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Presidential Documents

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The President

Presidential Determination No. 2004–08 of November 7, 2003

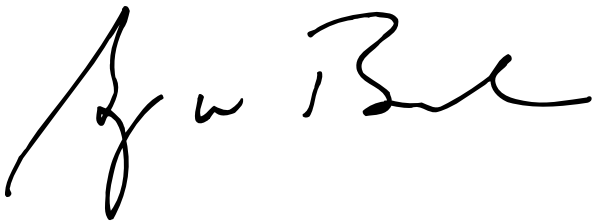
Waiver of Restrictions on Assistance to Russia under the Cooperative Threat Reduction Act of 1993 and Title V of the FREEDOM Support Act

Memorandum for the Secretary of State

Consistent with the authority vested in me by section 1306 of the National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314), I hereby certify that waiving the restrictions contained in subsection (d) of section 1203 of the Cooperative Threat Reduction Act of 1993 (22 U.S.C. 5952), as amended, and the requirements contained in section 502 of the FREEDOM Support Act (22 U.S.C. 5852) during Fiscal Year 2004 with respect to the Russian Federation is important to the national security interests of the United States.

I have enclosed the unclassified report described in section 1306(b)(1) of the National Defense Authorization Act for Fiscal Year 2003, together with a classified annex.

You are authorized and directed to transmit this certification and report with its classified annex to the Congress and to arrange for the publication of this certification in the **Federal Register**.



THE WHITE HOUSE,
Washington, November 7, 2003.

[FR Doc. 03–29162
Filed 11–19–03; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AH06

Purchase of Crop Insurance for Tobacco Price Support Eligibility

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This action amends the Tobacco Loan Program regulations to reflect a statutory change that removes the former statutory requirement that tobacco must be insured to be eligible for price support loans and to revise various organizational titles and OMB information collection control numbers.

EFFECTIVE DATE: November 20, 2003.

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Agricultural Program Specialist, Tobacco Division, Farm Service Agency, USDA, STOP 0514, 1400 Independence Avenue, SW., Washington, DC 20250–0514; Telephone: (202) 720–2715; e-mail: *ann_wortham@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Discussion of Final Rule

This rule will remove the requirement that eligible producers must purchase crop insurance on their tobacco in order to be eligible to receive price support loans under the Tobacco Loan Program. At one time, but not presently, section 508(b)(7) of the Federal Crop Insurance Act (7 U.S.C. 1508(b)(7)) required tobacco producers to purchase crop insurance in order to be eligible to receive a loan. Section 192(a)(2) of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127) removed that requirement. This rule removes the crop insurance provisions of § 1464.7(f). Also, this rule implements name changes in certain USDA institutions. Finally, the rule will correct the Office of Management and Budget (OMB) control numbers for the forms used in administering the regulations in the part. Because this rule removes requirements or makes technical changes only, withholding the publication of this rule for comment would be contrary to the public interest and unnecessary.

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866, has been determined to be not significant, and therefore has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the United States Department of Agriculture (USDA) is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the substance of this rule.

Environmental Review

FSA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. In accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), and the FSA regualtions for NEPA at 7 CFR part 799, neither an Environmental Impact Statement nor an environmental assessment is required. A copy of the environmental evaluation used to make this determination is available for inspection and review upon request.

Executive Order 12372

These corrections are not subject to the provisions of Executive Order 12372, which require consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

This rule contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local and tribal governments or the private sector. Therefore this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Federal Assistance Program

The number and title of the Federal assistance program, as found in the Catalogue of Federal Domestic Assistance, to which this rule applies are:

10.051—Commodity Loans and Loan Deficiency Payments

Paperwork Reduction Act

This rule does not affect the information collection requirements of 7 CFR part 1464 approved by OMB and assigned OMB control numbers 0560–0058 and 0560–0182.

List of Subjects in Part 1464

Eligibility, Price support, Tobacco.

■ Accordingly, as set forth in the preamble, 7 CFR part 1464 is amended as follows:

PART 1464—TOBACCO

■ 1. The authority citation for 7 CFR part 1464 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1, and 1445–2; 15 U.S.C. 714b, 714c.

■ 2. In the table below, for each section indicated in the left column, remove the phrase indicated in the middle column wherever it appears in the section, and add the phrase indicated in the right column:

Section	Remove	Add
1464.1(a); 1464.101(b); 1464.105	Tobacco and Peanuts Division	Tobacco Division.
1464.2(b)(2)(iii); 1464.2(b)(2)(iv); 1464.2(b)(2)(v); 1464.2(b)(2)(vii).	County FSA office	FSA county office.
1464.8(e)(2); 1464.10(e)	County ASC committee	FSA county committee.
1464.10(j)(2); 1464.10(j)(3)	State ASC committee	FSA State committee.
1464.108	National Appeals Division, FSA	National Appeals Division, USDA.

Section	Remove	Add
Part 1464, Appendix A	Agricultural Stabilization and Conservation Service.	Farm Service Agency.

§ 1464.4 [Amended]

■ 2. In the first sentence of § 1464.4(b), revise the phrase ''Claim Control Record, Form ASCS–604'' to read ''Claim Control Record.''

§ 1464.7 [Amended]

■ 3. In § 1464.7, remove paragraph (f).

■ 4. Revise § 1464.24 to read as follows:

§ 1464.24 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control numbers 0560–0058 and 0560–0182.

Signed at Washington, DC, on November 14, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–28990 Filed 11–19–03; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AH32

Minor Changes to Decommissioning Trust Fund Provisions

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations related to decommissioning trust fund provisions to correct typographical errors and make minor changes to a final rule promulgated by the NRC in December of 2002. This action adds clarifying language to amendments regarding notification requirements, investment prohibitions, and the option for licensees to retain their existing license conditions.

EFFECTIVE DATE: The final rule will become effective December 24, 2003, unless significant adverse comments on the amendment are received by December 22, 2003. If the rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the **Federal Register**. Comments received after December 22, 2003, will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH32) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; email *cag@nrc.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1978; e-mail *bjr@nrc.gov.*

SUPPLEMENTARY INFORMATION: Because NRC considers this action to be noncontroversial, the NRC is using the direct final rule process for this rule. The amendments in this rule will become effective on December 24, 2003. However, if the NRC receives significant adverse comments on this direct final rule by December 22, 2003, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this **Federal Register.** Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when—

(a) The comment causes the staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the staff.

(2) The comment proposes a change or an addition to the rule and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

Background

On December 24, 2002, the Nuclear Regulatory Commission (NRC) published in the **Federal Register** (67 FR 78332) a final rule entitled ''Decommissioning Trust Provisions,'' which amended the NRC's regulations relating to decommissioning trust provisions for nuclear power plant licensees. The rule required licensees that are no longer rate-regulated or who no longer have access to a non-bypassable charge for decommissioning to have decommissioning trust agreements in a form acceptable to the NRC in order to increase assurance that an adequate amount of decommissioning funds will be available for their intended purpose. The rule has an effective date of December 24, 2003.

After publication of the final rule, the Nuclear Energy Institute (NEI) suggested that an administrative rulemaking be undertaken to correct what it perceived to be administrative errors in the rule. The NRC agrees with NEI's requested changes, but because NRC considers this action noncontroversial and routine, the NRC is using the direct final rule procedure for this rule.

NEI's Proposed Changes

In a July 1, 2003, letter to the Director of the NRC's Office of Nuclear Reactor Regulation (NRR), NEI identified ''four important instances'' in which ''administrative errors involving errors or omissions in drafting, * * * if uncorrected * * * could affect efficient implementation of the new rule.'' The four instances identified by NEI were (1) notification requirement for administrative expenses, (2) effective date of the new rule, (3) preserving the option to retain existing license conditions, and (4) investment prohibition.

Notification Requirement for Administrative Expenses

NEI stated that NRC failed to exclude ordinary administrative expenses from the new rule's requirement that the fund withdrawals require prior NRC notification. Further, NEI stated that the NRC did not intend, supported by the language in its Statement of Considerations, for licensees to notify the NRC when paying ordinary trust administrative expenses. NEI asserted that ''* * * [T]he above-cited provisions of the final rule failed to associate administrative expenses with an exclusion from the notice requirement.'' In fact, the final rule states in § 50.75(h)(1)(iv) ''* * * Disbursements, or payments from the trust, escrow account, Government fund, or other account used to segregate and manage the funds, *other than for payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, are restricted to decommissioning expenses or transfer to another financial assurance method acceptable under paragraph (e) of this section until final decommissioning has been completed.* * *'' (emphasis added.)

In order to eliminate any further confusion regarding the present rule language, the NRC is revising the rule language to essentially the language NEI proposed. That is, 10 CFR 50.75(h)(1)(iv) will read ''Except for withdrawals being made under 10 CFR 50.82(a)(8) *or for payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, no disbursement or payment may be made from the trust,* * * *'' (emphasis added.)

Further, this rulemaking is also revising the first sentence of 10 CFR 50.75(h)(2) to read ''Licensees that are 'electric utilities' under § 50.2 that use prepayment or an external sinking fund to provide financial assurance, shall *include a provision* in the terms of the trust, escrow account, Government fund, or other account used to segregate and manage funds that except for withdrawals being made under 10 CFR 50.82(a)(8) *or for payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, no disbursement or payment may be made, from the trust,* * * *.'' (emphasis added.)

Effective Date of the New Rule

The second point NEI raised related to the effective date of the new rule. NEI's position is that certain changes made by the rule, other than those changes in 10 CFR 50.75(h)(1)–(3), should be made immediately effective, rather than on December 24, 2003, as now called for in the rule. The NRC believes that there is no substantive reason to change the effective date of the rule because the Commission has already determined that the December 24, 2003, effective date is appropriate.

Preserving the Option To Retain Existing License Conditions

NEI's third point related to licensees being able to retain their existing license conditions. NEI stated that the rule language does not reflect the intent of the Commission that individual licensees should have the option of retaining their existing license conditions. The NRC agrees with the comment and amends the rule by adding the following as a new section, 10 CFR 50.75(h)(5), to become effective on December 24, 2003:

> The provisions of paragraphs (h)(1) through (h)(3) do not apply to any licensee that as of December 24, 2003, was subject to existing license conditions relating to the terms and conditions of decommissioning trust agreements, so long as the licensee does not elect to amend those license conditions. If a licensee with existing license conditions relating to decommissioning trust agreements elects to amend the conditions, the license amendment shall be in accordance with the provisions of paragraph (h) of this section.

Investment Prohibition

Lastly, NEI discussed investment prohibition requirements of the rule. NEI stated that the rule failed ''to include a general prohibition against investments in nuclear plant owners, although such a prohibition was intended * * *,'' and proposed the following change in § 50.75(h)(1)(i)(A) which, as revised, would read: ''* * * is prohibited from investing the funds in securities or other obligations of the licensee or *any* other owner or operator of *any* power reactor * * *'' (emphasis added.) The NRC agrees and is making the proposed change (with the modification ''any *nuclear* power reactor'' to be consistent with the rest of the rule) through this direct final rule effort.

Miscellaneous NRC Corrections

The NRC is clarifying the applicability of the *de minimis* limitation contained in the investment prohibition, so that the *de minimis* proviso will now read ''* * * and provided further that no more than 10 percent of trust assets may be indirectly invested in securities of any entity owning or operating one or more nuclear power plants.'' In addition, the NRC is making an editorial change to clarify that the securities of operators, as well as owners, of nuclear power plants are subject to the investment provisions in their entirety. Finally, the NRC is correcting minor typographical errors in paragraphs (e)(1)(i) and (e)(1)(ii) so that the term ''permanent termination of operations'' is used in full where the term ''permanent termination'' now

appears, and correcting § 50.75(h)(1)(i)(B) to make consistent references to ''standard of care'.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is making clarifying changes to the existing rule and modifying the effective date of a part of the rule. These actions do not constitute the establishment of a standard that contains generally applicable requirements.

Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51 that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. These changes would not result in any increased impact on the environment from decommissioning activities as analyzed in the Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG–0586, August 1988) and Draft Supplement 1 (NUREG–0586, Draft Supplement 1, October 2001). Therefore, promulgation of this rule would not introduce any impacts on the environment not previously considered by the NRC.

Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget (OMB) approval 3150–0011, 10 CFR part 50.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

A regulatory analysis has not been prepared for this direct final rule because this rule is considered a minor, nonsubstantive amendment; it has no economic impact on NRC licensees or the public.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this rule, and, therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR chapter I.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, and Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); Secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under Secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235).

Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. In § 50.75, the sixth sentence of paragraphs (e)(1)(i) and the sixth sentence of (e)(1)(ii), paragraph (h)(1)(i)(A), the first sentences of paragraphs (h)(1)(i)(B), (h)(1)(iv), and (h)(2), are revised, and a new paragraph (h)(5) is added to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(e) * * *

(1) * * *

(i) * * * A licensee that has prepaid funds based on the formulas in § 50.75(c) of this section may take credit for projected earnings on the prepaid decommissioning funds using up to a 2 percent annual real rate of return up to the time of permanent termination of operations.

(ii) * * * A licensee that has collected funds based on the formulas in § 50.75(c) of this section may take credit for collected earnings on the decommissioning funds using up to a 2 percent annual real rate of return up to the time of permanent termination of operations.* * *

* * * * *

(h) * * *

(1) * * *

(i) * * *

(A) Is prohibited from investing the funds in securities or other obligations of the licensee or any other owner or operator of any nuclear power reactor or their affiliates, subsidiaries, successors or assigns, or in a mutual fund in which at least 50 percent of the fund is invested in the securities of a licensee or parent company whose subsidiary is an owner or operator of a foreign or domestic nuclear power plant. However, the funds may be invested in securities tied to market indices or other non-nuclear sector collective, commingled,

or mutual funds, provided that this subsection shall not operate in such a way as to require the sale or transfer either in whole or in part, or other disposition of any such prohibited investment that was made before the publication date of this rule, and provided further that no more than 10 percent of trust assets may be indirectly invested in securities of any entity owning or operating one or more nuclear power plants.

(B) Is obligated at all times to adhere to a standard of care set forth in the trust, which either shall be the standard of care, whether in investing or otherwise, required by State or Federal law or one or more State or Federal regulatory agencies with jurisdiction over the trust funds, or, in the absence of any such standard of care, whether in investing or otherwise, that a prudent investor would use in the same circumstances. * * *

* * * * *

(iv) Except for withdrawals being made under 10 CFR 50.82(a)(8) or for payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, no disbursement or payment may be made from the trust, escrow account, Government fund, or other account used to segregate and manage the funds until written notice of the intention to make a disbursement or payment has been given to the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30 working days before the date of the intended disbursement or payment. * * *

(2) Licensees that are ''electric utilities'' under § 50.2 that use prepayment or an external sinking fund to provide financial assurance shall include a provision in the terms of the trust, escrow account, Government fund, or other account used to segregate and manage funds that except for withdrawals being made under 10 CFR 50.82(a)(8) or for payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, no disbursement or payment may be made from the trust, escrow account, Government fund, or other account used to segregate and manage the funds until written notice of the intention to make a disbursement or payment has been given the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable at least 30 working days before the date of the intended disbursement or payment. * * *

* * * * *

(5) The provisions of paragraphs (h)(1) through (h)(3) of this section do not apply to any licensee that as of December 24, 2003, has existing license conditions relating to decommissioning trust agreements, so long as the licensee does not elect to amend those license conditions. If a licensee with existing license conditions relating to decommissioning trust agreements elects to amend those conditions, the license amendment shall be in accordance with the provisions of paragraph (h) of this section.

Dated at Rockville, Maryland, this 20th day of October, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–29022 Filed 11–19–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16409; Airspace Docket No. 03–ACE–78]

Modification of Class E Airspace; Sidney, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: Sidney Municipal Airport, Sidney, NE, has been renamed Sidney Municipal/Lloyd W. Carr Field. This action modifies the Sidney, NE Class E airspace areas by replacing ''Sidney Municipal Airport'' in the legal descriptions of Sidney, NE Class E airspace areas with ''Sidney Municipal/Lloyd W. Carr Field'' and brings the legal description into compliance with FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, February 19, 2004. Comments for inclusion in the Rules Docket must be received on or before December 17, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16409/Airspace Docket No. 03–ACE–78, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the legal description of the Class E airspace designated as a surface area and the Class E airspace area extending upward from 700 feet above the surface at Sidney, NE. It replaces ''Sidney Municipal Airport,'' the former name of the airport, with ''Sidney Municipal/Lloyd W. Carr Field,'' the new name of the airport, in the both legal descriptions. This action brings the legal descriptions of both Sidney, NE airspace areas into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The areas will be depicted on appropriate aeronautical charts. Class E airspace designated as surface areas are published in paragraph 6002 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of the same FAA Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal**

Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16409/Airspace Docket No. 03–ACE–78.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

■ 2. The authority citation for part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE NE E2 Sidney, NE

Sidney Municipal/Lloyd W. Carr Field, NE
(Lat. 41°06′05″ N., long 102°59′07″ W.)
Sidney VORTAC
(Lat. 41°05′48″ N., long. 102°58′59″ W.)

Within a 4.1-mile radius of Sidney Municipal/Lloyd W. Carr Field and within 1.8 miles each side of the Sidney VORTAC 126° radial extending from the 4.1-mile radius of the airport to 7 miles southeast of the VORTAC and within 1.8 miles each side of the Sidney VORTAC 323° radial extending from the 4.1-mile radius of the airport to 7 miles northwest of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Sidney, NE

Sidney Municipal/Lloyd W. Carr Field, NE
(Lat. 41°06′05″ N., long. 102°59′07″ W.)
Sidney VORTAC
(Lat. 41°05′48″ N., long. 102°58′59″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Sidney Municipal/Lloyd W. Carr Field and within 4 miles southwest and 6 miles northeast of the Sidney VORTAC 126° radial extending from the 6.6-mile radius of the airport to 10.5 miles southeast of the VORTAC and within 4 miles northeast and 6 miles southwest of the Sidney VORTAC 323° radial extending from the 6.6-mile radius of the airport to 10.5 miles northwest of the VORTAC.

* * * * *

Issued in Kansas City, MO, on November 3, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–29030 Filed 11–19–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30397; Amdt. No. 445]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, December 25, 2003.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed

changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on November 14, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC.

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 445 Effective Date December 25, 2003]

From	To	MEA
§ 95.6058 VOR Federal Airway 58 is Amended to Read in Part		
Kingston, NY VOR/DME	Hartford, CT VOR/DME	3,200
§ 95.6167 VOR Federal Airway 167 is Amended to Read in Part		
Hancock, NY VOR/DME	Helon, NY FIX	4,100
Helon, NY FIX	Kingston, NY VOR/DME	4,000
Kingston, NY VOR/DME	Hartford, CT VOR/DME	3,200
Jewit, CT FIX *2,000–MOCA	Providence, RI VORTAC	*2,500
Providence, RI VORTAC *1,800–MOCA	Peake, MA FIX	*2,500
Peake, MA FIX *1,600–MOCA	Marconi, MA VOR/DME	*3,000
§ 95.6454 VOR Federal Airway 454 is Amended to Read in Part		
Banbi, AL FIX *2,000–MOCA	Columbus, GA VORTAC	*2,400

§ 95.8003 VOR Federal Airway Changeover Points—Airway Segment

From	To	Changeover points	
		Distance	From
V–506 is Amended to Modify Changeover Point			
King Salmon, AK VORTAC	Bethel AK VORTAC	102	King Salmon

[FR Doc. 03–29025 Filed 11–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 1999N–2637]

Public Information Regulations; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the public information regulations to correct an error that was incorporated in the regulations. This action is being taken to improve the accuracy of the regulations.

DATES: This correction is effective July 28, 2003.

FOR FURTHER INFORMATION CONTACT: Joyce A. Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 12, 2003 (68 FR 25283), FDA published a final rule that, among other things, amended its regulations, in part 20 (21 CFR part 20). In § 20.120, the zip code for the Dockets Management Branch is incorrect. This document corrects that error.

§ 20.120 [Corrected]

■ 1. On page 25287, in the second column, § 20.120 *Records available in Food and Drug Administration Public Reading Rooms* is corrected in the third sentence of paragraph (a) by removing ''20857'' and adding in its place ''20852''.

Dated: November 14, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–28985 Filed 11–19–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA44

Financial Crimes Enforcement Network; Amendments to the Bank Secrecy Act Regulations; Definition of Futures Commission Merchants and Introducing Brokers in Commodities as Financial Institutions; Requirement That Futures Commission Merchants and Introducing Brokers in Commodities Report Suspicious Transactions

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Final rules.

SUMMARY: This document contains amendments to the regulations implementing the statute generally referred to as the Bank Secrecy Act. The amendments add futures commission merchants and introducing brokers in commodities to the regulatory definition of ''financial institution'' and require that they report suspicious transactions to FinCEN. Bringing these major participants in the futures industry into the Bank Secrecy Act regulatory structure is intended to further the counter-money laundering program of the Department of the Treasury.

DATES: *Effective Date:* December 22, 2003.

Applicability Date: May 18, 2004.

FOR FURTHER INFORMATION CONTACT: Alma M. Angotti, Senior Enforcement Counsel, and Judith R. Starr, Chief Counsel, FinCEN, at (703) 905–3590; David Vogt, Associate Director, and Donald Carbaugh, Chief, Depository Institutions, Office of Regulatory Programs, FinCEN, (202) 354–6400.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

The Bank Secrecy Act, Pub. L. 91–508, codified as amended at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314; 5316–5332 (''BSA''), authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311 *et seq.*) appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

The BSA defines the term ''financial institution'' to include, among other broad categories of institutions, any ''broker or dealer in securities or commodities.''[2] Section 321(b) of the USA Patriot Act amended the BSA to expressly include in the definition of ''financial institution'' futures commission merchants (''FCMs'') that are registered, or required to register, with the Commodity Futures Trading Commission (''CFTC'') under the Commodity Exchange Act (''CEA'').[3]

The Secretary of the Treasury was granted authority in 1992, with the enactment of 31 U.S.C. 5318(g),[4] to require financial institutions to report suspicious transactions. Subsection (g)(1) provides:

> The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

Subsection (g)(2) provides further:

> If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this

[1] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by Section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (''USA Patriot Act''), Pub. L. 107–56.

[2] 31 U.S.C. 5312(a)(2)(H). The Secretary has clarified that the term ''broker or dealer in commodities'' in the BSA includes introducing brokers in commodities (''IB–Cs''). *See* 67 FR 21110, 21111 n.5 (April 29, 2002) (anti-money laundering programs for certain financial institutions); 68 FR 25148 (May 9, 2003) (joint final rule requiring customer identification programs for FCMs and IB–Cs).

[3] 7 U.S.C. 1 *et seq.* Section 321(b) also provided that the term ''financial institution'' includes any commodity pool operator (''CPO'') and any commodity trading advisor (''CTA'') registered, or required to register, under the CEA. *See* 31 U.S.C. 5312(c). FinCEN has proposed rules that require unregistered investment companies, including commodity pools, to have anti-money laundering (''AML'') programs (''AMLPs''). FinCEN also has proposed rules requiring CTAs to have AMLPs. 68 FR 23640 (May 5, 2003). A requisite element of these AMLPs is the requirement to have policies, procedures, and controls that are reasonably designed to ensure compliance with the BSA and its implementing regulations.

[4] 31 U.S.C. 5318(g) was added to the BSA by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Title XV of the Housing and Community Development Act of 1992, Pub. L. 102–550; it was expanded by section 403 of the Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, to require designation of a single government recipient for reports of suspicious transactions.

section or any other authority, reports a suspicious transaction to a government agency * * * the financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported.

Subsection (g)(3) provides that any financial institution, director, officer, employee, or agent of any financial institution

that makes a voluntary disclosure of any possible violation of law or regulation * * * or makes a disclosure pursuant to this subsection or any other authority * * * shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision [thereof] * * * for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

Finally, subsection (g)(4)(A) requires the Secretary of the Treasury, ''to the extent practicable and appropriate,'' to designate ''a single officer or agency of the United States to whom such reports shall be made.'' [5] The designated agency is in turn responsible for referring any report of a suspicious transaction to ''any appropriate law enforcement or supervisory agency.'' [6]

B. FCMs and IB–Cs: Regulation and Money Laundering

The final suspicious activity reporting rule contained in this document applies to FCMs and IB–Cs. An FCM is defined in the CEA as an individual, association, partnership, corporation, or trust that is engaged in soliciting or accepting orders and funds for the purchase or sale of a commodity for future delivery on or subject to the rules of a contract market or derivatives transaction execution facility (''DTEF'').[7] An IB–C is similarly defined,[8] except that an IB–C may not accept money, securities, or property (or extend credit in lieu thereof) to margin, guarantee, or secure any trades or contracts. The CEA requires FCMs and IB–Cs to register pursuant to the procedures of Section 4f(a)(1) of the CEA.[9] As of May 31, 2003, there were 185 FCMs and 1,591 IB–Cs (domestic and foreign) that had registered with the CFTC pursuant to this provision.

This final rule is just one of several steps taken by the Secretary of the Treasury to address comprehensively the risk of money laundering in the futures industry. In April 2002, FinCEN issued an interim final rule requiring FCMs and IB–Cs to develop and implement AMLPs to prevent them from being used to launder money or finance terrorist activities, which includes achieving and monitoring compliance with the applicable requirements of the Bank Secrecy Act and the Secretary of the Treasury's implementing regulations.[10]

This final rule follows other recent actions that expand the application of the BSA to additional financial institutions and require those financial institutions to report suspicious transactions. For example, since April 1996, rules issued by FinCEN under the authority contained in 31 U.S.C. 5318(g) have required banks, thrifts, and other banking organizations to report suspicious transactions.[11] In collaboration with FinCEN, the federal bank supervisors concurrently issued suspicious transaction reporting rules under their own authority.[12] The bank supervisory agency rules apply to banks, bank holding companies, and non-depository institution affiliates and subsidiaries of banks and bank holding companies. Money services businesses have been required to report suspicious transactions to the Department of the Treasury since the beginning of 2002.[13] In July 2002, FinCEN took a further step in the creation of a comprehensive system for the reporting of suspicious transactions by the major categories of financial institutions operating in the United States by requiring brokers and dealers in securities (''BDs'') to report suspicious transactions.[14] In October 2002, FinCEN issued a final rule requiring casinos to report suspicious transactions, and a proposed rule that would require certain insurance companies to report suspicious transactions. The final rule contained in this document will extend this and other BSA requirements to FCMs and IB–Cs. The reporting and recordkeeping provisions of the BSA, including suspicious transaction reporting by FCMs and IB–Cs can provide highly useful information in law enforcement and regulatory investigations and proceedings, and in the conduct of intelligence activities to protect against international terrorism.[15]

II. Notice of Proposed Rulemaking and Comments

On May 5, 2003, FinCEN published a notice of proposed rulemaking (the ''Notice'') [16] that would extend the reporting and recordkeeping obligations of the BSA, including suspicious transaction reporting, to FCMs and IB–Cs. FinCEN received two comment letters on the Notice: one comment from NFA and one comment from the Futures Industry Association, an industry trade association. Both commenters support the proposed rule, but each suggested certain changes and clarifications they believe would be appropriate. Changes and clarifications resulting from these comments are discussed below in the section-by-section analysis.

III. Section-by-Section Analysis

A. 103.11(ii)—Meaning of Terms

1. *Definitions of Futures Commission Merchant and Introducing Broker-Commodities.* Under this final rule, the definition of ''financial institution'' in 31 CFR 103.11(n) includes FCMs and IB–Cs as these terms are defined in paragraphs (zz) and (aaa), respectively. There were no comments concerning these definitions, and FinCEN is adopting them as proposed.

These terms encompass any person registered or required to be registered as an FCM or IB–C with the CFTC,[17] but exclude securities BDs that have notice registered with the CFTC as FCMs or IB–Cs for the sole purpose of effecting transactions in security futures products (''SFPs'').[18] For these persons, FinCEN

[5] This designation does not preclude the authority of supervisory agencies to require financial institutions to submit other reports to the same agency or another agency ''pursuant to any other applicable provision of law.'' 31 U.S.C. 5318(g)(4)(C).

[6] 31 U.S.C. 5318(g)(4)(B).

[7] 7 U.S.C. 1a(20).

[8] 7 U.S.C. 1a(23) (defining the term ''introducing broker'').

[9] 7 U.S.C. 6f(a)(1).

[10] *See* 67 FR 21111. Compliance with this rule is deemed satisfied if FCMs and IB–Cs comply with the AML rule (Compliance Rule 2–9(c)) that was approved by the CFTC and issued by the National Futures Association (''NFA''), the only registered futures association. *Id.*

[11] *See* 31 CFR 103.18 (requiring banks, thrifts, and other banking organizations to report suspicious transactions).

[12] *See* 12 CFR 21.11 (issued by the Office of the Comptroller of the Currency); 12 CFR 208.62 (issued by the Board of Governors of the Federal Reserve System); 12 CFR 353.3 (issued by the Federal Deposit Insurance Corporation); 12 CFR 563.180 (issued by the Office of Thrift Supervision); and 12 CFR 748.1 (issued by the National Credit Union Administration).

[13] *See* 65 FR 13683 (March 14, 2000).

[14] *See* 67 FR 44048 (July 1, 2002).

[15] *See* 31 U.S.C. 5311 (stating purpose of the reporting authority under the BSA).

[16] 68 FR 23653 (May 5, 2003).

[17] There are two types of IB–Cs, guaranteed and non-guaranteed. A guaranteed IB–C is one that elects to operate pursuant to a written guarantee agreement with an FCM instead of independently meeting its own capital requirements. *See, e.g.*, 17 CFR 1.17(a)(2)(ii). An independent IB–C, by contrast, is one that elects to meet its own capital requirements. Both types of IB–Cs engage in the offer and sale of futures contracts and commodity options on behalf of customers and facilitate transfers or transmittals of funds for their customers. Thus, they present the same or similar money laundering risks, and Treasury sees no reason to draw a distinction between IB–Cs that are guaranteed and those that are not. Therefore, all IB–Cs will be covered by the final rule.

[18] A ''security future'' is defined in the CEA and the Securities Exchange Act of 1934 (''Exchange

Continued

believes that the BSA rules of their primary federal supervisory agency should apply, and that authority to examine for compliance with those rules should remain with the agency with which the entities are primarily registered. Thus, a BD that is notice registered with the CFTC must comply with the BSA rules applicable to BDs, and will be examined for BSA compliance by the Securities and Exchange Commission (''SEC''). A parallel change also is being made to the definition of ''broker or dealer in securities'' in the BSA regulations. Thus, an FCM or IB–C that is notice registered with the SEC must comply with the BSA rules applicable to FCMs and IB–Cs, and will be examined for BSA compliance by the CFTC and the relevant designated self-regulatory organizations (''DSROs'').

With respect to those entities that are dual registrants with both the CFTC and the SEC for purposes of futures and securities transactions other than SFPs, FinCEN intends for this rule to have the same effect as 31 CFR 103.19, which is the rule that requires suspicious transaction reporting for BDs. That is, dual registrants in compliance with the suspicious transaction reporting requirements under 31 CFR 103.19 also shall be deemed to be in compliance with this rule, and dual registrants who are in compliance with this rule shall be deemed to be in compliance with 31 CFR 103.19. This will prevent dual registrants from being subjected to different or conflicting suspicious transaction reporting requirements for the various aspects of their businesses.

2. *Definitions of Transaction, Commodity, Contract of Sale, and Option.* The definition of ''transaction'' in the regulations under the BSA, which is set forth in paragraph (ii), conforms generally to the definition Congress added to title 18 when it criminalized money laundering in 1986.[19] The term is broad and is intended to reach all of the various types of transactions that may occur at a financial institution. Amended paragraph (ii) specifically adds futures transactions, *i.e.*, transactions involving any contract of sale of a commodity for future delivery, any option on any contract of sale for future delivery, and any option on a commodity, to the list of transactions subject to BSA requirements. The definition is not restricted to transactions conducted on a designated contract market or a DTEF.[20]

Paragraphs (xx), (yy), and (bbb) set forth definitions of ''commodity,'' ''contract of sale,'' and ''option on a commodity.'' These are definitions based on Sections 1a(4), 1a(7), and 1a(26), respectively, in the CEA.[21] There were no comments concerning these definitions, and FinCEN is adopting them as proposed.

B. 103.17—Reports by FCMs and IB–Cs of Suspicious Transactions

1. *Reporting standard.* Section 103.17 requires FCMs and IB–Cs to report suspicious transactions that are conducted or attempted by, at, or through an FCM or IB–C and involve or aggregate at least $5,000 in funds or other assets. It is important to recognize that transactions are reportable whether or not they involve currency.[22] Paragraph (a)(1) also permits, but does not require, the reporting of transactions that appear relevant to possible violations of law or regulation even in cases in which the rule does not explicitly so require, for example in the case of a transaction falling below the $5,000 threshold.

Paragraph (a)(2) requires reporting if the FCM or IB–C knows, suspects, or has reason to suspect that the transaction (or pattern of transactions of which the transaction is a part) is one of four classes of transactions (described more fully below) requiring reporting. The ''knows, suspects, or has reason to suspect'' standard incorporates a concept of due diligence in the reporting requirement.

The first class of transactions requiring reporting, described in paragraph (a)(2)(i), includes transactions involving funds derived from illegal activity or intended or conducted in order to hide or disguise funds or assets derived from illegal activity. The second class of transactions, described in paragraph (a)(2)(ii), involves transactions designed, whether through structuring or other means, to evade the requirements of the BSA. The third class of transactions, described in paragraph (a)(2)(iii), involves transactions that appear to serve no business or apparent lawful purpose, and for which the FCM or IB–C knows of no reasonable explanation after examining the available facts relating to the transaction and the parties. The fourth class of transactions, described in paragraph (a)(2)(iv), involves the use of the FCM or IB–C to facilitate a criminal transaction.

A determination as to whether a report is required must be based on all the facts and circumstances relating to the transaction and customer in question. Different fact patterns may lead to different determinations. In some cases, the facts of the transaction may indicate the need to report. For example, frequent and large-scale usage of wire transfers, including wire transfers to or from locations outside of the United States, from an account with only nominal futures activity may be indicative of suspicious activity. In other instances, the transaction or activity itself may be sufficiently suspicious to warrant reporting. Thus, if a customer engages in wash transactions or other fictitious or non-bona fide transactions that violate the CEA, a suspicious activity report must be filed.[23] Similarly, the fact that a customer unreasonably refuses to provide information necessary for the FCM or IB–C to make required reports, retain records as required, identify or verify the identity of a customer, or otherwise comply with the BSA; provides information that the FCM or IB–C determines to be false; or seeks to change or cancel a transaction after such person is informed of currency transaction reporting or information

Act'') as a contract of sale for future delivery of a single security or narrow-based security index (7 U.S.C. 1a(31) and 15 U.S.C. 78c(a)(55)), and an SFP is defined as a security future or any put, call, straddle, option, or privilege on any security future (7 U.S.C. 1a(32) and 15 U.S.C. 78c(a)(56)). The Commodity Futures Modernization Act of 2000 (''CFMA''), Pub. L. 103–556, 114 Stat. 2763 (December 21, 2000), amended the Exchange Act definitions of ''security'' and ''equity security'' to include security futures (15 U.S.C. 78c(a)(1) and 15 U.S.C. 78c(a)(11), respectively). As a result of these amendments, an SFP is both a security and a futures contract (or option thereon) and is thus subject to the jurisdiction of both the CFTC and the SEC.

[19] *See* Pub. L. 99–570, Title XIII, 1352(a), 100 Stat. 3207–18 (October 27, 1986), codified at 18 U.S.C. 1956.

[20] Thus, for example, the term ''transaction'' includes any transaction by an FCM or IB–C in a foreign currency futures contract, any option on any foreign currency futures contract, or any option on a foreign currency that occurs on an off-exchange basis. *See* Section 2(c)(1) and (2) of the CEA, 7 U.S.C. 2(c)(1)–(2).

[21] 7 U.S.C. 1a(4), 1a(7), and 1a(26), respectively.

[22] Many currency transactions are not indicative of money laundering or other violations of law, a fact recognized both by Congress, in authorizing reform of the currency transaction reporting system, and by FinCEN in issuing rules to implement that system (*see* 31 U.S.C. 5313(d) and 31 CFR 103.22(d), 63 FR 50147 (September 21, 1998)). But many non-currency transactions (for example, funds transfers) can indicate illicit activity, especially in light of the breadth of the statutes that make money laundering a crime. *See* 18 U.S.C. 1956 and 1957.

[23] As discussed below, however, paragraph (c)(1)(ii) provides an exception from the suspicious transaction reporting requirements for violations of the CEA by the FCM, IB–C, or any of its officers, directors, employees, or associated persons that are reported to the CFTC, a registered futures association, or any ''registered entity,'' as that term is defined in Section 1a(29) of the CEA, 7 U.S.C. 1a(29). As discussed in more detail below, dual registrants can report these violations either to these entities, or to the SEC or a securities self-regulatory organization (''SRO''), as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26), whichever is appropriate.

verification or recordkeeping requirements relevant to the transaction, would all indicate that a suspicious activity report should be filed. The FCM or IB–C may not notify the customer that it intends to file or has filed a suspicious transaction report with respect to the customer's activity.

In other situations, a more involved analysis and judgment may be needed to determine whether a transaction is suspicious within the meaning of the rule. Transactions that raise the need for such judgments may include, for example: (i) Transmission or receipt of funds transfers without normal identifying information or in a manner that indicates an attempt to disguise or hide the country of origin or destination or the identity of the customer sending the funds or of the beneficiary to whom the funds are sent; (ii) a repeated pattern of unusual activity by the customer, such as where the customer repeatedly makes unexplainable, frequent deposits or withdrawals ; or (iii) repeated use of an account as a temporary resting place for funds from multiple sources without a clear business purpose. The judgments involved also will extend to whether the facts and circumstances and the institution's knowledge of its customer provide a reasonable explanation for the transaction or activity that removes it from the suspicious category.

An FCM may carry, and an IB–C may introduce, intermediated accounts including omnibus accounts and accounts for collective investment vehicles such as commodity pools. In such circumstances, the FCM and IB–C may have little or no contact with or information about the ultimate beneficial owners of such accounts. FinCEN has proposed AMLP rules for CTAs and commodity pools, and monitoring for suspicious transactions is an integral part of such programs. Any AMLP obligations of intermediaries such as CTAs, however, would not reduce the obligation on an FCM or IB–C imposed by this rule to monitor transactions based on the facts and circumstances with which it is presented, in order to determine if a transaction is suspicious. In addition, omnibus accounts maintained for certain foreign financial institutions ultimately may fall within the definition of ''correspondent account'' under section 312 of the USA Patriot Act.[24]

2. *Reporting Threshold.* There were no comments concerning the $5,000 reporting threshold and FinCEN is adopting it as proposed. FinCEN reminds FCMs and IB–Cs, however, that the suspicious transaction reporting rules are not intended to operate (and indeed cannot properly operate) in a mechanical fashion. Rather, the suspicious transaction reporting requirements are intended to function in such a way as to have financial institutions evaluate customer activity and relationships for money laundering risks.[25]

3. *Transactions Involving Both an FCM and an IB–C.* Proposed paragraph (a)(3) provided that the obligation to identify and report properly a suspicious transaction rests with each FCM and IB–C involved in the transaction. It also provided, though, that when a transaction involves both an FCM and an IB–C, only one report needs to be filed with FinCEN as long as that report contains all the relevant facts concerning the transaction. This provision was intended to avoid duplicative and redundant reporting.

Both commenters observed that FCMs and IB–Cs frequently handle complex transactions that involve one or more FCMs, and not just an FCM and an IB–C. They noted that the language in the proposed rule only addressed the situation in which both an FCM and an IB–C are involved in a transaction and did not clearly apply to a situation where two FCMs are involved in the same transaction on behalf of the same customer. Accordingly, FinCEN has clarified the language to extend to the latter situation as well, as long as the suspicious activity report (''SAR'') that is filed (FCMs and IB–Cs will use the Form SAR–SF) [26] contains all of the necessary information. Thus, for example, in a ''give-up'' arrangement involving a clearing and an executing FCM, one FCM's SAR–SF could satisfy the obligation of both FCMs to report suspicious transactions. As a corollary, FinCEN also wishes to clarify that, as in the case of an FCM and IB–C involved in a transaction, two FCMs involved in a transaction (such as a clearing and an executing FCM) may consult with each other and share information, including the SAR–SF itself, to enable them to file a single report.[27]

4. *Filing Procedures.* Paragraph (b) sets forth the filing procedures to be followed by an FCM or IB–C making reports of suspicious transactions. Within 30 days after an FCM or IB–C becomes aware of a suspicious transaction, it must report the transaction by completing a SAR–SF and filing it in a central location determined by FinCEN. The rule also makes special provision for situations that require immediate attention, such as ongoing terrorist financing or money laundering schemes. In that event, the FCM or IB–C must notify immediately, by telephone, an appropriate law enforcement authority in addition to filing a SAR–SF. The rule also permits, but does not require, FCMs and IB–Cs to notify the CFTC in addition to contacting law enforcement and filing a SAR–SF.[28] There were no comments that addressed these procedures.

5. *Exceptions.* Paragraph (c) sets forth two exceptions to the reporting requirement. A report does not have to be filed to report a robbery or burglary that is reported to law enforcement. A report also does not have to be filed concerning possible violations of the CEA, the rules promulgated by the CFTC, or the rules of any registered futures association or registered entity by an employee or other associated person of an FCM or IB–C, provided that such violations are reported to the CFTC, a registered futures association, or a registered entity. This exception does not encompass reports of BSA violations made to the CFTC or a registered futures association.[29]

One commenter suggested that the rule make clear that an entity dually registered with the CFTC and the SEC is permitted to rely on the reporting exception if it appropriately reports violations to the CFTC, a registered futures association or a registered entity, or to the SEC or applicable securities

[24] FCMs and IB–Cs have been temporarily exempted from the correspondent account due diligence requirements of Section 312, although they are subject to its private banking due diligence requirements. *See* 67 FR 48348 (July 23, 2002) (interim final rule).

[25] Thus, for example, sizable futures transactions conducted for a well established commodity pool operated in accordance with Part 4 of the CFTC's regulations may require less scrutiny than a futures transaction conducted for an individual customer through a financial institution located in a jurisdiction that has been identified as a non-cooperative country or territory by the Financial Action Task Force.

[26] A draft of the SAR–SF was published for comment in the **Federal Register** on August 5, 2002; 67 FR 50751 (August 5, 2002); the form became final on December 26, 2002 and is available on FinCEN's Web site at *www.fincen.gov.* FinCEN intends to conform the instructions to the SAR–SF to specifically address FCM responsibilities under this rule.

[27] Information sharing procedures among BSA-defined financial institutions generally are set forth in 31 CFR 103.110. FinCEN will be issuing guidance on how financial institutions can file joint SARs in the appropriate circumstances.

[28] In addition, the rule reminds FCMs and IB–Cs of FinCEN's Financial Institutions Hotline (1–866–556–3974) for use by financial institutions wishing voluntarily to report to law enforcement suspicious transactions that may relate to terrorist activity. FCMs and IB–Cs reporting suspicious activity by calling the Financial Institutions Hotline must still file a timely SAR–SF to the extent required by the proposed rule.

[29] Specifically, this exception does not apply to a BSA violation that is reported to the CFTC pursuant to CFTC Rule 42.2, 17 CFR 42.2, which was adopted after the issuance of the proposed rule.

SRO, whichever is most appropriate under the circumstances. In the proposing release, FinCEN made clear its intent that the rule will have the same effect as 31 CFR 103.19, which is the rule that requires suspicious transaction reporting for BDs. FinCEN stated that dual registrants who are in compliance with the suspicious transaction reporting requirements for BDs under 31 CFR 103.19 will also be deemed to be in compliance with this rule, and further, that dual registrants that are in compliance with this rule will also be deemed to be in compliance with 31 CFR 103.19.[30]

FinCEN is guided by the legislative history of Title II of the USA Patriot Act,[31] which specifically urged Treasury to take steps to provide for a reporting process for entities registered as both a BD and an FCM that requires only a single report, and to act to prevent inconsistent regulations for dual registrants. Accordingly, FinCEN agrees with this comment and clarifies that an FCM dually registered as a BD can rely on the exception from SAR filing by reporting the violation to either an appropriate securities or futures regulator or SRO. Similarly, a BD that is dually registered as an FCM can rely on the exception by reporting the violation to the CFTC or a registered futures association or registered entity in the same way that an FCM is permitted to do so.

Both commenters also noted that the proposed rule did not specifically address what documentation is sufficient to demonstrate reliance upon an exception. In contrast, the SAR rule for BDs provides that a Form RE–3, U–4, or U–5 is sufficient documentation to demonstrate reliance. One commenter suggested that FinCEN specifically state that a Form 8–T, U–5, RE–3, or any other form properly filed with a futures or securities regulator is sufficient documentation. FinCEN agrees with this comment, and the final rule reflects this change.[32]

Finally, in response to one comment, FinCEN clarifies that FCMs and IB–Cs have the same ability as BDs to rely on the reporting exception whether their reporting procedures are ''formal or informal.''[33]

6. *Retention of Records.* Paragraph (d) requires FCMs and IB–Cs to maintain a copy of any SAR–SF that is filed with FinCEN and all original related supporting documentation for a period of five years from the date of filing. Nothing in the rule modifies, limits, or supersedes section 101 of the Electronic Records in Global and National Commerce Act,[34] and thus an FCM or IB–C may make and maintain records either as originals or in electronic format as permitted under existing CFTC rules.[35] Accordingly, the FCM or IB–C must make the supporting documentation available to FinCEN, the CFTC, or any other appropriate law enforcement or regulatory agency, and, consistent with paragraph (g), to any registered futures association, registered entity, or SRO. There were no comments addressing this record retention provision, and FinCEN is adopting it as proposed.

7. *Non-Disclosure.* Paragraph (e) reflects the statutory bar against the disclosure of information filed in, or the fact of filing, a suspicious activity report (whether the report is required by the rule or is filed voluntarily).[36] Thus, the paragraph specifically prohibits persons filing a SAR–SF from making any disclosure either about the report or the supporting documentation unless the disclosure is made to FinCEN, the CFTC, another appropriate law enforcement or regulatory agency, or, consistent with paragraph (g), a registered futures association, registered entity, or SRO. There were no comments concerning this provision, and FinCEN is adopting it as proposed.

8. *Safe Harbor from Civil Liability.* Paragraph (f) incorporates the BSA's statutory protection from civil liability for making or filing a report of a suspicious transaction or for failing to disclose the fact that a report has been made or filed. The specific reference to arbitration reflects the clarification provided in the USA Patriot Act that the safe harbor for suspicious transaction reporting would apply in arbitration proceedings. Because some disputes in the futures industry are resolved under a reparations procedure provided for by the CEA,[37] paragraph (f) clarifies that the safe harbor also applies in reparations proceedings. FinCEN intends to work with the CFTC, the DSROs, and industry representatives to ensure that appropriate educational materials are delivered to compliance and litigation personnel.

It must be noted that, while the rule reiterates and clarifies the broad statutory protection from liability for making reports of suspicious transactions and for failing to disclose the fact of such reporting, the regulatory provisions do not extend the scope of either the statutory prohibition or the statutory protection. The prohibition on disclosure (other than as required under the rule) applies regardless of any protection from liability. This means, for instance, that during an arbitration or reparations proceeding, an FCM or IB–C would not be permitted to provide a copy of a SAR–SF, or disclose the fact that one had been filed, to any participant in the proceeding, including as applicable, the arbitrator, judgment officer, or administrative law judge.

Both commenters requested that the safe harbor protection from civil liability under this rule, and under FinCEN's rule implementing Section 314(b) of the USA Patriot Act,[38] be extended to protect disclosures to foreign financial institutions to the extent that an FCM or IB–C needs to obtain information from that foreign entity.[39] However, foreign entities are not ''financial institutions'' and thus are not eligible for these protections that the BSA extends to financial institutions. Moreover, FinCEN and the relevant examining authority in the United States have the ability to require U.S.-regulated financial institutions to protect adequately sensitive information involved in reporting a suspicious transaction. That said, it may be appropriate in certain circumstances for an FCM or IB–C to question carefully the foreign financial institution about the customer or the transaction to understand more fully whether the FCM should report the transaction as

[30] 68 FR at 23656.

[31] HR Rep. 107–250 at 65.

[32] The final rule also clarifies that any report filed with a securities or futures regulator in reliance upon an exception to suspicious activity reporting and other related documentation shall be made available, upon request, to the CFTC, SEC, and any registered futures association, registered entity, or securities self-regulatory organization that is examining an FCM, IB–C, or BD for compliance with SAR requirements.

[33] 67 FR at 44,051 (noting that BDs may rely on the reporting exception whether their reporting follows existing formal or informal industry procedures).

[34] Pub. L. 106–229, 114 Stat. 464 (15 U.S.C. 7001) (E-Sign Act).

[35] *See, e.g.*, 17 CFR 1.4 and 1.31.

[36] *See* 31 U.S.C. 5318(g)(2).

[37] *See* Section 14 of the CEA, 7 U.S.C. 18 and 7 CFR Part 12.

[38] 31 CFR 103.110(b)(5).

[39] These provisions are different and serve different purposes. The safe harbor in the SAR rule provides total immunity for filing the SAR. Those financial institutions permitted to file a joint SAR must be able to share information, including the SAR itself, in order to prepare and file the SAR. Under Section 314(b) of the USA Patriot Act, however, information sharing relates to the underlying transactional and customer information; nothing in the rule implementing Section 314(b) authorizes the sharing of actual SARs. 31 CFR 103.10. If other financial institutions, *e.g.*, CTAs, become subject to final rules requiring them to have an AMLP, FCMs and IB–Cs can qualify for the safe harbor under Section 314(b) when they share underlying transactional and customer information with those financial institutions.

suspicious. The FCM could not however, disclose the fact that it is contemplating the filing of a SAR. FinCEN recognizes that, particularly with respect to international transactions, the balance between obtaining sufficient information and protecting the confidentiality of suspicious activity reporting is a difficult one for FCMs and IB–Cs to achieve, but it is one that is faced by all financial institutions subject to a SAR requirement, and one which they are generally successful in achieving.

9. *Examination.* Paragraph (g) notes that compliance with the obligation to report suspicious transactions will be examined for by Treasury through FinCEN or its delegee, and provides that failure to comply with the rule may constitute a violation of the BSA and the BSA regulations. This paragraph also clarifies that an FCM or IB–C must provide access to any SAR–SF that it has filed, along with any supporting documentation, to the CFTC and any registered futures association, any registered entity that has authority to examine the institution, or to the SEC or an SRO in the case of dual registrants.

10. *Effective Date.* Paragraph (h) provides that the new suspicious transaction reporting requirements will be effective 180 days after the date on which the final regulations to which this notice of rulemaking relates are published in the **Federal Register**.

C. 103.33—Records To Be Made and Retained by Financial Institutions

The addition of FCMs and IB–Cs to the ''financial institution'' definition make such persons subject to the recordkeeping and reporting requirements set forth in section 103.33. This paragraph requires specific records concerning transfers and transmittals of funds in the amount of $3,000 or more. The amendments to paragraphs (e)(6)(i) and (f)(6)(i) of Section 103.33 set forth exceptions for any transfers or transmittals of funds involving either an FCM or an IB–C. The inclusion of FCMs and IB–Cs within the exceptions is intended to provide parallel treatment for records required to be made and kept by banks, BDs, FCMs, and IB–Cs. There were no comments concerning this provision, and FinCEN is adopting it as proposed.

D. 103.56—Examination

Under the current BSA delegation framework, the Internal Revenue Service is responsible for examining all financial institutions (except for BDs) that are not examined by the federal bank supervisory agencies. This rule will expand the scope of the BSA rules applicable to FCMs and IB–Cs by including them in the regulatory definition of ''financial institution,'' and shift the responsibility for examining FCMs and IB–Cs under the BSA from the Internal Revenue Service to the CFTC. Thus, 31 CFR 103.56, which sets forth delegations of BSA authority, is amended to provide the CFTC with examination authority with respect to FCMs and IB–Cs for compliance with the BSA regulations.

IV. Regulatory Flexbility Act

FinCEN certifies that this final regulation will not have a significant economic impact on a substantial number of small entities. As noted above, the inclusion of FCMs and IB–Cs within the ''financial institution'' definition in the BSA regulations will make these entities subject to all of the same requirements that apply to similarly situated financial institutions, such as banks and broker-dealers in securities. Nevertheless, FinCEN does not believe that these requirements modify the existing obligations of FCMs and IB–Cs, since the transactional information required to be made and retained under the rules will be information that already is required to be made and retained in the ordinary course of an FCM's or IB–C's business.

Concerning the filing of SARs by FCMs and IB–Cs, FinCEN does not believe that the economic impact of the rule will be significant. Due to mandatory provisions of the USA Patriot Act [40] and obligations imposed by the NFA,[41] FCMs and IB–Cs already are obligated to establish AMLPs that include policies, procedures, and internal controls that are reasonably designed to assure compliance with the BSA and the implementing regulations. A set of systems and procedures designed to detect and require reporting of suspicious activity complements these existing program requirements. As the NFA's interpretive notice to Compliance Rule 2–9(c) makes clear, an FCM or IB–C may tailor its program based on the type of its business, the size and complexity of its operations, the breadth and scope of its customer base, the number of its employees, and its resources.

V. Executive Order 12866

The Department of the Treasury has determined that this final regulation is not a ''significant regulatory action'' for purposes of Executive Order 12866.

[40] 31 U.S.C. 5318(h).

[41] NFA Compliance Rule 2–9(c).

VI. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (''Unfunded Mandates Act''), March 22, 1995, requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under section 202 and has concluded that on balance these rules provide the most cost-effective and least burdensome alternative to achieve the objectives of the rules.

VII. Paperwork Reduction Act

The collection of information contained in this final regulation has been approved by the Office of Management and Budget (''OMB'') in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1506–0019. The estimated average burden associated with the collection of information in this final rule is 4 hours per respondent.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *jlackeyj@omb.eop.gov*).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. FinCEN received no comments on its recordkeeping burden estimate.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Brokers, Commodity futures, Currency, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Securities.

Amendments to the Regulations

■ For the reasons set forth above in the preamble, 31 CFR Part 103 is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, sec. 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307; 12 U.S.C. 1818; 12 U.S.C. 1786(q).

■ 2. Section 103.11 is amended by revising paragraph (f), adding paragraphs (n)(8) and (n)(9), revising paragraph (ii)(1), and adding paragraphs (xx), (yy), (zz), (aaa), and (bbb) to read as follows:

§ 103.11 Meaning of terms.

* * * * *

(f) *Broker or dealer in securities.* A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934.

* * * * *

(n) * * *

(8) A futures commission merchant;

(9) An introducing broker in commodities.

* * * * *

(ii) *Transaction.* (1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, security, contract of sale of a commodity for future delivery, option on any contract of sale of a commodity for future delivery, option on a commodity, purchase or redemption of any money order, payment or order for any money remittance or transfer, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

* * * * *

(xx) *Commodity.* Any good, article, service, right, or interest described in section 1a(4) of the Commodity Exchange Act (''CEA''), 7 U.S.C. 1a(4).

(yy) *Contract of sale.* Any sale, agreement of sale, or agreement to sell as described in section 1a(7) of the CEA, 7 U.S.C. 1a(7).

(zz) *Futures commission merchant.* Any person registered or required to be registered as a futures commission merchant with the Commodity Futures Trading Commission (''CFTC'') under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

(aaa) *Introducing broker-commodities.* Any person registered or required to be registered as an introducing broker with the CFTC under the CEA, except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2).

(bbb) *Option on a commodity.* Any agreement, contract, or transaction described in section 1a(26) of the CEA, 7 U.S.C. 1a(26).

■ 3. Section 103.17 is added to read as follows:

§ 103.17 Reports by futures commission merchants and introducing brokers in commodities of suspicious transactions.

(a) *General*—(1) Every futures commission merchant (''FCM'') and introducing broker in commodities (''IB–C'') within the United States shall file with FinCEN, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. An FCM or IB–C may also file with FinCEN a report of any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by this section. Filing a report of a suspicious transaction does not relieve an FCM or IB–C from the responsibility of complying with any other reporting requirements imposed by the Commodity Futures Trading Commission (''CFTC'') or any registered futures association or registered entity as those terms are defined in the Commodity Exchange Act (''CEA''), 7 U.S.C. 21 and 7 U.S.C. 1a(29).

(2) A transaction requires reporting under the terms of this section if it is conducted or attempted by, at, or through an FCM or IB–C, it involves or aggregates funds or other assets of at least $5,000, and the FCM or IB–C knows, suspects, or has reason to suspect that the transaction (or a pattern of transactions of which the transaction is a part):

(i) Involves funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation;

(ii) Is designed, whether through structuring or other means, to evade any requirements of this part or of any other regulations promulgated under the Bank Secrecy Act (''BSA''), Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332;

(iii) Has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the FCM or IB–C knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction; or

(iv) Involves use of the FCM or IB–C to facilitate criminal activity.

(3) The obligation to identify and properly and timely to report a suspicious transaction rests with each FCM and IB–C involved in the transaction, provided that no more than one report is required to be filed by any of the FCMs or IB–Cs involved in a particular transaction, so long as the report filed contains all relevant facts.

(b) *Filing procedures*—(1) *What to file.* A suspicious transaction shall be reported by completing a Suspicious Activity Report-Securities and Futures Industry (''SAR–SF''), and collecting and maintaining supporting documentation as required by paragraph (d) of this section.

(2) *Where to file.* The SAR–SF shall be filed with FinCEN in a central location, to be determined by FinCEN, as indicated in the instructions to the SAR–SF.

(3) *When to file.* A SAR–SF shall be filed no later than 30 calendar days after the date of the initial detection by the reporting FCM or IB–C of facts that may constitute a basis for filing a SAR–SF under this section. If no suspect is identified on the date of such initial detection, an FCM or IB–C may delay filing a SAR–SF for an additional 30 calendar days to identify a suspect, but in no case shall reporting be delayed more than 60 calendar days after the date of such initial detection. In situations involving violations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, the FCM or IB–C shall immediately notify by telephone an appropriate law enforcement authority in addition to filing timely a SAR–SF. FCMs and IB–Cs wishing voluntarily to report suspicious transactions that may relate to terrorist activity may call FinCEN's Financial Institutions Hotline at 1–866–556–3974 in addition to filing timely a SAR–SF if required by this section. The FCM or IB–C may also, but is not required to, contact the CFTC to report in such situations.

(c) *Exceptions*—(1) An FCM or IB–C is not required to file a SAR–SF to report—

(i) A robbery or burglary committed or attempted of the FCM or IB–C that is reported to appropriate law enforcement authorities;

(ii) A violation otherwise required to be reported under the CEA (7 U.S.C. 1 *et seq.*), the regulations of the CFTC (17 CFR chapter I), or the rules of any registered futures association or registered entity as those terms are defined in the CEA, 7 U.S.C. 21 and 7 U.S.C. 1a(29), by the FCM or IB–C or any of its officers, directors, employees, or associated persons, other than a violation of 17 CFR 42.2, as long as such violation is appropriately reported to the CFTC or a registered futures association or registered entity.

(2) An FCM or IB–C may be required to demonstrate that it has relied on an exception in paragraph (c)(1) of this section, and must maintain records of its determinations to do so for the period specified in paragraph (d) of this section. To the extent that a Form 8–R, 8–T, U–5, or any other similar form concerning the transaction is filed consistent with CFTC, registered futures association, or registered entity rules, a copy of that form will be a sufficient record for the purposes of this paragraph (c)(2).

(d) *Retention of records.* An FCM or IB–C shall maintain a copy of any SAR–SF filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR–SF. Supporting documentation shall be identified as such and maintained by the FCM or IB–C, and shall be deemed to have been filed with the SAR–SF. An FCM or IB–C shall make all supporting documentation available to FinCEN, the CFTC, or any other appropriate law enforcement agency or regulatory agency, and, for purposes of paragraph (g) of this section, to any registered futures association, registered entity, or self-regulatory organization (''SRO'') (as defined in section 3(a)(26) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(26)), upon request.

(e) *Confidentiality of reports.* No financial institution, and no director, officer, employee, or agent of any financial institution, who reports a suspicious transaction under this part, may notify any person involved in the transaction that the transaction has been reported, except to the extent permitted by paragraph (a)(3) of this section. Thus, any person subpoenaed or otherwise requested to disclose a SAR–SF or the information contained in a SAR–SF, except where such disclosure is requested by FinCEN, the CFTC, another appropriate law enforcement or regulatory agency, or for purposes of paragraph (g) of this section, a registered futures association, registered entity, or SRO shall decline to produce the SAR–SF or to provide any information that would disclose that a SAR–SF has been prepared or filed, citing this paragraph and 31 U.S.C. 5318(g)(2), and shall notify FinCEN of any such request and its response thereto.

(f) *Limitation of liability.* An FCM or IB–C, and any director, officer, employee, or agent of such FCM or IB–C, that makes a report of any possible violation of law or regulation pursuant to this section or any other authority (or voluntarily) shall not be liable to any person under any law or regulation of the United States (or otherwise to the extent also provided in 31 U.S.C. 5318(g)(3), including in any arbitration or reparations proceeding) for any disclosure contained in, or for failure to disclose the fact of, such report.

(g) *Examination and enforcement.* Compliance with this section shall be examined by the Department of the Treasury, through FinCEN or its delegates, under the terms of the BSA. Reports filed under this section or § 103.19 (including any supporting documentation), and documentation demonstrating reliance on an exception under paragraph (c) of this section or § 103.19, shall be made available, upon request, to the CFTC, Securities and Exchange Commission, and any registered futures association, registered entity, or SRO, examining an FCM, IB–C, or broker or dealer in securities for compliance with the requirements of this section or § 103.19. Failure to satisfy the requirements of this section may constitute a violation of the reporting rules of the BSA or of this part.

(h) *Effective date.* This section applies to transactions occurring after May 18, 2004.

■ 4. Section 103.33 is amended by redesignating paragraphs (e)(6)(i)(E), (F), and (G) as paragraphs (e)(6)(i)(G), (H), and (I), respectively; adding new paragraphs (e)(6)(i)(E) and (F); redesignating paragraphs (f)(6)(i)(E), (F), and (G) as paragraphs (f)(6)(i)(G), (H), and (I), respectively, and adding new paragraphs (f)(6)(i)(E) and (F) to read as follows:

§ 103.33 Records to be made and retained by financial institutions.

* * * * *

(e) * * *

(6) * * *

(i) * * *

(E) A futures commission merchant or an introducing broker in commodities;

(F) A wholly-owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;

* * * * *

(f) * * *

(6) * * *

(i) * * *

(E) A futures commission merchant or an introducing broker in commodities;

(F) A wholly-owned domestic subsidiary of a futures commission merchant or an introducing broker in commodities;

* * * * *

■ 5. Section 103.56 is amended by revising paragraph (b)(8) and adding a new paragraph (b)(9) to read as follows:

§ 103.56 Enforcement.

* * * * *

(b) * * *

(8) To the Commissioner of Internal Revenue with respect to all financial institutions, except brokers or dealers in securities, futures commission merchants, introducing brokers in commodities, and commodity trading advisors, not currently examined by Federal bank supervisory agencies for soundness and safety; and

(9) To the Commodity Futures Trading Commission with respect to futures commission merchants, introducing brokers in commodities, and commodity trading advisors.

* * * * *

Dated: November 13, 2003.

William F. Baity,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 03–28991 Filed 11–19–03; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AL52

Veterans Education: Increased Allowances for the Educational Assistance Test Program

AGENCIES: Department of Defense and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance under the Educational Assistance Test Program shall be adjusted annually by the Secretary of

Defense. The law further provides those rates must be adjusted based upon the average actual cost of attendance at public institutions of higher education in the 12-month period since the rates were last adjusted. After obtaining data from the Department of Education, the Department of Defense has concluded that the rates for the 2002–03 academic year should be increased by 4.3% over the rates payable for the 2001–02 academic year. The regulations dealing with these rates are amended accordingly.

DATES: *Effective Date:* November 20, 2003.

Applicability Date: The changes in rates are applied retroactively to October 1, 2002, to conform to statutory requirements. For more information concerning the applicability date, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lynn M. Cossette, Education Adviser (225C), Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–7294.

SUPPLEMENTARY INFORMATION: The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program and the amount of subsistence allowance authorized under that program. The law further requires that the adjustment is to be consistent with the change in the average actual cost of attendance at public institutions of higher education over the preceding 12-month period. As required by law, the Department of Defense has obtained data from the Department of Education. The Department of Defense has calculated that these costs increased by 4.3%. Accordingly, this final rule changes 38 CFR 21.5820 and 21.5822 to reflect a 4.3% increase in the rates payable in the 2002–03 academic year, including changes needed to compensate for rounding.

The changes set forth in this final rule are effective from the date of publication, but the changes in rates are applied from October 1, 2002, in accordance with the applicable statutory provisions discussed above.

Administrative Procedure Act

Substantive changes made by this final rule merely reflect statutory requirements and adjustments made based on previously established formulas. Accordingly, there is a basis for dispensing with notice-and-comment and a delayed effective date under 5 U.S.C. 552 and 553.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Executive Order 12866

This document has been reviewed by the Office Of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary of Defense and the Secretary of Veterans Affairs hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 501–612. This final rule directly affects only individuals and does not directly affect small entities. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

There is no Catalog of Federal Domestic Assistance number for the program affected by this final rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: May 9, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

Approved: September 5, 2003.

William J. Carr,

Acting Deputy Under Secretary (Military Personnel Policy).

■ For the reasons set out above, 38 CFR part 21, subpart H, is amended as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart H—Educational Assistance Test Program

■ 1. The authority citation for part 21, subpart H, continues to read as follows:

Authority: 10 U.S.C. ch.107; 38 U.S.C. 501(a), 3695, 5101, 5113, 5303A; 42 U.S.C. 2000; sec. 901, Pub. L. 96–342, 94 Stat. 1111–1114, unless otherwise noted.

■ 2. Section 21.5820 is amended by:

■ a. In paragraph (b)(1), removing ''2001–02'' and adding, in its place, ''2002–03'', and by removing ''$3,690'' and adding, it its place, ''$3,849''.

■ b. In paragraph (b)(2)(ii), removing ''2001–02'' and adding, in its place, ''2002–03''.

■ c. In paragraphs (b)(2)(ii)(A) and (b)(3)(ii)(A), removing ''$410.00'' and adding, in each place, ''$427.67'', and by removing ''$205.00'' and adding, in each place, ''$213.84''.

■ d. In paragraphs (b)(2)(ii)(B) and (b)(3)(ii)(B), removing ''$13.67'' and adding, in each place, ''$14.26'', and by removing ''$6.83'' and adding, in each place, ''$7.13''.

■ e. Revising paragraphs (b)(2)(ii)(C) and (b)(3)(ii)(C).

■ f. In paragraph (b)(3)(ii) introductory text, removing ''2001–02'' and adding, in its place, ''2002–03''.

The revisions read as follows:

§ 21.5820 Educational assistance.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(C) Adding the two results. If the enrollment period is as long as or longer than the standard academic year, this amount will be decreased by 3 cents for a full-time student and decreased by 6 cents for a part-time student.

(3) * * *

(ii) * * *

(C) Adding the two results. If the enrollment period is as long as or longer than a standard academic year, this amount will be decreased by 3 cents for a full-time student and decreased by 6 cents for a part-time student; and

* * * * *

§ 21.5822 [Amended]

■ 3. Section 21.5822 is amended by:

■ a. In paragraphs (b)(1)(i) and (b)(2)(i), removing ''$919'' and adding, in each place, ''$959'', and by removing ''2001–02'' and adding, in each place, ''2002–03''.

■ b. In paragraphs (b)(1)(ii) and (b)(2)(ii), removing ''$459.50'' and adding, in each place, ''$479.50'', and by removing ''2001–02'' and adding, in each place, ''2002–03''.

[FR Doc. 03–28966 Filed 11–19–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[OH 157–2 FRL–7588–9]

Clean Air Act Approval of Revision to Operating Permits Program in Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve, as a revision to Ohio's title V air operating permits program, revisions to Ohio's regulations for insignificant emissions units (IEUs), Ohio's regulations requiring reports of any required monitoring at least every six months and prompt reports of deviations, and other provisions of Ohio's title V regulations. In a Notice of Deficiency published in the **Federal Register** on April 18, 2002, EPA notified Ohio of EPA's finding that Ohio's provisions for insignificant emissions units and Ohio's regulations requiring reports of any required monitoring at least every six months and prompt reports of deviations did not meet minimum Federal requirements. Final approval of this program revision resolves the deficiency identified in the Notice of Deficiency and removes the potential for any resulting consequences, including sanctions, with respect to the April 18, 2002 NOD.

DATES: Effective December 22, 2003.

ADDRESSES: Copies of Ohio's submittal and other supporting information used in developing this action are available for inspection during normal business hours at the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Interested persons wanting to examine these documents should make an appointment at least 24 hours before the visiting day. A reasonable fee may be charged for copies.

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, Environmental Engineer, Air Permits Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4761, *damico.genevieve@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

A. What Is the History of This Action?
B. Did OEPA Hold a Public Hearing?
C. What Action Is EPA Taking Today?
D. Statutory and Executive Order Reviews

A. What Is the History of This Action?

The Clean Air Act (CAA or Act) requires all state and local permitting authorities to develop operating permits programs that meet the requirements of title V of the Act, 42 U.S.C. 7661–7661(f), and its implementing regulations, 40 CFR part 70 (part 70). Ohio submitted its operating permits program in response to this directive. EPA granted full approval to Ohio's title V operating permits program on August 15, 1995 (60 FR 42045).

Ohio's title V operating permits program is implemented by the Ohio Environmental Protection Agency (OEPA) and local air pollution control agencies.

Pursuant to section 502(i) of the Act and 40 CFR 70.10(b)(1), EPA notified Ohio of EPA's finding that Ohio's regulations for IEUs and Ohio's regulations requiring reports of any required monitoring at least every six months and prompt reports of deviations did not meet minimum Federal requirements in a Notice of Deficiency (NOD) published in the **Federal Register** on April 18, 2002 (67 FR 19175). This was necessary to make these aspects of the Ohio program consistent with the other permitting programs throughout the country.

On June 18, 2003, OEPA proposed revisions to its regulations for IEUs, Ohio's regulations requiring reports of any required monitoring at least every six months and prompt reports of deviations, and other provisions of Ohio's title V regulations. OEPA intended the proposed revisions to it's regulations to resolve deficiencies in Ohio's title V program identified by EPA in the NOD. To expedite the process, Ohio submitted to EPA proposed revisions while it processed them at the State level. On September 30, 2003, EPA proposed to approve OEPA's proposed revisions to its title V regulations. *See* 68 FR 56220. The State public comment period on the OEPA regulations ended on July 29, 2003. On September 16, 2003, OEPA submitted the final revisions to its title V regulations and asked EPA to give final approval to the revisions. The revisions submitted by OEPA on September 16, 2003 are identical in substance to the proposed regulations for which EPA proposed approval on September 30, 2003.

EPA received no comments on its proposal to approve OEPA's proposed revisions to its title V regulations. Accordingly, EPA is taking final action to approve OEPA's final revisions to its IEU provisions, Ohio's regulations requiring reports of any required monitoring at least every six months and prompt reports of deviations, and other provisions of Ohio's title V regulations. OEPA's final revisions are described in EPA's proposed approval notice. *See* 68 FR 56220.

B. Did OEPA Hold a Public Hearing?

On June 18, 2003, OEPA proposed revisions to its regulations for IEUs, Ohio's regulations requiring reports of any required monitoring at least every six months and prompt reports of deviations, and other provisions of Ohio's title V regulations. OEPA held a public hearing on these revisions on July 28, 2003, in Columbus, Ohio. The public comment period closed on July 29, 2003.

C. What Action Is EPA Taking Today?

EPA is taking final action to approve, as a revision to OEPA's title V air operating permits program, revisions to OEPA's regulations for IEUs and reporting, specifically, revisions to OAC 3745–77–02(E), 3745–77–07(A)(13), 3745–77–07(A)(3)(c)(ii) and (iii), 3745–77–07(I), and 3745–77–08(C). EPA has determined that these changes meet the requirements of title V and part 70 relating to IEUs and reporting, and adequately address the deficiency identified in the Notice of Deficiency published in the **Federal Register** on April 18, 2002 (67 FR 19175). EPA is also approving Ohio's new provisions at 3745–77–01(U), 3745–77–01(W)(2)(aa), 3745–77–01(MM) and 3745–77–01(NN). Ohio's program revision satisfactorily addresses the program deficiency identified in EPA's NOD, published on April 18, 2002 (67 FR 19175). Because Ohio timely corrected those deficiencies, *see* 40 CFR 70.10(b), there are no potential consequences of the NOD, such as sanctions or promulgation of a federal operating permits program.

Because these rules apply throughout the State of Ohio, this approval applies to all State and local agencies that implement Ohio's operating permits program.

D. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain an unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000).

Executive Order 13132 Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act.

Executive Order 13045 Protection of Children From Environmental Health and Safety Risks

This final approval also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not a significant regulatory action under executive order 12866.

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

Civil Justice Reform

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

Governmental Interference With Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order, and has determined that the rule's requirements do not constitute a taking.

Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 20, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 10, 2003.

Bharat Mathur,

Regional Administrator, Region 5.

■ Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 2. In appendix A to part 70, the entry (a) for Ohio is revised to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Ohio

(a) Ohio Environmental Protection Agency (OEPA): Submitted on November 1, 1993; interim approval effective on December 9, 1994; revisions submitted on June 5, 1996, October 3, 1996, August 25, 1998, and May 24, 1999; full approval effective on September 12, 2001; revision submitted on September 16, 2003; revision approved December 22, 2003.

* * * * *

[FR Doc. 03–29004 Filed 11–19–03; 8:45 am]

BILLING CODE 6560–50–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

40 CFR Part 1600

Organization and Functions of the Chemical Safety and Hazard Investigation Board

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Final rule.

SUMMARY: This rule provides information on the Chemical Safety and Hazard Investigation Board's organization, functions, and operations.

DATES: This rule is effective November 20, 2003.

FOR FURTHER INFORMATION CONTACT: Raymond C. Porfiri, Office of the General Counsel, (202) 261–7600.

SUPPLEMENTARY INFORMATION: This final rule informs the public about the structure, function, operations, and quorum requirements of the Chemical Safety and Hazard Investigation Board (CSB).

Regulatory Impact

1. Administrative Procedure Act

In promulgating this rule, the CSB finds that notice and public comment are not necessary. Section 553(b)(3)(A) of Title 5, United States Code, provides that when regulations involve matters of agency organization, procedure, or practice, the agency may publish regulations in final form. In addition, the CSB finds, in accordance with 5 U.S.C. 553(d), that a delayed effective date is unnecessary. Accordingly, these regulations are effective upon publication.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a rule that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The CSB has considered the impact of this final rule under the Regulatory Flexibility Act. The General Counsel certifies that this final rule will not have a significant economic impact on a substantial number of small business entities.

3. Paperwork Reduction Act

This final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

4. Unfunded Mandates Reform Act of 1995

This final rule does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. This rule does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

List of Subjects in 40 CFR Part 1600

Organization and functions (Government agencies).

■ For the reasons stated in the preamble, the Chemical Safety and Hazard Investigation Board adds a new 40 CFR part 1600 to read as follows:

PART 1600—ORGANIZATION AND FUNCTIONS OF THE CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sec.
1600.1 Purpose.
1600.2 Organization.
1600.3 Functions.
1600.4 Operation.
1600.5 Quorum and voting requirements.
1600.6 Office location.

Authority: 5 U.S.C. 301, 552(a)(1); 42 U.S.C. 7412(r)(6)(N).

§ 1600.1 Purpose.

This part describes the organization, functions, and operation of the Chemical Safety and Hazard Investigation Board (CSB). The CSB is an independent agency of the United States created by the Clean Air Act Amendments of 1990 [Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7412(r)(6) *et seq.*]. Information about the CSB is available from its Web site, *http://www.csb.gov.*

§ 1600.2 Organization.

(a) The CSB's Board consists of five Members appointed by the President with the advice and consent of the Senate. The President designates one of the Members as Chairperson with the advice and consent of the Senate. The Members exercise various functions, powers, and duties set forth in the Clean Air Act Amendments of 1990 (42 U.S.C. 7412(r)(6) *et seq.*).

(b) The CSB's staff is comprised of the following administrative units:

(1) The Office of the Chief Operating Officer;

(2) The Office of Investigations and Safety Programs;

(3) The Office of the General Counsel;

(4) The Office of Financial Operations;

(5) The Office of Management Operations; and

(6) The Office of Equal Employment Opportunity.

§ 1600.3 Functions.

(a) The CSB investigates chemical accidents and hazards, recommending actions to protect workers, the public, and the environment. The CSB is responsible for the investigation and determination of the facts, conditions, and circumstances and the cause or probable cause or causes of any accidental release resulting in a fatality, serious injury, or substantial property damages.

(b) The CSB makes safety recommendations to Federal, State, and local agencies, including the Environmental Protection Agency and the Occupational Safety and Health Administration and private organizations to reduce the likelihood of recurrences of chemical incidents. It initiates and conducts safety studies and special investigations on matters pertaining to chemical safety.

(c) The CSB issues reports pursuant to its duties to determine the cause or probable cause or causes of chemical incidents and to report the facts, conditions, and circumstances relating to such incidents; and issues and makes available to the public safety recommendations, safety studies, and reports of special investigations.

§ 1600.4 Operation.

In exercising its functions, duties, and responsibilities, the CSB utilizes:

(a) The CSB's staff, consisting of specialized offices performing investigative, administrative, legal, and financial work for the Board.

(b) Rules published in the **Federal Register** and codified in this title of the Code of Federal Regulations.

(c) Meetings of the Board Members conducted pursuant to the Government in the Sunshine Act and part 1603 of this title (CSB Rules Implementing the Government in the Sunshine Act) or voting by notation as provided in § 1600.5(b).

(d) Public hearings in connection with incident or hazard investigations.

§ 1600.5 Quorum and voting requirements.

(a) *Quorum requirements.* A quorum of the Board for the transaction of business shall consist of three Members; provided, however, that if the number of Board Members in office is fewer than three, a quorum shall consist of the number of Members in Office; and provided further that on any matter of business as to which the number of Members in office, minus the number of Members who have disqualified themselves from consideration of such matter is two, two Members shall constitute a quorum for purposes of such matter. Once a quorum is constituted, a simple majority of voting Members is required to approve an item of the Board's business. A tie vote results in no action.

(b) *Voting.* The Board votes on items of business in meetings conducted pursuant to the Government in the Sunshine Act. Alternatively, whenever a Member of the Board is of the opinion that joint deliberation among the members of the Board upon any matter at a meeting is unnecessary in light of the nature of the matter, impracticable, or would impede the orderly disposition of agency business, such matter may be disposed of by employing notation voting procedures. A written notation of the vote of each participating Board member shall be recorded by the General Counsel who shall retain it in the records of the Board.

§ 1600.6 Office location.

The principal offices of the Chemical Safety and Hazard Investigation Board are located at 2175 K Street NW, Washington, DC 20037.

Dated: November 14, 2003.

Raymond C. Porfiri,

Deputy General Counsel.

[FR Doc. 03–28971 Filed 11–19–03; 8:45 am]

BILLING CODE 6350–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 590

[Docket No. NHTSA 2003–16524]

RIN 2127–AJ22

Federal Motor Vehicle Safety Standards: Tire Pressure Monitoring Systems; Controls and Displays; Amendment in Response to Court Decision

AGENCY: Department of Transportation, National Highway Traffic Safety Administration (NHTSA).

ACTION: Final rule; notice of manufacturer responsibilities and agency plans.

SUMMARY: The agency is revising the Code of Federal Regulations to conform to a court decision vacating a Federal motor vehicle safety standard for tire pressure monitoring systems. Per a mandate in the Transportation Recall Enhancement, Accountability and Documentation Act, the agency issued a rule in June 2002 establishing the standard. The U.S. Court of Appeals for the Second Circuit concluded in *Public Citizen, Inc.* v. *Mineta* that a portion of the standard was both contrary to law and arbitrary and capricious, but vacated the entire standard. Since this document simply revises the Code to conform to the court decision, prior notice and public comment are not required.

DATES: The amendments made by this final rule are effective on November 20, 2003.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical and other non-legal issues, you may call Mr. George Soodoo or Mr. Samuel Daniel, Office of Crash Avoidance Standards (Telephone: 202–366–2720) (Fax: 202–366–4329).

For legal issues, you may call Eric Stas, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

You may send mail to these officials at National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Congress enacted the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106–414) on November 1, 2000. Section 13 of the TREAD Act mandated the completion of ''a rulemaking for a regulation to require a warning system in new motor vehicles to indicate to the operator when a tire is significantly under inflated.'' NHTSA published a final rule establishing a standard requiring tire pressure monitoring systems on June 5, 2002. (67 FR 38704) Public Citizen, Inc., New York Public Interest Research Group, and the Center for Auto Safety, petitioned for judicial review of the standard. On August 6, 2003, the U.S. Court of Appeals for the Second Circuit issued an opinion vacating the rule establishing the standard. *Public Citizen, Inc.* v. *Mineta,* No. 02–4237, 2003 U.S. App. LEXIS 16556 (2d Cir. Aug. 6, 2003). The mandate from the Court issued on the same date.

Pursuant to the Court's decision, NHTSA is removing the regulatory text added to the Code of Federal Regulations by the rule issued on June 5, 2002. Consequently, motor vehicle manufacturers have no obligation to begin certifying their vehicles to the standard on November 1, 2003, as previously required. However, NHTSA intends expeditiously to issue a standard setting forth performance-based requirements consistent with the Court's decision and in accordance with the Administrative Procedure Act.

NHTSA has determined that it has ''good cause'' under section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), to promulgate this final rule without prior notice and opportunity for comment. The agency finds it ''unnecessary'' to provide an opportunity to comment because this action involves a ministerial removal of regulatory text in direct response to a court decision. The rule amends only those regulatory provisions directly affected by the Court's decision. For the same reasons, the agency finds that this final rule should be effective immediately because the public would benefit from the prompt removal from the Code of Federal Regulations of regulatory requirements that are no longer applicable as a result of the court's decision.

VIII. Administrative Requirements

A. Executive Order 12866: ''Significant Regulatory Action Determination''

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action is also not considered to be significant under the Department's

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). While the June 2002 final rule establishing a standard requiring tire pressure monitoring systems was economically significant, that rule was vacated by a court decision, and today's action merely involves a ministerial removal of regulatory text in direct response to that court decision. Therefore, this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is not subject to OMB review.

B. Regulatory Flexibility Act Compliance as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Paperwork Reduction Act

The Administrator has determined today's action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Burden means the total time, effort, or financial resources expended to generate and maintain, retain, or provide information as required by a rule. Today's rule imposes no such burden on any entity.

D. Submission to Congress and the Comptroller General

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report (which includes a copy of the rule) to each House of the Congress and to the Comptroller General of the United States. NHTSA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to its effective date. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, NHTSA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any single year. Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the APA or any other statute, it is not subject to sections 202 and 205 of the UMRA. In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA.

F. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255; August 10, 1999), requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have Federalism implications'' is defined in the Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, NHTSA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or NHTSA consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation that has Federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. This action will not alter the overall relationship or distribution of powers between governments for the Title V program. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note), directs NHTSA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, *etc.*) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs NHTSA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's action does not involve any decision whether to adopt a technical standard. Therefore, NHTSA is not considering the use of any voluntary consensus standards in issuing this action.

H. Executive Order 12988: Civil Justice Reform

Pursuant to Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), the agency has considered whether this rulemaking will have any retroactive effect. This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard

is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file a suit in court.

I. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental, health, or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This final rule removes the existing TPMS standard from the CFR in response to a court decision. This rulemaking action is neither economically significant, nor does it involve decisions based upon health and safety risks that disproportionately affect children. Consequently, no further analysis is required under E.O. 13045.

J. National Environmental Policy Act

NHTSA has analyzed this rulemaking for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

K. Regulatory Identification Number (RIN)

The Department of Transportation assigns a regulation identification number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

L. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

List of Subjects in 49 CFR Parts 571 and 590

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA is amending 49 CFR part 571 and removing part 590 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.101 is amended by revising paragraph S5.2.3 and Table 2 to read as follows:

§ 571.101 Standard No. 101; Controls and displays.

* * * * *

S5.2.3 Any display located within the passenger compartment and listed in column 1 of Table 2 that has a symbol designated in column 4 of that table shall be identified by either the symbol designated in column 4 (or symbol substantially similar in form to that shown in column 4) or the word or abbreviation shown in column 3. Additional words or symbols may be used at the manufacturer's discretion for the purpose of clarity. Any telltales used in conjunction with a gauge need not be identified. The identification required or permitted by this section shall be placed on or adjacent to the display that it identifies. The identification of any display shall, under the conditions of S6, be visible to the driver and appear to the driver perceptually upright.

* * * * *

BILLING CODE 4910–59–P

Table 2

Identification and Illustration of Displays

Column 1	Column 2	Column 3	Column 4	Column 5
Display	***Telltale Color***	***Identifying Words or Abbreviation***	***Identifying Symbol***	***Illumination***
Turn Signal Telltale	Green	Also see FMVSS 108	1,5	_____
Hazard Warning Telltale		Also see FMVSS 108	2, 5	_____
Seat Belt Telltale	_____4	Fasten Belts or Fasten Seat Belts Also see FMVSS 208	or	_____
Fuel Level Telltale ---------- Gauge	---------- _____	Fuel	or	_____ ---------- Yes
Oil Pressure Telltale ---------- Gauge	---------- _____	Oil		_____ ---------- Yes
Coolant Temperature Telltale ---------- Gauge	---------- _____	Temp		_____ ---------- Yes
Electrical Charge Telltale ---------- Gauge	---------- _____	Volts, Charge or Amp		_____ ---------- Yes
Highbeam Telltale	Blue or Green 3	Also see FMVSS 108	5	_____

1. The pair of arrows is a single symbol. When the indicator for left and right turn operate independently, however, the two arrows will be considered separate symbols and may be spaced accordingly.
2. Not required when arrows of turn signal tell-tales that otherwise operate independently flash simultaneously as hazard warning tell-tale.
3. Red can be red-orange. Blue can be blue-green.
4. The color of the telltale required by S4.5.3.3 of Standard No. 208 is red; the color of the telltale required by S7.3 of Standard No. 208 is not specified.
5. Framed areas may be filled.

Table 2 (continued)

Column 1	Column 2	Column 3	Column 4	Column 5
Display	***Telltale Color***	***Identifying Words or Abbreviation***	***Identifying Symbol***	***Illumination***
Brake System 8	Red 3	Brake, Also see FMVSS 105 and 135	_____	_____
Malfunction in Anti-lock or ---------- Variable Brake Proportioning System 8	Yellow ---------- Yellow	Antilock, Anti-lock or ABS. Also see FMVSS 105 and 135 ---------- Brake Proportioning, Also see FMVSS 135	_____ ---------- _____	_____ ---------- _____
Parking Brake Applied 8	Red 3	Park or Parking Brake, Also see FMVSS 105 and 135	_____	_____
Malfunction in Anti-lock	Yellow	ABS, or Antilock; Trailer ABS, or Trailer Antilock, Also see FMVSS 121	_____	_____
Brake Air Pressure Position Telltale	_____	Brake Air, Also see FMVSS 121	_____	_____
Speedometer	_____	MPH, or MPH and km/h 7	_____	Yes
Odometer	_____	_____ 6	_____	_____
Automatic Gear Position	_____	Also see FMVSS 102	_____	Yes

6. If the odometer indicates kilometers, then "KILOMETERS" or "km" shall appear, otherwise, no identification is required.
7. If the speedometer is graduated in miles per hour and in kilometers per hour, the identifying words or abbreviations shall be "MPH and km/h" in any combination of upper or lower case letters.
8. In the case where a single telltale indicates more than one brake system condition, the word for Brake System shall be used.

BILLING CODE 4910–59–C

§ 571.138 [Removed and Reserved]

■ 3. Remove and reserve § 571.138.

PART 590—[REMOVED AND RESERVED]

■ 4. Under the authority of 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50, remove and reserve part 590.

Issued: November 14, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–28942 Filed 11–19–03; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–3280–03; I.D. 111403A]

RIN 0648–AQ04

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,356 square nautical miles (nm2) (4,651 km2), east of Portsmouth, NH, for 15 days. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours November 22, 2003, through 2400 hours December 6, 2003.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9328 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP Web site at *http://www.nero.noaa.gov/whaletrp/.*

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) as well as to provide conservation benefits to a fourth non-endangered species (minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's Dynamic Area Management (DAM) program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm2 (139 km2)) such that right whale density is equal to or greater than 0.04 right whales per nm2 (1.85 km2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On November 7, 2003, a vessel-based survey reported a sighting of four right whales in the proximity of 42°49′ N lat. and 70°01′ W long. This position lies east of Portsmouth, NH. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. Pursuant to this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule. The DAM zone is bound by the following coordinates:

43°09′ N, 70°26′ W (NW Corner)
43°09′ N, 69°36′ W
42°32′ N, 69°36′ W
42°32′ N, 70°26′ W

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Nearshore Lobster Waters, Northern Inshore State Lobster Waters, and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with the

DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends; and
5. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours November 24, 2003, through 2400 hours December 6, 2003, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, Atlantic Large Whale Take Reduction Team (ALWTRT) members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

This action falls within the scope of alternatives and impacts analyzed in the Final EAs prepared for the ALWTRP's DAM program. Further analysis under the National Environmental Policy Act (NEPA) is not required.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this notice in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as the AA approves it, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary

for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated:November 17, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–29038 Filed 11–17–03; 2:47 pm]

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Proposed Rules

Federal Register

Vol. 68, No. 224

Thursday, November 20, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1423

RIN 0560–AE50

Standards for Approval of Warehouses for CCC Interest Commodity Storage

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule is offered to revise regulations covering the storage of commodities in which the Commodity Credit Corporation (CCC) has an interest. For the most part, those commodities are acquired in connection with non-recourse commodity loan programs that benefit farmers. This rule will consolidate the regulations for all commodities stored by CCC into one set of regulations. In addition, this rule would, in some instances, revise the substantive provisions that are in effect under the existing regulations.

DATES: Comments on this rule, in order to be assured of consideration, must be received by January 20, 2004.

ADDRESSES: Comments and request for additional information should be directed to Howard Froehlich, Chief, Program Development Branch, Warehouse and Inventory Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 0553, Washington, DC 20250–0553, telephone (202) 720–7398, FAX (202) 690–3123, e-mail *Howard_Froehlich@wdc.fsa.usda.gov.* Persons with disabilities who require alternative means for communication for regulatory information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant under Executive Order 12866 and has not, therefore, been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this proposed rule applies are: Commodity Loans and Loan Deficiency Payments, 10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Assessment

The environmental impacts of this proposed rule have been considered in accordance with the provisions of the national Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. To the extent these authorities may apply, CCC has concluded that this rule is categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) except as specifically stated in this rule, no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 780 must be exhausted before seeking judicial review.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general and CCC in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required for the warehousing matters covered by this rule are not yet fully implemented for the public to conduct business with CCC electronically. Documents needed in this regard may be obtained by mail or FAX. Electronic implementation of the matters covered by this rule is under consideration.

Background

Under Title I of the Farm Security and Rural Investment Act of 2002, the Commodity Credit Corporation (CCC) makes marketing assistance loans to farmers that can lead to forfeiture of the commodities to CCC. Also, CCC can acquire commodities under other circumstances. Section 4(h) of the CCC Charter Act (7 U.S.C. 714b(h)) precludes CCC from acquiring real property for storage facilities for agricultural commodities unless CCC determines that private facilities for the storage of such commodities are inadequate. Further, section 5 of the CCC Charter Act (7 U.S.C. 714c) requires that in purchasing, selling, warehousing, transporting, or handling agricultural commodities, CCC shall use, to the maximum extent practicable, the usual and customary channels, facilities, and arrangements of trade and commerce.

CCC enters into storage agreements with private warehouse operators to provide for the storage of various commodities it acquires. CCC has

regulations covering such storage at 7 CFR 1421.5551–1421.5559, part 1423, and 1427, subpart E. More specifically, those rules establish the standards a warehouse operator must meet to be approved to store CCC-interest commodities. This rule proposes to:

1. Consolidate the approval regulations at one location in the Code of Federal Regulations.

2. Revise the fire fighting equipment requirements in the approval regulations to specify that warehouses must meet local standards;

3. Reduce the financial information submission requirements for a warehouse seeking approval and delete the option of submitting a financial statement compilation report prepared by a management firm. All participating warehouses will now be required to submit an accountant's audit or review report. This will allow for standard filings and greater confidence in the independence of the analysis.

4. Reduce the number of alternatives and forms of financial assurance allowed to document the warehouse operator's compliance with minimum net worth requirements. This rule proposes to delete the option of a legal liability insurance policy as an alternative for calculated net worth deficiencies and requires net worth deficiencies be met with bonds, cash, negotiable securities, an irrevocable letter of credit, or other alternative instruments. Legal liability policies are rarely used and including that option in the regulations is an unnecessary complication and distraction.

5. Allow submission of irrevocable letters of credit from financial institutions subject to the Farm Credit Act of 1971. This change is in response to requests from warehouse operators that receive their financing through the Farm Credit Administration rather than through commercial banks insured by the Federal Deposit Insurance Corporation. This will allow greater flexibility, and conform regulations with industry practice, without compromising CCC's interests.

6. Make technical and clarifying changes in the wording and structure of the regulation and other substantive changes to specify fees applicable to examination of approved warehouses.

List of Subjects in 7 CFR Part 1423

Agricultural commodities, Approval of warehouses, Dairy products, Feed grains, Oilseeds, Price support programs, Processed commodities, Surplus agricultural commodities.

For the reasons set forth in the preamble, 7 CFR part 1423 is revised to read as follows:

PART 1423—STANDARDS FOR APPROVAL OF WAREHOUSES FOR CCC INTEREST COMMODITY STORAGE

Sec.
1423.1 Applicability.
1423.2 Administration.
1423.3 Definitions.
1423.4 General requirements.
1423.5 Application requirements.
1423.6 Financial information documentation requirements.
1423.7 Net worth alternatives.
1423.8 Approval or rejection.
1423.9 Examination of warehouses.
1423.10 Exceptions for United States Warehouse Act licensed warehouses.
1423.11 Exemption from standards.
1423.12 Application, inspection, and annual agreement fees.
1423.13 Appeals, suspensions, and debarment.

Authority: 15 U.S.C. 714b and 714c.

§ 1423.1 Applicability.

(a) This part sets forth the terms and conditions for approval of a warehouse operator by the Commodity Credit Corporation (CCC) to store and handle CCC interest commodities.

(b) A warehouse must be approved by CCC and a storage agreement must be in effect between CCC and the warehouse operator before CCC will consider storing or store CCC interest commodities in this warehouse. The approval of a warehouse by CCC or the completion of a storage agreement on behalf of CCC does not constitute a commitment that CCC will use the warehouse, and no official or employee of the U.S. Department of Agriculture is authorized to make such a commitment.

(c) By entering into a storage agreement with CCC, the warehouse operator agrees to perform and comply with the terms and conditions prescribed in the storage agreement.

(d) Warehouse operators who are under agreement with CCC shall meet the terms and conditions of these regulations.

§ 1423.2 Administration.

(a) On behalf of CCC, the Farm Service Agency (FSA) will administer this part under the supervision of the Deputy Administrator, Commodity Operations (Deputy Administrator), FSA.

(b) The Deputy Administrator or a designee may authorize a waiver or modification of deadlines and other program requirements in cases where lateness or failure to meet requirements does not adversely affect the operation of the program, and may set such additional requirements as will facilitate the operation of the program.

§ 1423.3 Definitions.

Agreement means agreements covering storage and handling of any such commodity the Secretary of Agriculture may determine appropriate for storage.

CCC interest commodities means commodities either pledged as collateral for a CCC commodity loan or owned by CCC.

KCCO means the FSA, Kansas City Commodity Office.

Warehouse means a building, structure, or other protected enclosure, in good state of repair, and adequately equipped to receive, handle, store, preserve, and deliver the applicable commodity.

Warehouse operator means an individual, partnership, corporation, association, or other legal entity engaged in the business of storing or handling for hire, or both, the applicable commodity.

§ 1423.4 General requirements.

(a) Unless otherwise provided in this part, approved warehouse operators shall have:

(1) A current and valid license for the kind of storage operation for which the warehouse operator seeks approval if such a license is required by State or local laws or regulations;

(2) A minimum and required net worth in such amount as is specified by CCC or as otherwise meets the requirements of § 1423.7;

(3) Sufficient funds to meet ordinary operating expenses;

(4) Corrected any deficiencies in the performance of any previous storage agreement with CCC; and

(5) Accurate and complete inventory and operating records.

(b) Approved warehouses may only use pre-numbered warehouse receipts meeting the information requirements in the applicable commodity's CCC loan program regulations and requirements and may only use pre-numbered scale tickets, if applicable; or other documents as CCC may prescribe.

(c) In addition, the warehouse must have:

(1) Adequate and operable fire fighting equipment as required by the state and local fire authorities for the type of warehouse and stored commodity;

(2) A work force and equipment available to provide adequate storage and handling services as specified in the applicable agreement or as otherwise determined by CCC;

(3) Necessary experience, organization, technical qualifications, and skills in the warehousing business regarding the applicable commodities to provide proper storage and handling

services. This includes officials and supervisory employees of the warehouse operator in charge of warehouse operations;

(4) A satisfactory record of integrity, judgment, and performance as determined by CCC; provided further that owners, officials, and supervisory employees of the warehouse operator in charge of warehouse operations must also have such a satisfactory record; and

(5) No record, either itself or among its owners, officials, and supervisory employees, of suspension or debarment under applicable Federal suspension and debarment regulations.

(d) Unless otherwise provided in this part, each approved warehouse used to store or handle CCC interest commodities, shall:

(1) Be under the control of the warehouse operator at all times;

(2) If leased, furnish a copy of the written lease agreement to CCC with the application. The lease agreement must be renewable and must provide that the lease holder cannot cancel the agreement without giving at least 120 days notice to the warehouse operator. All leases are subject to CCC approval;

(3) At all times meet the conditions for approval; and

(4) Not be subject to greater than normal risk of fire, flood, or other hazards, as determined by CCC.

§ 1423.5 Application requirements.

(a) *Documents required.* To apply for approval under this part, a warehouse operator shall submit to CCC the following:

(1) An application as prescribed by CCC for the applicable commodity storage agreement;

(2) Evidence of compliance with § 1423.4;

(3) Current financial information sufficient to meet the requirements of § 1423.6;

(4) For State licensed or non-licensed warehouse operators, a sample copy of the warehouse operator's warehouse receipts or electronic warehouse receipt record descriptor when applicable; and

(5) Such other documents or information as CCC may require.

(b) *Examination required.* Before approval, a warehouse must be examined by a person designated by CCC to determine whether it meets the standards for approval for the storage or handling of commodities under this part.

§ 1423.6 Financial information documentation requirements.

(a) To be approved to store CCC-interest commodities, warehouse operators shall submit the following to CCC:

(1) An audit or review report by an independent Certified Public Accountant or an independent public accountant. The report must be prepared in accordance with standards established by the American Institute of Certified Public Accountants according to generally accepted auditing principles including the accountant's certifications, assurances, opinions, comments, and notes with respect to such audit or review report. The report must also include a:

(i) Balance sheet;

(ii) Statement of income (profit and loss);

(iii) Statement of retained earnings; and

(iv) Statement of cash flows.

(2) Such other information as CCC may require.

(b) Financial statements submitted:

(1) May be submitted on other forms than required in paragraph (a) of this section when so approved by CCC;

(2) Shall show the financial condition of the warehouse operator no earlier than ninety (90) days before the date of the warehouse operator's application, or such other date as CCC may prescribe, and must indicate any material changes that have occurred in the interim; and

(3) Shall be updated and resubmitted annually and at such other times as CCC may require; and

(c) Subject to CCC approval, the financial reporting requirements set forth in paragraphs (a) and (b) of this section may be met by one of the following:

(1) Appraisals of the value of fixed assets in excess of the book value when prepared by independent appraisers acceptable to and approved by CCC.

(2) A parent company of a wholly-owned subsidiary when the warehouse operator's financial position is separately identified on all applicable consolidated statements, or

(3) A guaranty agreement from:

(i) A parent company submitted on behalf of a wholly-owned subsidiary, or

(ii) An entity with substantial interest in the warehouse operator when applicable financial statements are prepared at the audit level.

§ 1423.7 Net worth alternatives.

Warehouse operators with net worth equal to or greater than the minimum net worth required, but less than the total net worth for the commodity involved in the particular agreement, may satisfy the net worth deficiency by furnishing one of the following:

(a) A bond which:

(1) Is executed by a surety approved by the U.S. Department of the Treasury so long as the surety maintains someone authorized to accept service of legal process in the State where the warehouse is located.

(2) Is executed on either a bond form obtained from CCC, or which is furnished under State law or operational rules for non-governmental supervisory agencies, if approved by CCC, so long as CCC determines that such alternative bond:

(i) Provides adequate protection to CCC;

(ii) Has been executed by a surety approved by the U.S. Department of the Treasury or has an acceptable blanket rider and endorsement executed by such a surety with the liability of the surety under such rider or endorsement being the same as that of the surety under the original bond; and

(iii) Is effective for at least 1 year and cannot be canceled without a one hundred twenty (120) days notice to CCC. Excess coverage on a bond for one warehouse will not be accepted by CCC against insufficient bond coverage on other warehouses;

(b) Cash and negotiable securities. Any such cash or negotiable securities accepted by CCC will be returned to the warehouse operator when the period for which coverage was required has ended and CCC determines there is no liability under the storage agreement;

(c) An irrevocable letter of credit meeting CCC requirements that is effective for at least 1 year and cannot be canceled without a one hundred twenty (120) days notice to CCC. The issuing bank must be a commercial bank insured by the Federal Deposit Insurance Corporation or a financial institution subject to the Farm Credit Act of 1971, Public Law 92–181, 85 Stat. 583; or

(d) Other alternative instruments and forms of financial assurance as the Deputy Administrator determines appropriate to secure the warehouse operator's compliance with this section.

§ 1423.8 Approval or rejection.

(a) CCC will notify warehouse operators approved under this part in writing. Approval does not relieve the warehouse operator of any obligation under any agreement to CCC or any other agency of the United States, and does not obligate CCC to use the warehouse.

(b) CCC will notify the warehouse operator of rejection under this part in writing. The notification will state the cause(s) for rejection. Except for rejections due to the requirements of § 1423.4(c)(5), CCC may reconsider a warehouse for approval when the warehouse operator establishes that the reasons for rejection have been

remedied or requests reconsideration of the action and presents to the Director, KCCO, in writing, information in support of such request. The warehouse operator may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing by submitting a request with the Deputy Administrator. Appeals shall be as prescribed in 7 CFR part 780.

§ 1423.9 Examination of warehouses.

Before approval, and while a storage agreement is in effect, a warehouse must be examined by a person designated by CCC periodically to determine compliance with this part. CCC or any other agency of USDA shall, at any time, have the right to inspect the warehouse storage facilities and any applicable records. Inspection or examination by CCC does not absolve the warehouse operator of any failure to comply with this part that CCC does not discover. Failure to allow access to facilities as required under this paragraph will result in rejection or revocation of approval.

§ 1423.10 Exceptions for United States Warehouse Act licensed warehouses.

The financial requirements, net worth alternatives, and examination provisions of this part do not apply to any warehouse operator approved or applying for approval for the storage and handling of commodities under CCC programs if the warehouse is licensed under the U.S. Warehouse Act (USWA) for such commodities. A special examination shall be made of such warehouse whenever CCC determines such action is necessary.

§ 1423.11 Exemption from standards.

The Deputy Administrator may temporarily exempt the standards of this part for approval of warehouses to store CCC-interest commodities where such exemption is considered necessary to protect the interests of CCC and when necessary to carry out CCC programs.

§ 1423.12 Application, inspection, and annual agreement fees.

Each warehouse operator not licensed under USWA shall pay to CCC an application fee, as well as inspection fees, and annual agreement fees, for each warehouse approved by CCC or for which approval is sought. The terms and conditions of such fees will be set forth in the applicable agreement.

(a) The application and inspection fees shall be the inspection fee applicable to the commodity announced by FSA for USWA warehouse operators; and

(b) The annual agreement fee shall be fifty (50) percent of the applicable USWA annual license fee.

§ 1423.13 Appeals, suspensions, and debarment.

(a) After initial approval, warehouse operators may request that CCC reconsider adverse actions when the warehouse operator establishes that the reasons for the action have been remedied or requests reconsideration of the action and presents to the Director, KCCO, in writing, information in support of such request. The warehouse operator may, if dissatisfied with the Director's determination, obtain a review of the determination and an informal hearing by submitting a request to the Deputy Administrator. Appeals shall be as prescribed in 7 CFR part 780, and under such regulations, the warehouse operator shall be considered as a ''participant.''

(b) Suspension and debarment actions taken under this part shall be conducted in accordance with part 1407 of this chapter. After expiration of the suspension or debarment period, a warehouse operator may, at any time, apply for approval under this part.

Signed at Washington, DC, on November 14, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–28989 Filed 11–19–03; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AH32

Minor Changes to Decommissioning Trust Fund Provisions

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The NRC is amending its regulations related to decommissioning trust fund provisions to correct typographical errors and make minor changes to a final rule promulgated by the NRC in December of 2002. This action adds clarifying language to amendments regarding notification requirements, investment prohibitions, and the option for licensees to retain their existing license conditions.

DATES: Comments on the proposed rule must be received on or before December 22, 2003.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH32) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Brian J. Richter, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1978; e-mail *bjr@nrc.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

Because NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on December 24, 2003. However, if the NRC receives significant adverse comments on the direct final rule by December 22, 2003, then the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action in the event the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal Penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, and Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is proposing to adopt the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.75, the sixth sentence of paragraphs (e)(1)(i) and the sixth sentence of (e)(1)(ii), paragraph (h)(1)(i)(A), the first sentences of paragraphs (h)(1)(i)(B), (h)(1)(iv), and (h)(2), are revised, and a new paragraph (h)(5) is added to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(e)(1) * * *

(i) * * * A licensee that has prepaid funds based on the formulas in § 50.75(c) of this section may take credit for projected earnings on the prepaid decommissioning funds using up to a 2 percent annual real rate of return up to the time of permanent termination of operations.

(ii) * * * A licensee that has collected funds based on the formulas in § 50.75(c) of this section may take credit for collected earnings on the decommissioning funds using up to a 2 percent annual real rate of return up to the time of permanent termination of operations. * * *

* * * * *

(h)(1) * * *

(i) * * *

(A) Is prohibited from investing the funds in securities or other obligations of the licensee or any other owner or operator of any nuclear power reactor or their affiliates, subsidiaries, successors or assigns, or in a mutual fund in which at least 50 percent of the fund is invested in the securities of a licensee or parent company whose subsidiary is an owner or operator of a foreign or domestic nuclear power plant. However, the funds may be invested in securities tied to market indices or other non-nuclear sector collective, commingled, or mutual funds, provided that this subsection shall not operate in such a way as to require the sale or transfer either in whole or in part, or other disposition of any such prohibited investment that was made before the publication date of this rule, and provided further that no more than 10 percent of trust assets may be indirectly invested in securities of any entity owning or operating one or more nuclear power plants.

(B) Is obligated at all times to adhere to a standard of care set forth in the trust, which either shall be the standard of care, whether in investing or otherwise, required by State or Federal law or one or more State or Federal regulatory agencies with jurisdiction over the trust funds, or, in the absence of any such standard of care, whether in investing or otherwise, that a prudent investor would use in the same circumstances. * * *

* * * * *

(iv) Except for withdrawals being made under 10 CFR 50.82(a)(8) or for payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, no disbursement or payment may be made from the trust, escrow account, Government fund, or other account used to segregate and manage the funds until written notice of the intention to make a disbursement or payment has been given to the Director, Office of Nuclear Reactor Regulation, or the Director, Office of Nuclear Material Safety and Safeguards, as applicable, at least 30 working days before the date of the intended disbursement or payment. * * *

(2) Licensees that are ''electric utilities'' under § 50.2 that use prepayment or an external sinking fund to provide financial assurance shall include a provision in the terms of the trust, escrow account, Government fund, or other account used to segregate

and manage funds that except for withdrawals being made under 10 CFR 50.82(a)(8) or for payments of ordinary administrative costs (including taxes) and other incidental expenses of the fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the fund, no disbursement or payment may be made from the trust, escrow account, Government fund, or other account used to segregate and manage the funds until written notice of the intention to make a disbursement or payment has been given the Director, Office of Nuclear Reactor Regulation or the Director, Office of Nuclear Material Safety and Safeguards, as applicable at least 30 working days before the date of the intended disbursement or payment.

* * *

* * * * *

(5) The provisions of paragraphs (h)(1) through (h)(3) of this section do not apply to any licensee that as of December 24, 2003, has existing license conditions relating to decommissioning trust agreements, so long as the licensee does not elect to amend those license conditions. If a licensee with existing license conditions relating to decommissioning trust agreements elects to amend those conditions, the license amendment shall be in accordance with the provisions of paragraph (h) of this section.

Dated at Rockville, Maryland, this 20th day of October, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–29021 Filed 11–19–03; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 620, and 630

RIN 3052–AC07

Loan Policies and Operations; Disclosure to Shareholders; Disclosure to Investors in Systemwide and Consolidated Bank Debt Obligations of the Farm Credit System

AGENCY: Farm Credit Administration.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Farm Credit Administration (FCA, agency, or we) is reopening the comment period on the proposed rule to amend the agency's regulations governing the Farm Credit System's (System) mission to provide sound and constructive credit and services to young, beginning, and small farmers and ranchers, and producers or harvesters of aquatic products (YBS farmers and ranchers or YBS). This additional comment period will give interested parties more time to consider the issues raised in the proposed rule and respond.

DATES: Please send your comments to the FCA by January 20, 2004.

ADDRESSES: We encourage you to send comments by electronic mail to ''*reg-comm@fca.gov*'' or through the Pending Regulations section of FCA's Web site, ''*http://www.fca.gov.*'' You may also send comments to S. Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by facsimile to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

Robert E. Donnelly, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434

or

Wendy R. Laguarda, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: On September 15, 2003, we published a proposed rule in the **Federal Register** seeking public comment on amendments to regulations governing the System's mission to provide sound and constructive credit and services to young, beginning, and small farmers and ranchers, and producers or harvesters of aquatic products. The comment period expired on November 14, 2003. *See* 68 FR 53915, September 15, 2003. We have received a request that the FCA provide an additional 60 days to comment. In response to this request, we are reopening the comment period until January 20, 2004, so all interested parties have more time to respond. The FCA supports public involvement and participation in its regulatory and policy process and invites all interested parties to review and provide comments on the proposed rule.

Dated: November 14, 2003.

James M. Morris,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 03–28969 Filed 11–19–03; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16410; Airspace Docket No. 03–ACE–79]

Proposed Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Hutchinson, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to create a Class E surface area at Hutchinson, KS for those times when the air traffic control tower (ATCT) is closed. It also proposes to modify the Class E5 airspace at Hutchinson, KS.

DATES: Comments for inclusion in the Rules Docket must be received on or before December 18, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–16210/ Airspace Docket No. 03–ACE–79, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16410/Airspace Docket No. 03–ACE–79.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This notice proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace designated as a surface area for an airport at Hutchinson, KS. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. This airspace would be in effect during those times when the ATCT is closed. Weather observations would be provided by an Automated Surface Observing System (ASOS) and communications would be direct with Wichita ATCT.

This notice also proposes to revise the Class E airspace area extending upward from 700 feet above the surface at Hutchinson, KS. An examination of this Class E airspace area for Hutchinson, KS revealed a discrepancy in the identified type of one navigational aid and a discrepancy in the location of another navigational aid serving Hutchinson Municipal Airport and used in the Class E airspace legal description. The Hutchinson Very High Frequency Omni-Directional Range (VOR)/Distance Measuring Equipment (DME) is misidentified as a VHF Omni-Directional range/Tactical Air Navigation (VORTAC). The location of the SALTT Outer Compass Locator (LOM) is erroneous. This proposal would correct these discrepancies. The areas would be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designation and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE KS E2 Hutchinson, KS

Hutchinson Municipal Airport, KS
(Lat. 38°03′56″ N., long. 97°51′38″ W.)

Within a 4.3-mile radius of Hutchinson Municipal Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Hutchinson, KS

Hutchinson Municipal Airport, KS
(Lat. 38°03′56″ N.,97°51′38″ W.)
Hutchinson VOR/DME
(Lat. 37°59′49″ N., long. 97°56′03″ W.)
SALTT LOM
(Lat. 38°07′25″ N., long. 97°55′37″ W.)
Hutchinson ILS Localizer
(Lat. 38°03′31″ N., long. 97°51′12″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Hutchinson Municipal Airport, and within 4 miles each side of the Hutchinson ILS localizer northwest course extending to 16 miles northwest of the SALTT LOM, and within 4 miles each side of the ILS localizer back course extending from the 6.8-mile radius to 7.4 miles southeast of the airport, and within 4 miles each side of the Hutchinson VOR/DME 042° radial extending from the 6.8-mile radius to 7.4 miles northeast of the airport, and within 4 miles each side of the Hutchinson VOR/DME 222° radial extending from the 6.8-mile radius to 11.2 miles southwest of the airport.

* * * * *

Issued in Kansas City, MO, on November 3, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–29029 Filed 11–19–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–110896–98]

RIN 1545–AW35

Charitable Remainder Trusts; Application of Ordering Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations on the ordering rules of section 664(b) of the Internal Revenue Code for characterizing distributions from charitable remainder trusts. The proposed regulations reflect changes made to income tax rates, including the rates applicable to capital gains and certain dividends, by the Taxpayer Relief Act of 1997, the Internal Revenue Service Restructuring and Reform Act of 1998, and the Jobs and Growth Tax Relief Reconciliation Act of 2003. The proposed regulations affect charitable remainder trusts and their beneficiaries. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received Tuesday, February 17, 2004. Outlines of topics to be discussed at the public hearing scheduled for Tuesday, March 9, 2004, must be received by Tuesday, February 17, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–110896–98), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–110896–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs.* The public hearing will be held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Theresa M. Melchiorre, (202) 622–7830; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Robin Jones, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 664 contains the rules for charitable remainder annuity trusts and charitable remainder unitrusts. In general, a charitable remainder trust provides for a specified periodic distribution (CRT distribution) to one or more beneficiaries (at least one of which is a noncharitable beneficiary) for life or for a term of years, with an irrevocable remainder interest held for the benefit of charity.

Section 664(b) provides ordering rules for determining the character of CRT distributions in the hands of the recipient of those distributions. A CRT distribution is treated: First, as ordinary income to the extent of the trust's gross income other than gains from the sale of capital assets (''ordinary income'') for the trust's taxable year and its undistributed ordinary income for prior years; second, as capital gain to the extent of the trust's capital gain for the trust's taxable year and its undistributed capital gain for prior years; third, as other income (that is, tax-exempt income) to the extent of the trust's other income for the trust's taxable year and its undistributed other income for prior years; and, finally, as a distribution of trust corpus. The general principle of section 664(b) is that income subject to the highest Federal income tax rate is deemed distributed prior to income subject to a lower (or no) Federal income tax rate. The existing regulations under ''1.664–1(d)(1)(i)(b)(1) follow this general principle by providing that short-term capital gain is deemed distributed prior to any long-term capital gain.

Beginning with the Taxpayer Relief Act of 1997 (TRA), Public Law 105–34 (111 Stat. 788), different types of long-term capital gains are subject to different Federal income tax rates. The different classes of long-term capital gains and losses properly taken into account by a charitable remainder trust after May 6, 1997, may, for example, consist of 28-percent rate gain as defined in section 1(h)(4), unrecaptured section 1250 gain as defined in section 1(h)(6), and all other long-term capital gains and losses. For taxable years beginning after December 31, 2002, the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA), Public Law 108–27 (117 Stat. 752), provides that qualified dividend income as defined in section 1(h)(11) is taxed at the rates applicable to all other long-term capital gains. Because dividends represent one type of ordinary income, different types of ordinary income are subject to different Federal income tax rates as a result of JGTRRA.

Notice 98–20 (1998–1 C.B. 776), as modified by Notice 99–17 (1999–1 C.B. 871), provides guidance on the treatment of capital gains under section 664(b)(2) following the changes made by the TRA and the technical corrections made by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685). The proposed regulations incorporate this guidance as well as provide additional guidance regarding the treatment of qualified dividend income under section 664(b)(1).

Explanation of Provisions

The proposed regulations will amend § 1.664–1(d)(1) to revise the rules for characterizing a CRT distribution to take into account differences in the Federal income tax rates applicable to items of income that are assigned to the same category under section 664(b). The trust's income is assigned, in the year it is required to be taken into account by the trust, to one of three categories: the ordinary income category, the capital gains category, or the other income category. Further, within the ordinary income and capital gains categories, items are also assigned to different classes based on the Federal income tax rate applicable to each type of income in the category. In accordance with section 664(b), a CRT distribution is treated as being made from the categories in the following order: ordinary income, capital gain, other income, and trust corpus. Within the ordinary income and capital gains categories, income is treated as distributed from the classes of income in that category beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest Federal income tax rate. The proposed regulations also provide rules for netting different classes of capital gains and losses based on the guidance in Notice 97–59 (1997–2 C.B. 309).

Proposed Effective Date

The provisions in these regulations that were set forth in Notice 98–20 (1998–1 C.B. 776) and Notice 99–17 (1999–1 C.B. 871) are proposed to apply for taxable years ending on or after December 31, 1998, and taxpayers may rely on the provisions for taxable years beginning on or after January 1, 1998. The other provisions of these regulations are proposed to apply for taxable years ending after [DATE OF PUBLICATION OF THIS DOCUMENT IN THE **Federal Register**].

Special Analyses

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. In addition, comments are requested on the administrative difficulty and potential tax benefit or detriment of maintaining separate classes within a category when two classes are only temporarily subject to the same rate (for example, if the current rate applicable to one class sunsets in a future year). All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, March 9, 2004 in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must use the main building entrance on Constitution Avenue. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For more information about having your name placed on the list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written (signed original and eight (8) copies) or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic by Tuesday, February 17, 2004. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Theresa M. Melchiorre, Office of Chief Counsel, IRS. Other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 1.664–1 is amended as follows:

1. Paragraph (d)(1) is revised.

2. Paragraph (d)(2) is amended by:

a. Removing the language ''or to corpus (determined under subparagraph (1)(i) of this paragraph)'' in the first sentence and adding ''(determined under paragraph (d)(1)(i)(*a*) of this section) or to corpus'' in its place.

b. Removing the language ''subparagraph (1)(i)(c) of this paragraph'' from the fifth sentence and adding ''paragraph (d)(1)(i)(*a*)(*3*) of this section'' in its place.

c. Removing the language ''or corpus in the categories described in subparagraph (1) of this paragraph'' from the last sentence and adding ''described in paragraph (d)(1)(i)(*a*) of this section or to corpus'' in its place.

3. Paragraph (e)(1) is amended by removing the language ''paragraph (d)(1)'' from the first sentence and adding ''paragraph (d)(1)(i)(*a*)'' in its place.

The revision reads as follows:

§ 1.664–1 Charitable remainder trusts.

* * * * *

(d) *Treatment of annual distributions to recipients*—(1) *Character of distributions*—(i) *Assignment of income to categories and classes.* (*a*) A trust's income, including income includible in gross income and other income, is assigned to one of three categories in the year in which it is required to be taken into account by the trust. These categories are—

(*1*) Gross income, other than gains and amounts treated as gains from the sale or other disposition of capital assets (referred to as the ordinary income category);

(*2*) Gains and amounts treated as gains from the sale or other disposition of capital assets (referred to as the capital gains category); and

(*3*) Other income (including income excluded under part III, subchapter B, chapter 1, subtitle A of the Internal Revenue Code).

(*b*) Items within the ordinary income and capital gains categories are assigned to different classes based on the Federal income tax rate applicable to each type of income in that category in the year the items are required to be taken into account by the trust. For example, the ordinary income category may include a class of qualified dividend income as defined in section 1(h)(11) and a class of all other ordinary income. In addition, the capital gains category may include separate classes for short-term capital gains and losses, for 28-percent rate gain as defined in section 1(h)(4), for unrecaptured section 1250 gain as defined in section 1(h)(6), and for all other long-term capital gains and losses. After items are assigned to a class, the tax rates may change so that items in two or more classes would be taxed at the same rate if distributed during a particular year. If the changes to the tax rates are permanent, the undistributed items in those classes are combined into one class. If, however, the changes to the tax rates are only temporary (for example, the new rate for one class will sunset in a future year), the classes are kept separate.

(ii) *Order of distributions.* (*a*) The categories and classes of income (determined under paragraph (d)(1)(i) of this section) are used to determine the character of an annuity or unitrust distribution from the trust in the hands of the recipient irrespective of whether the trust is exempt from taxation under section 664(c) for the year of the distribution. The determination of the character of amounts distributed shall be made as of the end of the taxable year of the trust. The recipient is taxed on the distribution based on the tax rates applicable in the year of the distribution to the classes of income that are deemed distributed from the trust. The character of the distribution in the hands of the annuity or unitrust recipient is determined by treating the distribution

as being made from each category in the following order:

(*1*) First, from ordinary income to the extent of the sum of the trust's ordinary income for the taxable year and its undistributed ordinary income for prior years.

(*2*) Second, from capital gain to the extent of the trust's capital gains determined under paragraph (d)(1)(iv) of this section.

(*3*) Third, from other income to the extent of the sum of the trust's other income for the taxable year and its undistributed other income for prior years.

(*4*) Finally, from trust corpus (with corpus defined for this purpose as the net fair market value of the trust assets less the total undistributed income (but not loss) in paragraphs (d)(1)(i)(*a*)(*1*) through (*3*) of this section)).

(*b*) If the trust has different classes of income in the ordinary income category, the distribution from that category is treated as being made from each class, in turn, until exhaustion of the class, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest Federal income tax rate. If the trust has different classes of net gain in the capital gains category, the distribution from that category is treated as being made first from the short-term capital gain class and then from each class of long-term capital gain, in turn, until exhaustion of the class, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. If two or more classes within the same category are subject to the same current tax rate, but at least one of those classes will be subject to a different tax rate in a future year (for example, if the current rate sunsets), the order of that class in relation to other classes in the category with the same current tax rate is determined based on the future rate or rates applicable to those classes. Within each category, if there is more than one type of income in a class, amounts treated as distributed from that class are to be treated as consisting of the same proportion of each type of income as the total of the current and undistributed income of that type bears to the total of the current and undistributed income of all types of income included in that class. For example, if rental income and interest income are subject to the same current and future Federal income tax rate and therefore are in the same class, a distribution from that class will be treated as consisting of a proportional amount of rental income and interest income.

(iii) *Treatment of losses—(a) Ordinary income category.* An ordinary loss for the current year is first used to reduce undistributed ordinary income for prior years that is assigned to the same class as the loss. Any excess loss is then used to reduce the current and undistributed ordinary income from other classes, in turn, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest Federal income tax rate. If any of the loss exists after all the current and undistributed ordinary income from all classes has been offset, the excess is carried forward indefinitely to reduce ordinary income for future years. For purposes of this section, the amount of current income and prior years' undistributed income shall be computed without regard to the deduction for net operating losses provided by sections 172 or 642(d).

(b) *Other income category.* A loss in the other income category for the current year is used to reduce undistributed income in this category for prior years and any excess is carried forward indefinitely to reduce other income for future years.

(iv) *Netting of capital gains and losses.* Capital gains of the trust are determined on a cumulative net basis under the rules of this paragraph (d)(1) without regard to the provisions of section 1212. For each taxable year, current and undistributed gains and losses within each class are netted to determine the net gain or loss for that class, and the classes of capital gains and losses are then netted against each other in the following order. A net loss from the class of short-term capital gain and loss offsets the net gain from each class of long-term capital gain and loss, in turn, until exhaustion of the class, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest Federal income tax rate. A net loss from a class of long-term capital gain and loss (beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate) is used to offset net gain from each other class of long-term capital gain and loss, in turn, until exhaustion of the class, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. A net loss from all the classes of long-term capital gain and loss (beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate) offsets any net gain from the class of short-term capital gain and loss.

(v) *Carry forward of net capital gain or loss.* If, at the end of a taxable year, a trust has, after the application of paragraph (d)(1)(iv), any net loss or any net gain that is not treated as distributed under paragraph (d)(1)(ii)(*a*)(*2*) of this section, the net gain or loss is carried over to succeeding taxable years and retains its character in succeeding taxable years as gain or loss from its particular class.

(vi) *Special transitional rules.* To be eligible to be included in the class of qualified dividend income, dividends must meet the definition of section 1(h)(11) and must be received by the trust after December 31, 2002. Long-term capital gain or loss properly taken into account by the trust before January 1, 1997, is included in the class of all other long-term capital gains and losses. Long-term capital gain or loss properly taken into account by the trust on or after January 1, 1997, and before May 7, 1997, if not treated as distributed in 1997, is included in the class of all other long-term capital gains and losses. Long-term capital gain or loss (other than 28-percent rate gain as defined in section 1(h)(4), unrecaptured section 1250 gain as defined in section 1(h)(6), and qualified 5-year gain as defined in section 1(h)(9) prior to its amendment by the Jobs and Growth Tax Relief Reconciliation Act of 2003, Public Law 108–27 (117 Stat. 752)), properly taken into account by the trust on or after January 1, 2003, and before May 6, 2003, if not treated as distributed during 2003, is included in the class of all other long-term capital gains and losses. Qualified 5-year gain properly taken into account by the trust after December 31, 2000, and before May 6, 2003, if not treated as distributed by the trust in 2003 or a prior year, must be maintained in a separate class within the capital gains category.

(vii) *Application of section 643(a)(7).* For application of the anti-abuse rule of section 643(a)(7) to distributions from charitable remainder trusts, see § 1.643(a)–8.

(viii) *Examples.* The following examples illustrate the rules in this paragraph (d)(1):

Example 1. (i) X, a charitable remainder annuity trust described in section 664(d)(1), is created on January 1, 2003. The annual annuity amount is $100. X's income for the 2003 tax year is as follows:

Interest income	$80
Qualified dividend income	50
Capital gains and losses	0
Tax-exempt income	0

(ii) In 2003, the year this income is received by the trust, qualified dividend income is subject to a different rate of

Federal income tax than interest income and is, therefore, a separate class of income in the ordinary income category. The annuity amount is deemed to be distributed from the classes within the ordinary income category, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. Because during 2003 qualified dividend income is taxed at a lower rate than interest income, the interest income is deemed distributed prior to the qualified dividend income. Therefore, in the hands of the recipient, the 2003 annuity amount has the following characteristics:

Interest income	$80
Qualified dividend income	20

(iii) The remaining $30 of qualified dividend income that is not treated as distributed to the recipient in 2003 is carried forward to 2004 as undistributed qualified dividend income.

Example 2. (i) The facts are the same as in *Example 1,* and at the end of 2004, X has the following classes of income:

Interest income class	$5
Qualified dividend income class ($10 from 2004 and $30 carried forward from 2003)	40
Net short-term capital gain class	15
Net long-term capital loss in 28-percent rate class	(325)
Net long-term capital gain in unrecaptured section 1250 gain class	175
Net long-term capital gain in all other long-term capital gain class	350

(ii) In 2004, gain in the unrecaptured section 1250 gain class is subject to a 25-percent Federal income tax rate, and gain in the all other long-term capital gain class is subject to a lower rate. The net long-term capital loss in the 28-percent rate class is used to offset the net capital gains in the other classes of long-term capital gain and loss, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. The $325 net loss in the 28-percent rate class reduces the $175 net gain in the unrecaptured section 1250 gain class to $0. The remaining $150 loss from the 28-percent rate class reduces the $350 gain in the all other long-term capital gain class to $200. As in *Example 1,* qualified dividend income is taxed at a lower rate than interest income during 2004. The annuity amount is deemed to be distributed from all the classes in the ordinary income category and then from the classes in the capital gains category, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. In the hands of the recipient, the 2004 annuity amount has the following characteristics:

Interest income	$5
Qualified dividend income	40
Net short-term capital gain	15
Net long-term capital gain in all other long-term capital gain class	40

(iii) The remaining $160 gain in the all other long-term capital gain class that is not treated as distributed to the recipient in 2004 is carried forward to 2005 as gain in that same class.

Example 3. (i) The facts are the same as in *Examples 1* and *2,* and at the end of 2005, X has the following classes of income:

Interest income class	$5
Qualified dividend income class	20
Net short-term capital loss class	(50)
Net long-term capital gain in 28-percent rate class	10
Net long-term capital gain in unrecaptured section 1250 gain class	135
Net long-term capital gain in all other long-term capital gain class (carried forward from 2004)	160

(ii) Net short-term capital loss is used to offset the net capital gains in the classes of long-term capital gain and loss, in turn, until exhaustion of the class, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. The $50 net loss reduces the $10 net gain in the 28-percent rate class to $0. The remaining $40 net loss reduces the $135 net gain in the unrecaptured section 1250 gain class to $95. As in *Examples 1* and *2,* during 2005, qualified dividend income is taxed at a lower rate than interest income; gain in the unrecaptured section 1250 gain class is taxed at 25-percent; and gain in the all other long-term capital gain class is taxed at a rate lower than 25-percent. The annuity amount is deemed to be distributed from all the classes in the ordinary income category and then from the classes in the capital gains category, beginning with the class subject to the highest Federal income tax rate and ending with the class subject to the lowest rate. In the hands of the recipient, the 2005 annuity amount has the following characteristics:

Interest income	$5
Qualified dividend income	20
Unrecaptured section 1250 gain	75

(iii) The remaining $20 gain in the unrecaptured section 1250 gain class and the $160 gain in the all other long-term capital gain class that are not treated as distributed to the recipient in 2005 are carried forward to 2006 as gains in their respective classes.

(ix) *Effective dates.* The rules in this paragraph (d)(1) that require long-term capital gains to be distributed in the following order: first, 28-percent rate gain as defined in section 1(h)(4); second, unrecaptured section 1250 gain as described in section 1(h)(6); and then, all other long-term capital gains are applicable for taxable years ending on or after December 31, 1998. The rules in this paragraph (d)(1) that provide for the netting of capital gains and losses are applicable for taxable years ending on or after December 31, 1998. The rule in the second sentence of paragraph (d)(1)(vi) of this section is applicable for taxable years ending on or after December 31, 1998. The rule in the third sentence of paragraph (d)(1)(vi) of this section is applicable for distributions made in taxable years ending on or after December 31, 1998. All other provisions of paragraph (d)(1) are applicable for taxable years ending after November 20, 2003.

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–29042 Filed 11–19–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[CO–033–FOR]

Colorado Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: We are announcing receipt of revisions pertaining to a previously-proposed amendment to the Colorado regulatory program (hereinafter, the ''Colorado program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Colorado proposes revisions to require a weed management plan as part of the permit application, and as part of the Cropland revegetation success criteria, to not consider crop production prior to year nine of the liability cycle (or with respect to annual grain crops for which the cropping cycle may incorporate a summer fallow year, two of the last four cropping years will be considered).

DATES: We will accept written comments on this amendment until 4 p.m., m.d.t., December 5, 2003.

ADDRESSES: You should mail written comments and requests to speak at the hearing to James F. Fulton at the address listed below.

You may review copies of the Colorado program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting Office of Surface Mining Reclamation and Enforcement's (OSM) Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, PO Box 46667, Denver, CO 80201–6667.

David A. Berry, Coal Program Supervisor, Colorado Division of Minerals and Geology, 1313 Sherman Street Room 215, Denver, Colorado 80203, Telephone: 303/866–3873.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: 303/844–1400 ext. 1424, Internet address: *jfulton@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Colorado Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Colorado program on December 15, 1980. You can find background information on the Colorado program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Colorado program in the December 15, 1980, **Federal Register** (45 FR 82173). You can also find later actions concerning Colorado's program and program amendments at 30 CFR 906.15, 906.16, and 906.30.

II. Proposed Amendment

By letter dated March 27, 2003, Colorado sent us a proposed amendment to its program (SATS No. CO–033–FOR, administrative record number CO–696–1) under SMCRA (30 U.S.C. 1201 *et seq.*). Colorado sent the proposed amendment in response to the letters that we sent it in accordance with 30 CFR 732.17(c) on May 7, 1986; on June 9, 1987; and on March 22, 1990. The amendment concerns prime farmland, revegetation, hydrology, enforcement, topsoil, historic properties, and bond release requirements.

On April 4, 2003, Colorado sent us an addition to its March 27, 2003, program amendment which amended Rule 4.15.8(3)(a), Revegetation Success Criteria.

We announced receipt of the March 27, 2003, proposed amendment and its April 4, 2003, addition in the June 3, 2003, **Federal Register** (68 FR 33032), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy. Because no one requested a public hearing or meeting, none was held. The public comment period ended on July 3, 2003. We received comments from one Federal agency.

Colorado now proposes, in its July 23, 2003, submittal, revisions to Rule 4.15.1, Weed Management Plan; Rule 4.15.9, Revegetation Success Criteria: Cropland; and Rule 1.04(78), Definition of Noxious Weeds. Specifically, (1) Rule 4.15.1 requires a weed management plan be submitted with the surface coal mining permit application; (2) In Rule 1.04(78), the definition is amended to read ''noxious weeds'' rather than ''noxious plants;'' and (3) Rule 4.15.9, ''Revegetation Success Criteria: Cropland,'' is amended to read ''crop production from the mined area shall not be less than that of the liability period * * *,'' and ''Crop production shall not be considered prior to year nine of the liability period. With respect to annual grain crops for which the cropping cycle may incorporate a summer fallow year, two of the last four cropping years will be considered.''

III. Public Comment Procedures

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Denver Field Division.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS No. CO–033–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Denver Field Division at 303/844–1400, ext. 1441.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10),

decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian Tribes and have determined that the rule does not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: a. does not have an annual effect on the economy of $100 million; b. will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and c. does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 24, 2003.

Peter A. Rutledge,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 03–28996 Filed 11–19–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–246–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Kentucky regulatory program (the ''Kentucky program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky is revising its definition of ''affected area'' to be consistent with the corresponding Federal regulations.

This document gives the times and locations that the Kentucky program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., e.s.t., December 22, 2003. If requested, we will hold a public hearing on the amendment on December 15, 2003. We will accept requests to speak until 4 p.m., e.s.t., on December 5, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to William J. Kovacic at the address listed below.

You may review copies of the Kentucky program, this amendment, a

listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Lexington Field Office.

William J. Kovacic, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859) 260–8400. E-mail: *bkovacic@osmre.gov.*

Department for Surface Mining Reclamation and Enforcement, 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Telephone: (859) 260–8400. Internet: *bkovacic@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act. *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Kentucky program in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated September 30, 2003, Kentucky sent us a proposed amendment to its program ([KY–246], administrative record No. KY–1601) under SMCRA (30 U.S.C. 1201 *et seq.*). Kentucky is proposing to revise its definition of ''affected area'' as it relates to public roads at 405 Kentucky Administrative Regulations (KAR) 7:001, 8:001, 10:001, 12:001, 16:001, 18:001, 20:001, and 24:001. The revision specifies that the affected area will include every road used for the purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road ''is a state, county, or public road and the road is in existence as of the date of the submittal of the preliminary application under 405 KAR 8:010 Section 4.'' This replaces the current language, which Kentucky proposes to delete, that includes every road in the affected area except those: designated as a public road pursuant to jurisdictional laws where the road is located; maintained with public funds and constructed in a similar manner to other public roads of the same classification in the area; and, those with substantial public use. In the Regulatory Impact Analysis that accompanied the submission, Kentucky states that the amendment is necessary to clarify and simplify the definition of ''affected area'' as it relates to roads and to ''eliminate confusion that has existed since the Federal definition of ''affected area'' was suspended on November 20, 1986, ''insofar as it excludes roads which are within the definition of *surface coal mining operations*'.''

The full text of the program amendment is available for you to read at the locations listed under **ADDRESSES.**

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Lexington Field Office.

Electronic Comments

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SATS No. KY–246'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Lexington Field Office at (859) 260–8400.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., e.s.t. on December 5, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing. To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard. If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person

listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

V. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian Tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C.804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State or local governmental agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on a State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based on the fact that the State submittal, which is the subject of this rule, is based on counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 22, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–28997 Filed 11–19–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–03–020]

RIN 1625–AA00

Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent security zone in the Atlantic Ocean west of the Ambrose to Hudson Canyon Traffic Lane for high interest vessels during emergency situations. This action is necessary to protect the Port of New York/New Jersey against terrorism, sabotage or other subversive acts and incidents of a similar nature during emergency situations onboard high interest vessels. This action is intended to restrict vessel traffic in a portion of the Atlantic Ocean.

DATES: Comments and related material must reach the Coast Guard on or before January 20, 2004.

ADDRESSES: You may mail comments and related material to Waterways Oversight Branch (CGD01–03–020), Coast Guard Activities New York, 212 Coast Guard Drive, room 203, Staten Island, NY 10305. The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 203, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4191.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–03–020), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Oversight Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to establish a permanent security zone between the Ambrose to Hudson Canyon Traffic Lane and the Barnegat to Ambrose Traffic Lane bound by the following points: 40°21′29.9″ N, 073°44′41.0″ W, thence to 40°21′04.5″ N, 073°45′31.4″ W, thence to 40°15′28.3″ N, 073°44′13.8″ W, thence to 40°15′35.4″ N, 073°43′29.8″ W, thence to 40°19′21.2″ N, 073°42′53.0″ W, thence to the point of origin. The security zone would only be used for high interest vessels due to emergency situations onboard the vessel.

On January 31, 2002, a release of MTBE (methyl tertiary-butyl ether) onboard the M/V LEADER required the closure of Anchorage Grounds No. 23–A, 23–B, and 24 in the Narrows. Additionally, from September 11, to September 13, 2002, a radiological anomaly was discovered onboard the M/V PALERMO SENATOR during a vessel boarding. As a result, the vessel was ordered to depart the Port of New York/New Jersey and remain at anchorage for further investigation. To maximize safety, the Captain of the Port New York established a security zone around the anchored vessel.

While these incidents had uneventful conclusions they each posed a significant threat to port infrastructure and the local population. The Coast Guard intends to minimize risk to the Port of New York/New Jersey and the area population by requiring vessels in similar emergency situations to anchor in the proposed security zone while the vessel is inspected and cleared for a safe transit.

Discussion of Proposed Rule

The proposed security zone includes all waters of the Atlantic Ocean between the Ambrose to Hudson Canyon Traffic Lane and the Barnegat to Ambrose Traffic Lane bound by the following points: 40°21′29.9″ N, 073°44′41.0″ W, thence to 40°21′04.5″ N, 073°45′31.4″ W, thence to 40°15′28.3″ N, 073°44′13.8″ W, thence to 40°15′35.4″ N, 073°43′29.8″ W, thence to 40°19′21.2″ N, 073°42′53.0″ W, thence to the point of origin. The proposed security zone would prevent vessels from transiting a portion of the Atlantic Ocean and is needed to protect vessel operators from the hazards associated with emergency situations onboard vessels that are not authorized within the Port of New York/New Jersey due to conditions that may be dangerous to the Port and the local population. Marine traffic would still be able to transit around the security zone when it is activated via already established traffic separation schemes. In cases of emergency, vessels transiting in the traffic separation scheme traffic lanes adjacent to the security zone would be authorized to enter the adjacent separation zone between traffic lanes to avoid immediate danger. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed security zone.

The Coast Guard does not know when the security zone would be enforced as the zone would be used only on an as needed basis. Establishing a permanent security zone by notice and comment rulemaking provides the public the opportunity to comment on the proposed zone, location and size. Coast Guard Activities New York would give notice of the enforcement of the security zone by all appropriate means to provide the widest publicity among the affected segments of the public. This proposed rule has been discussed with the Sandy Hook Pilots Association and they do not feel this zone would interfere with the New York Traffic Separation Scheme. Notifications would be made to the local maritime community by the Vessel Traffic Service New York, facsimile, marine information and electronic mail broadcasts, and on the Internet at *http://www.harborops.com.*

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not

reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This finding is based on the minimal time that vessels would be restricted from the zone, and the zone is in an area where the Coast Guard expects insignificant adverse impact on all mariners during periods when the zone is in effect. Vessels may also still transit through all Traffic Lanes to, and from, the Port of New York/New Jersey. As stated above, in cases of emergency, vessels transiting in the adjacent traffic lanes would be authorized to enter the adjacent separation zone to avoid immediate danger. This proposed rule has been discussed with the Sandy Hook Pilots Association. The Pilot's Association does not feel that activation of this proposed zone would interfere with the New York Traffic Separation Scheme. Notifications of when the zone would be in effect would also be made to the local maritime community by the Vessel Traffic Service New York, facsimile, marine information and electronic mail broadcasts, and on the Internet at *http://www.harborops.com.*

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels, including commercial fisherman, intending to transit, engage in fishing, or anchor in a portion of the Atlantic Ocean during the times this proposed zone is activated.

This security zone would not have a significant economic impact on a substantial number of small entities for the following reasons: Commercial Vessel traffic would continue to transit through the New York Traffic Separation Scheme. Recreational, fishing and small commercial vessels would still be able to transit around the security zone. Additionally, the periods of time when the zone would be effective are expected to be short and nothing more than minimal interference with commercial fishing operations is expected. The Sandy Hook Pilots Association agrees that activating the zone would not interfere with the traffic separation scheme. In the event that the zone is activated, maritime advisories widely available to users of the Port of New York/New Jersey would be issued by the Vessel Traffic Service New York, facsimile, marine information and electronic mail broadcasts, and on the Internet at *http://www.harborops.com.*

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander W. Morton, Waterways Oversight Branch, Coast Guard Activities New York at (718) 354–4191.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because

it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation because it establishes a security zone. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. In § 165.169, add a new paragraph (a)(7), revise paragraph (b), and add new paragraph (c) to read as follows:

§ 165.169 Safety and Security Zones; New York Marine Inspection Zone and Captain of the Port Zone.

(a) * * *

(7) *Approaches to New York, Atlantic Ocean.* The following area is a security zone: All waters of the Atlantic Ocean between the Ambrose to Hudson Canyon Traffic Lane and the Barnegat to Ambrose Traffic Lane bound by the following points: 40°21′29.9″ N, 073°44′41.0″ W, thence to 40°21′04.5″ N, 073°45′31.4″ W, thence to 40°15′28.3″ N, 073°44′13.8″ W, thence to 40°15′35.4″ N, 073°43′29.8″ W, thence to 40°19′21.2″ N, 073°42′53.0″ W, thence to the point of origin.

(b) *Regulations.* (1) Entry into or remaining in a safety or security zone is prohibited unless authorized by the Coast Guard Captain of the Port, New York.

(2) Persons desiring to transit the area of a safety or security zone may contact the Captain of the Port at telephone number 718–354–4088 or on VHF channel 14 (156.7 MHz) or VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(3) Vessels not actively engaged in authorized vessel to facility transfer operations shall not stop or loiter within that part of a commercial waterfront facility safety and security zone extending into the navigable channel, described in paragraph (a)(3) of this section, without the express permission of the Coast Guard Captain of the Port or his or her designated representative, including on-scene patrol personnel.

(4) The zone described in paragraph (a)(7) of this section is not a Federal Anchorage Ground. Only vessels directed by the Captain of the Port or his or her designated representative to enter this zone are authorized to anchor here.

(5) Vessels do not need permission from the Captain of the Port to transit the area described in paragraph (a)(7) of this section during periods when that security zone is not being enforced.

(c) *Enforcement.* Enforcement periods for the zone in paragraph (a)(7) of this section will be announced through marine information broadcast or other appropriate method of communication. The Coast Guard is enforcing the zone whenever a vessel is anchored in the security zone or a Coast Guard patrol vessel is on-scene.

Dated: November 12, 2003.

C.E. Bone,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 03–29026 Filed 11–19–03; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 501

Authorization To Manufacture and Distribute Postage Meters

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: Only manufacturers and distributors authorized by the Postal Service are allowed to manufacturer and/or distribute postage meters. This proposed rule notifies them that the Postal Service may revoke or suspend, wholly or in part, their authorization to distribute postage meters if they make or distribute false and misleading statements about actions or proposed actions of the Postal Service regarding the postage meter program.

DATES: The Postal Service must receive your comments on or before December 22, 2003.

ADDRESSES: Mail or deliver written comments to Manager, Postage Technology Management, 1735 N Lynn Street, Room 5011, Arlington, VA 22209–6370. You can view and copy all written comments at the same address between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, manager of Postage Technology Management, at 703–292–3691 or by fax at 703–292–4073.

SUPPLEMENTARY INFORMATION: The intentional dissemination of false and misleading communications, advertising, or promotional materials that misrepresent actions or proposed actions of the Postal Service is misleading and confusing to customers of the Postal Service. These false and misleading statements are often made to encourage customers to change from one postage meter or postage meter supplier to another. If the Postal Service identifies such practices, it will take appropriate action to notify law enforcement agencies concerned with false and misleading advertising practices and will take action to publish the deceptive communications or advertising with appropriate corrective statements. In addition, by the proposed rule, the Postal Service is providing notice to authorized postage meter manufacturers and distributors that their approval to distribute meters throughout the United States or any part thereof may be jeopardized if the Postal Service determines that they or their employees, agents, or dealers have engaged in such false and misleading communication or advertising practices. If an authorized manufacturer or distributor is in doubt as to the accuracy of any proposed representation concerning actions or proposed actions of the Postal Service, they are invited to verify the accuracy of the representation with the office of Postage Technology Management.

We will review any public comments and will issue a final rule amending these sections.

Notice and Comment

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments

to the *Code of Federal Regulations* (CFR).

List of Subjects in 39 CFR Part 501

Administrative practice and procedure, Postal Service.

For the reasons set out in this document, the Postal Service is proposing to amend 39 CFR part 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE METERS

1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Public Law 95'452, as amended); 5 U.S.C. App. 3.

2. Redesignate current §§ 501.23 through 501.30 as §§ 501.24 through 501.31 and add new § 501.23 to read as follows:

§ 501.23 Communications.

Authorized manufacturers, distributors, and any agents of an authorized manufacturer or distributor must not intentionally misrepresent to customers of the Postal Service decisions, actions, or proposed actions of the Postal Service respecting the postage meter program. The Postal Service reserves the right to suspend and/or revoke the authorization to manufacture and/or distribute postage meters throughout the United States or any part thereof under Sec. 501.5 when the manufacturer, distributor, or any agent of a manufacturer or distributor fails to comply with this requirement.

We will publish an appropriate amendment to 39 CFR part 501 to reflect these changes if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03–28958 Filed 11–19–03; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 551

Semipostal Stamp Program

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would clarify procedures for determining offsets for the Postal Service's reasonable costs from semipostal differential revenue.

DATES: Comments must be received on or before December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Cindy Tackett, (202) 268–6555.

SUPPLEMENTARY INFORMATION: On June 12, 2001, the Postal Service published a final rule establishing the regulations in 39 CFR part 551 for the Semipostal Stamp Program (66 FR 31822). Minor revisions were made to these regulations to implement Public Law No. 107–67, 115 Stat. 514 (2001), and to reflect minor organizational changes in the Postal Service (67 FR 5215 (February 5, 2002)).

The Postal Service proposes to amend regulations in section 551.8. The proposed changes are relatively straightforward and are intended to clarify existing regulations. A brief description of each proposed change follows.

Proposed edits to section 551.8(a) and (c) would expand the types of ''comparable stamps'' that could be used in conducting cost comparisons. Under current regulations, comparable stamps for purposes of cost comparisons are defined as *commemorative* stamps having similar sales; physical characteristics; and marketing, promotional, and public relations activities. The proposed rule would no longer limit the universe of comparable stamps to *commemorative* stamps. This measure would accordingly allow other types of stamps, such as definitive or special issue stamps, to serve as a baseline for cost comparisons. In some instances, it is conceivable that a definitive or special issue stamp could serve as the best proxy for comparative analysis, because, much like some semipostal stamps, such stamps are often sold for longer periods, are subjected to multiple print runs, and produced and distributed in much larger quantities than commemorative stamps. Thus, it is possible that some definitive or special issue stamps could more accurately mirror the characteristics of commemorative stamps, at least for certain discrete cost comparisons.

A proposed edit to section 551.8(c) would specify that different comparable stamps may be used for specific cost comparisons. For example, a given stamp might be useful for comparing marketing and advertising costs incurred in connection with a semipostal stamp. Nevertheless, a comparable stamp selected for purposes of comparing marketing and advertising costs might not serve as the best proxy for comparing other types of costs, for example because it has different physical characteristics than the semipostal stamp to which it is compared. The proposed change would clarify that the Postal Service could select different comparable stamps for discrete cost comparisons. This will enhance accuracy in conducting comparative analysis for purposes of determining cost offsets.

A proposed edit to section 551.8(d)(1) would clarify that costs less than $3,000 would not be offset from differential revenue, as long as they were not charged to a semipostal-specific finance number. The current rule is intended to preclude the need for time-consuming recordkeeping for low-value expenditures. Tracking low-dollar expenditures is, however, simplified whenever such costs are charged to a semipostal-specific finance number. Thus, the Postal Service intends to track semipostal costs less than $3,000 when such costs are assigned to semipostal-specific finance number.

A proposed edit to section 551.8(d)(2) would clarify that costs that do not need to be tracked include not only those costs that would be too burdensome to *track,* but also those costs that would be too burdensome to *estimate.*

Finally, the proposed edits to section 551.8(d)(6) and (f) would clarify that printing, sales, distribution, and several other types of costs could be recovered when they materially exceed the costs of comparable stamps. While such costs arguably could be recovered under section 551.8(d)(5), the proposed edit would establish, in clear and unambiguous terms, the circumstances in which such costs are to be offset from differential revenue.

In accordance with 39 U.S.C. 416(e)(2), the Postal Service invites public comment on the following proposed amendments to the *Code of Federal Regulations.*

List of Subjects in 39 CFR Part 551

Administrative practice and procedure, Postal Service.

For the reasons set out in this document, the Postal Service proposes to revise 39 CFR 551 as follows:

PART 551—SEMIPOSTAL STAMP PROGRAM

1. The authority citation for 39 CFR part 551 is revised to read as follows:

Authority: 39 U.S.C. 101, 201, 203, 401, 403, 404, 410, 414, 416.

2. In § 551.8, revise paragraphs (a), (c), (d), (e), and (g) to read as follows:

§ 551.8 Cost offset policy.

(a) Postal Service policy is to recover from the differential revenue for each semipostal stamp those costs that are determined to be attributable to the semipostal stamp and that would not

normally be incurred for stamps having similar sales; physical characteristics; and marketing, promotional, and public relations activities (hereinafter ''comparable stamps'').

* * * * *

(c) For each semipostal stamp, the Office of Stamp Services, in coordination with the Office of Accounting, Finance, Controller, shall, based on judgment and available information, identify the comparable stamp(s) and create a profile of the typical cost characteristics of the comparable stamp(s) (*e.g.*, manufacturing process, gum type), thereby establishing a baseline for cost comparison purposes. The determination of comparable stamps may change during or after the sales period, and different comparable stamp(s) may be used for specific cost comparisons.

(d) Except as specified, all costs associated with semipostal stamps will be tracked by the Office of Accounting, Finance, Controller. Costs that will not be tracked include:

(1) Costs that the Postal Service determines to be inconsequentially small, which include those cost items that are not charged to a semipostal-specific finance number and do not exceed $3,000 per invoice.

(2) Costs for which the cost of tracking or estimation would be burdensome (*e.g.*, costs for which the cost of tracking exceeds the cost to be tracked);

(3) Costs attributable to mail to which semipostal stamps are affixed (which are attributable to the appropriate class and/or subclass of mail); and

(4) Administrative and support costs that the Postal Service would have incurred whether or not the Semipostal Stamp Program had been established.

(e) Cost items recoverable from the differential revenue may include, but are not limited to, the following:

(1) Packaging costs in excess of the cost to package comparable stamps;

(2) Printing costs of flyers and special receipts;

(3) Costs of changes to equipment;

(4) Costs of developing and executing marketing and promotional plans in excess of the cost for comparable stamps;

(5) Other costs specific to the semipostal stamp that would not normally have been incurred for comparable stamps; and

(6) Costs in paragraph (g) of this section that materially exceed those that would normally have been incurred for comparable stamps.

* * * * *

(g) Other costs attributable to semipostals but which would normally be incurred for comparable stamps would be recovered through the postage component of the semipostal stamp price. Such costs are not recovered, unless they materially exceed the costs of comparable stamps. These include, but are not limited to, the following:

(1) Costs of stamp design (including market research);

(2) Costs of stamp production and printing;

(3) Costs of stamp shipping and distribution;

(4) Estimated training costs for field staff, except for special training associated with semipostal stamps;

(5) Costs of stamp sales (including employee salaries and benefits);

(6) Costs associated with the withdrawal of the stamp issue from sale;

(7) Costs associated with the destruction of unsold stamps; and

(8) Costs associated with the incorporation of semipostal stamp images into advertising for the Postal Service as an entity.

We will publish an appropriate amendment to 39 CFR part 551 to reflect these changes if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03–28957 Filed 11–19–03; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2002–11321; Notice 1]

Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by General Motors Corporation (GM) on October 19, 2001. The petitioner requested that NHTSA initiate rulemaking to amend the test conditions specified in Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection,'' and FMVSS No. 214, ''Side impact protection,'' allowing vehicles equipped with automatic door locks (ADLs) to be tested with the doors locked. In its petition for rulemaking, GM stated that the proposed changes would allow vehicles equipped with ADLs to be tested according to their designed condition, better reflecting field performance. Further, GM stated that initiating such a rulemaking would encourage manufacturers to equip their vehicles with ADLs, resulting in better occupant protection.

After examining four ADL designs and our crash test data, the agency is denying the petition for rulemaking for several reasons. Some ADL systems can be readily disabled, there is no evidence that ADLs provide a safety benefit, and testing ADL-equipped vehicles with all doors locked could degrade the minimum performance requirements specified in FMVSS Nos. 208 and 214.

FOR FURTHER INFORMATION CONTACT: The following persons at NHTSA, 400 Seventh Street, SW., Washington, DC 20590:

For non-legal issues: Dr. William Fan, Office of Crashworthiness Standards, NVS–112, telephone (202) 366–4922, facsimile (202) 366–4329.

For legal issues: Deirdre Fujita, Esq., Office of Chief Counsel, NCC–112, telephone (202) 366–2992, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

1. Background

a. The Provision

Sections S8.1.7 and S16.2.4 of FMVSS No. 208, ''Occupant crash protection,'' specify that in frontal crash tests, all vehicle doors are fully closed and latched but not locked. In addition, FMVSS No. 208 requires that all portions of the test dummy shall be contained within the outer surfaces of the vehicle passenger compartment throughout the test. Section S6.8 of FMVSS No. 214, ''Side impact protection,'' specifies that in side impact tests, all doors, including any rear hatch and tailgate doors, are fully closed and latched but not locked. In addition, FMVSS No. 214 requires that any side door on the struck side shall not separate totally from the vehicle, and that any door on the non-struck side shall meet the following requirements:

1. The door shall not disengage from the latched position,

2. The latch shall not separate from the striker, and the hinge components shall not separate from each other or from their attachment to the vehicle, and

3. Neither the latch nor the hinge systems of the door shall pull out of their anchorages.

The above test requirements and procedures simulate a worst-case crash condition for real crashes with respect to the door latch/lock.

b. Safety Problem

Crash data indicate that 9,303 out of 33,387 fatally injured occupants in motor vehicle crashes were ejected or partially ejected from their vehicles in the year 2000. Among these, 8,847 were light vehicle occupants, and the remaining 456 were occupants of large trucks, buses, and other vehicles. According to annualized national estimates derived from the 1991–2000 National Automotive Sampling System investigated cases, an average of approximately 8,464 light vehicle occupants are ejected and killed annually, and 1,272 of the 8,464 fatal ejections occur through a side or rear door. (The majority of the remaining fatal ejections occur through the side window glazing.) Based on the annualized national estimates, we estimate that approximately 1,330 light vehicle occupants were ejected through an open door and killed in the year 2000. An estimated 1,227 of the occupants went through a side door opening and the remainder went through a rear door opening. Approximately 47 percent and 18 percent of the 1,330 fatal ejections occurred in side and frontal crashes, respectively. The remaining 35 percent occurred in rollover and other crashes.

Currently, both FMVSS Nos. 208 and 214 specify that the vehicle doors are fully closed and latched, but not locked when tested. With respect to the lock position, this procedure simulates a worst-case crash condition for real-world crashes. By specifying a worst-case test condition, these requirements lead to stronger door latches, providing better occupant ejection safety protection.

c. Automatic Door Locks (ADLs)

Recently, many passenger vehicles have been equipped with ADLs. Four basic ADL designs currently exist: (1) Gear-based, (2) speed-based, (3) ignition-based, and (4) brake-based locking. Three of the designs are not sensitive to vehicle traveling speed. The following are general descriptions of these ADLs.

1. Gear-based ADLs: All vehicle doors will automatically lock when the vehicle transmission is shifted out of the ''park'' position when all doors are closed and the engine running.

2. Speed-based ADLs: All vehicle doors will automatically lock when:

- All doors are closed while the transmission is in any position other than ''park'' and the vehicle brake pedal is inactive, and
- The engine is running and the vehicle speed exceeds a pre-defined limit.

3. Ignition-based ADLs: All vehicle doors will automatically lock when the vehicle ignition is turned on (regardless of whether the door is open).

4. Brake-based ADLs: All vehicle doors will automatically lock when:

- All doors become closed while the transmission is in any position other than ''park'' and the brake pedal is active, and
- The engine is running, and the brake pedal becomes inactive.

An ADL-equipped vehicle will automatically lock the doors whenever the driver completes the said procedures during a trip. Judging from the above general descriptions, NHTSA believes that only ADLs equipped with speed-based locking can assure that the doors will lock continuously when the vehicle is moving above a certain speed. However, there are instances when an ADL could be broken, disabled, defeated or unlocked manually before and/or during a crash. The other three ADL systems cannot assure that the doors will lock continuously when the vehicle is moving. Also, the owner's manuals of some vehicles explain how the owner can disable and/or modify the ADLs.

2. Discussion

a. The Petition for Rulemaking

On October 19, 2001, GM submitted a petition for rulemaking (Docket No. NHTSA–02–11321–1) requesting that NHTSA initiate rulemaking to amend the test conditions of FMVSS Nos. 208 and 214 allowing vehicles equipped with ADLs to be tested with all doors locked. Currently, S8.1.7 and S16.2.4 of FMVSS No. 208 specify that in a frontal crash test, all vehicle doors are fully closed and latched but not locked. Similarly, S6.8 of FMVSS No. 214 specifies that in a side impact test, all doors, including any rear hatch or tailgate, are fully closed and latched but not locked. The petition for rulemaking indicates that GM has decided to equip all its future passenger cars and light trucks with ADLs that are programmed to lock while the vehicle is moving, and that the requested amendment would allow vehicles equipped with ADLs to be tested according to their designed condition. GM claims that this test condition would better reflect and predict field performance. In addition, GM claims that initiating such a rulemaking would encourage manufacturers to equip their vehicles with ADLs, and that this would result in better occupant protection.

b. Agency Analysis

Crash experience prior to the issuance of FMVSS Nos. 208 and 214 and subsequent analyses of the crash data indicate that vehicle doors can open in crashes due to the failure of hinge/latch/lock assembly systems, and that this can result in occupant ejections. In promulgating FMVSS Nos. 208 and 214, NHTSA decided to specify test conditions simulating a worst-case condition observed in real crashes with respect to the door lock position. Therefore, the test conditions of both standards currently require that all vehicle doors are fully closed and latched but not locked in a dynamic impact test. The goal is to require the installation of better door hinge/latch assemblies, thus minimizing side/rear door ejections.

The agency recognizes that many late model year passenger cars and light trucks are equipped with ADLs. However, we have no data to indicate whether or not ADL-equipped vehicles have a reduced likelihood of opening in a real crash or to indicate consumer acceptance of ADLs. NHTSA is also concerned that there are many different ADL design concepts, and that there may be situations in which an ADL could be broken, disabled, or unlocked at the time of a crash. The test conditions currently specified in FMVSS Nos. 208 and 214 replicate these real world situations.

As noted previously, there are four basic ADL designs: (1) Gear-based, (2) speed-based, (3) ignition-based, and (4) brake-based. Three of these designs are not sensitive to the traveling velocity of the vehicle. Many ADL systems have a manual control button on the driver side as a convenience feature. Drivers can unlock the doors of ADL-equipped vehicles, and the door will not necessarily relock. For instance, drivers can stop some ADL-equipped vehicles, unlock the doors by pushing the button, and discharge occupants. In this particular case, the gear-based ADLs would not relock the doors unless the driver shifted the transmission back to and then out of the ''park'' position. In addition, the brake-based ADLs would not relock the doors if the vehicle accelerated before all doors were fully closed. Therefore, there is no guarantee that ADLs will assure that the doors will be locked continuously when the vehicle is moving. While the speed-based ADLs may have the most potential for reducing unlocked doors in the real world, there is no indication that all ADLs produced in the immediate future would be of this type. Therefore, based on the reasons above, we believe that the test conditions specified in FMVSS Nos. 208 and 214 are appropriate for ADL-equipped vehicles. Allowing ADL-equipped

vehicles to be tested with all doors locked could result in a reduction of the stringency of the test conditions and detract from safety.

Finally, GM did not present any technical data in support of its assertion that allowing doors to be locked in the impact tests of FMVSS Nos. 208 and 214 would encourage manufacturers to install ADLs in their vehicles. Moreover, there is no evidence that ADLs will necessarily result in better occupant protection. Manufacturers have been complying with FMVSS Nos. 208 and 214 with the doors closed and latched, but not locked. Therefore, there is no reason to believe that manufacturers would be motivated to install ADLs based upon the requested amendment to these standards, particularly if there were an additional associated cost. ADL components are likely to be more expensive than standard mechanical locks, and electrical ADL circuitry in the vehicle environment could be more vulnerable to damage/repair/recall issues. Based on the foregoing reasons, the agency is not convinced that such an amendment by NHTSA would accelerate the installation of ADLs in future vehicles, nor that such acceleration would yield a safety benefit.

Conclusion: Based upon the above analyses, we do not believe that there is sufficient reason to conclude that amending FMVSS Nos. 208 and 214 as petitioned would be appropriate or provide a safety benefit. Conducting research to determine whether or not ADLs could provide a safety benefit, to develop performance requirements for the various ADL designs, and to establish consumer acceptance of the various designs would take considerable time and is not included in the agency's current research plan.

In accordance with 49 CFR part 552, this completes the agency's review of the petition for rulemaking. The agency has concluded that there is no reasonable possibility that the amendments requested by the petitioner would be issued at the conclusion of the rulemaking proceeding. Accordingly, the petition for rulemaking is denied.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: November 13, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–28941 Filed 11–19–03; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 68, No. 224

Thursday, November 20, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

2003 Record of Decision on the Woodpecker Project Area Final Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice; record of decision.

SUMMARY: The USDA Forest Service, Tongass National Forest, has prepared the 2003 Record of Decision for the Woodpecker Project Area. The project area is located within the Petersburg Ranger District, on Mitkof Island, about 27 miles south of Petersburg, Alaska. Forrest Cole, Forest Supervisor for the Tongass National Forest, has selected the activities from Alternative 6 of the Final Environmental Impact Statement (Final EIS, August 2001) that were not included in the 2002 Record of Decision (signed December 24, 2002). The 2003 decision includes: (a) Harvest of approximately 10.9 million board feet of timber from approximately 900 acres, (b) construction of approximately 4.8 miles of new classified road, and (c) construction of approximately 1.3 miles of temporary road. An existing log transfer facility will be used.

DATES: The legal notice of this decision will be published in the *Juneau Empire,* the newspaper of record, published in Juneau, Alaska, on November 24, 2003. This will begin the 45-day appeal period, which will close on Thursday, January 8, 2004. This decision may be implemented no sooner than 5 business days after close of the appeal period, if no appeal is received. If an appeal is received, this decision may be implemented no sooner than 15 days following disposition of the appeal.

ADDRESSES: Requests for copies of the Record of Decision or Final EIS may be directed to: Linda Slaght, Petersburg Ranger District, P.O. Box 1328, Petersburg, Alaska 99833, Phone (907) 772–3871; fax (907) 772–5995; or E-mail *lslaght@fs.fed.us.* The Responsible Official is Forrest Cole, Forest Supervisor, Tongass National Forest, 648 Mission Street, Ketchikan, AK 99901. The Regional Forester is the Appeal Deciding Officer. Written notices of appeal must be addressed to: Regional Forester, Alaska Region, USDA, Forest Service, P.O. Box 21628, Juneau, AK 99802–1628.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the Final EIS or the Record(s) of Decision may be directed to Patricia Grantham, District Ranger, or Linda Slaght, Writer/Editor, Petersburg Ranger District, 907–772–3871. Copies of the 2003 Record of Decision have been mailed directly to those people who requested to be on the project mailing list. Additional copies may be obtained from the Petersburg Ranger District or reviewed at public libraries throughout southeast Alaska. The 2003 Record of Decision is also posted on the Tongass National Forest Web site at *http://www.fs.fed.us/rl0/tongass.*

SUPPLEMENTARY INFORMATION:

Background: The Forest Supervisor for the Tongass National Forest signed a Record of Decision for the Woodpecker Project Area on December 24, 2002. No appeals were received and the Decision is being implemented. All of the activities approved by the 2002 Decision were outside roadless areas, in compliance with an order issued by the U.S. District Court, District of Alaska, in *Sierra Club* v. *Rey* (J00–0009 CV (JKS)) on April 26, 2002. That order enjoined the Forest Service from permitting timber harvest and road building in roadless areas until the completion of the final supplemental environmental impact statement (SEIS) for the Tongass National Forest Land and Resource Management Plan (Forest Plan). The SEIS was signed on February 24, 2003, and the injunction was lifted.

The Woodpecker Project Area is partly within the Crystal Inventoried Roadless Area on the Tongass National Forest. The Roadless Area Conservation Rule (Roadless Rule, 36 CFR 294.10, January 12, 2001) generally prohibits timber harvesting and road building in roadless areas with a period of transition for the Tongass. This transition period makes an exception for projects where a notice of availability for a draft environmental impact statement was published prior to January 12, 2001. Since the notice of availability for the Woodpecker project was published on August 18, 2000, this project is exempted from the prohibitions in the Roadless Rule. The Woodpecker project is consistent with the Forest Plan and the Forest Plan SEIS.

This decision is subject to administrative review (appeal) pursuant to 36 CFR part 215. The legal notice of this decision will be published in the *Juneau Empire,* the newspaper of record, published in Juneau, Alaska, on November 24, 2003, which will start the 45-day appeal period. A written notice of appeal that includes sufficient evidence of why this decision should be changed and requirements of 36 CFR part 215 must be postmarked by the last day of the appeal period and filed with the Appeal Deciding Officer: Regional Forester, Alaska Region, USDA Forest Service, P.O. Box 21628, Juneau, AK 99802–1628.

Responsible Official: Forrest Cole, Forest Supervisor, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official.

(Authority: 40 CFR 1505.2 and 1506.6; Forest Service Handbook 1909.15, Section 28)

Dated: November 13, 2003.

Forrest Cole,

Forest Supervisor.

[FR Doc. 03–28970 Filed 11–19–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Task Force on Agricultural Air Quality

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Agricultural Air Quality Task Force will meet to continue discussions on critical air quality issues in relation to agriculture. Special emphasis will be placed on obtaining a greater understanding about the relationship between agricultural production and air quality. The meeting is open to the public; a draft agenda of the meeting is attached.

DATES: The meeting will convene Wednesday, December 3, 2003, at 8 a.m., and continue until 5 p.m.; resume Thursday, December 4, 2003, from 8:15

a.m. to 4:30 p.m. Individuals with written materials, and those who have requests to make oral presentations, should contact the Natural Resources Conservation Service (NRCS), at the address below, on or before November 18, 2003.

ADDRESSES: The meeting will be held at the Doubletree Hotel, Two Portola Plaza, Monterey, California 93940; telephone: (831) 649–4511. Written material and requests to make oral presentations should be sent to Dr. Beth Sauerhaft, USDA–NRCS, Post Office Box 2890, Room 6158, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Questions or comments should be directed to Dr. Beth Sauerhaft, Designated Federal Official; telephone: (202) 720–8578; fax: (202) 720–2646; e-mail: *Beth.Sauerhaft@usda.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the AAQTF, including any revised agendas for the December 3 and 4, 2003, meeting that occur after this **Federal Register** notice is published, may be found on the World Wide Web at *http://fargo.nserl.purdue.edu/faca.*

Draft Agenda of the December 3 and 4, 2003, Meeting of the AAQTF

A. Welcome to California
- Local and NRCS officials

B. Discussion of August minutes
C. Presentation/Discussion of Documents to Be Approved by Conclusion of Meeting and Subsequently Presented to Secretary Veneman
D. Subcommittee Presentations
- Emerging Issues Committee Report
- Research Committee Report
- Policy Committee Report
- Education/Technology Transfer Committee Report

E. Local Research Presentations
- University of California (UC), Davis—Field Research
- UC Davis, Nitrogen Balance
- Alternatives to Methyl Bromide

F. Dairy Action Plan
G. Presentation of Collaborative Efforts between NRCS and Local Air District
H. Presentation of South Coast Anaerobic Digester Project
I. Environmental Protection Agency Update
J. Pesticide Volatile Organic Compounds
K. Diesel Air Toxic Control Measures
L. Next Meeting, Time/Place
M. Public Input (Time will be reserved before lunch and at the close of each daily session to receive public comment. Individual presentations will be limited to 5 minutes).

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may give oral presentations during the meeting. Persons wishing to make oral presentations should notify Dr. Sauerhaft no later than November 18, 2003. If a person submitting material would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 30 copies to Beth Sauerhaft no later than November 14, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Dr. Sauerhaft.

USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA (not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication of program information (Braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2000 (voice and TDD). The USDA is an equal opportunity provider and employer.

Signed in Washington, DC on November 5, 2003.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 03–28967 Filed 11–19–03; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Maine Advisory Committee will convene at 11 a.m. and adjourn at 12 p.m., Thursday, November 20, 2003. The purpose of the conference call is to discuss steps to be taken and allocation of duties for planning a community forum in Lewiston, ME on post-9/11 immigrant experiences.

This conference call is available to the public through the following call-in number: 1–888–532–2976, access code: 20076641. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Aonghas St-Hilaire of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116), by 4 p.m. on Wednesday, November 19, 2003. The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 4, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–28945 Filed 11–19–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Missouri and Oklahoma Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Missouri and Oklahoma Advisory Committees will convene at 1:30 p.m. and adjourn at 3 p.m. on Wednesday, December 17, 2003. The purpose of the conference call is to conduct strategic planning and discuss recommendations to hold a regional ''Civil Rights Listening Tour'' in 2004.

This conference call is available to the public through the following call-in number: 1–800–659–8292, access code 20244814. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Jo Ann Daniels of the Central Regional Office, 913–551–1400 and TDD number 913–551–1414, by 3 p.m. on Thursday, December 11, 2003. The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 10, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–28948 Filed 11–19–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Hampshire Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the New Hampshire Advisory Committee will convene at 10:30 a.m. and adjourn at 11:30 a.m., Tuesday, November 25, 2003. The purpose of the conference call is to discuss final planning steps for the community forum in Bedford, NH, on access to health care by limited-English-proficient and hearing-impaired persons.

This conference call is available to the public through the following call-in number: 1–800–659–1025, access code: 20275780. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Aonghas St-Hilaire of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116), by 4 p.m. on Monday, November 24, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 10, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–28944 Filed 11–19–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Ohio Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Ohio Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 6 p.m. on Monday, November 24, 2003, and the Committee will convene at 9 a.m. to 4 p.m. on Tuesday, November 25, 2003 at the Ohio Civil Rights Commission, 1111 East Broad Street, Columbus, Ohio 43205. The purpose of the fact-finding meeting is to gather information on ''Ohio Hate Crimes.''

Persons desiring additional information, or planning a presentation to the Committee, should contact Chairperson Lynwood L. Battle, Jr., 513–281–4330, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 4, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–28949 Filed 11–19–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Iowa, Kansas and Nebraska Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Iowa, Kansas and Nebraska Advisory Committees will convene at 1:30 p.m. and adjourn at 3 p.m. on Tuesday, December 16, 2003. The purpose of the conference call is to conduct strategic planning and discuss recommendations to hold a regional ''Civil Rights Listening Tour'' in 2004.

This conference call is available to the public through the following call-in number: 1–800–659–8297, access code 20244794. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Jo Ann Daniels of the Central Regional Office, (913) 551–1400 and TDD number (913) 551–1414, by 3 p.m. on Thursday, December 11, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 10, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–28946 Filed 11–19–03; 8:45 am]

BILLING CODE 4335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama, Arkansas, Louisiana and Mississippi Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Alabama, Arkansas, Louisiana and Mississippi Advisory Committees will convene on Wednesday, December 3, 2003 at 9:30 a.m. and recess at 12:30 p.m. on Wednesday, December 3 and reconvene at 9:30 a.m. on Thursday, December 4, 2003 at 9:30 a.m. and adjourn at 12:30 p.m. on Thursday, December 4, 2003. The purpose of the conference call is to receive information about outstanding and emerging issues in the southern region, *i.e.* predatory lending in minority communities; racial profiling, the Patriot Act; immigrant issues; voter rights and election reform; environmental justice; and the effect of the ''No Child Left Behind'' initiative upon education for minority students.

This conference call is available to the public through the following call-in

number: 1–800–720–5846, #20104654 on Wednesday, December 3 and 1–888–869–0374, #20104671 on Thursday, December 4. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number listed above.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Jo Ann Daniels of the Central Regional Office, (913) 551–1400, by 3 p.m. (CDST) on Monday, December 1, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 3, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–28947 Filed 11–19–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Open Meeting

The Regulations and Procedures Technical Advisory Committee will meet on December 10, 2003, 9 a.m., Room 3884, in the Herbert C . Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on pending regulations.
4. Discussion on technology controls, including proposed rule on computer and microprocessor technology.
5. Discussion on deemed export licensing.
6. Discussion on sanctioned parties screening lists proposal.
7. Discussion on EAR country groups revision.
8. Discussion on Enhanced Proliferation Control Initiative (EPCI).
9. Update on Simplified Network Application Process (SNAP) and proposed rule.
10. Update on Automated Export System (AES) implementation.
11. Reports from working groups.

The meeting will be open to the public and a limited umber of seats will be available. Reservations are not accepted. To this extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials, two weeks prior to the meeting date, to the following address: Ms. Lee Ann Carpenter, BIS/EA, MS: 1099D, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

For more information contact Lee Ann Carpenter on (202) 462–2583.

Dated: November 17, 2003.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 03–28986 Filed 11–19–03; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–887]

Notice of Postponement of Preliminary Antidumping Duty Determination: Tetrahydrofurfuryl Alcohol from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Postponement of Preliminary Determination of Antidumping Duty Investigation.

EFFECTIVE DATE: November 20, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Peter Mueller, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207, (202) 482–5811, respectively.

SUMMARY: The Department of Commerce (''Department'') is postponing the preliminary determination in the antidumping duty investigation of tetrahydrofurfuryl alcohol (''THFA'') from the People's Republic of China (''PRC'') from November 30, 2003, until no later than January 19, 2004. This postponement is made pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended (''the Act'').

SUPPLEMENTARY INFORMATION:

Postponement of Determination Results

On July 18, 2003, the Department published the initiation of the antidumping duty investigations of imports of THFA from the PRC. *See Notice of Initiation of Antidumping Duty Investigations: Notice of Initiation of Antidumping Duty Investigation: Tetrahydrofurfuryl Alcohol from the People's Republic of China*, 68 FR 42686 (July 18, 2003). The notice of initiation stated that we would make our preliminary determinations for this antidumping duty investigation no later than 140 days after the date of issuance of the initiation (*i.e.*, November 30, 2003).

On October 29, 2003, Petitioner made a timely request pursuant to 19 CFR §351.205(e) for a fifty day postponement of the preliminary determination, or until January 19, 2004. The Petitioner requested postponement of the preliminary determination because it believes additional time is necessary to allow Petitioner to review responses to the supplemental questionnaire, gather and submit publically available information to value the factors of production based on respondent's supplemental questionnaires, and to allow Petitioner to fully participate in the preliminary determination.

For the reasons identified by the Petitioner, and because there are no compelling reasons to deny the request, we are postponing the preliminary determination under section 733(c)(1) of the Act. Therefore, the preliminary determination is now due on January 19, 2004. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination.

This notice is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: November 14, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–29048 Filed 11–19–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090903C]

Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Survey in the Northwest Atlantic Ocean Near Bermuda

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of an incidental harassment authorization.

SUMMARY: In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting an oceanographic survey in the Northwest Atlantic Ocean near Bermuda has been issued to Lamont-Doherty Earth Observatory (LDEO).

DATES: Effective from November 14, 2003 through November 13, 2004.

ADDRESSES: The application, a list of references used in this document, and/or the IHA are available by writing to P. Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here.

FOR FURTHER INFORMATION CONTACT: Sarah C. Hagedorn, Office of Protected Resources, NMFS, (301) 713–2322, ext 117.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under Section 3(18)(A), the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

The term ''Level A harassment'' means harassment described in subparagraph (A)(i). The term ''Level B harassment'' means harassment described in subparagraph (A)(ii).

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On July 16, 2003, NMFS received an application from LDEO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey by the *R/V Maurice Ewing* within the Northwest Atlantic Ocean off the coast of Bermuda near the Bermuda Rise area, between 29° and 35° N and between 61° and 68° W, during mid- to late-November and early December 2003. These operations will take place within the Exclusive Economic Zone (EEZ) of Bermuda and adjacent international waters. Clearance to conduct the seismic survey in the foreign EEZ has been requested from Bermuda (U.K.). The purpose of this project is to determine what physical and chemical changes have been imparted to the tectonic plate as a result of the eruption of the Bermuda volcano. By understanding what portion of the uplift of the seafloor is caused by thermal (temporary) versus chemical (permanent) changes to the plate, it will be possible to predict the rate that volcanoes in the middle of plates will sink beneath the waves.

Description of the Activity

The seismic survey will involve a single vessel, the *R/V Maurice Ewing*. The *Maurice Ewing* will deploy an array of 20 airguns as an energy source, and a receiving system consisting of Ocean Bottom Hydrophones (OBH's), 96 sonobuoys, and/or a 6–km (3.2–nm) towed hydrophone streamer. The energy to the airgun array is compressed air supplied by compressors on board the source vessel. As the airgun array is towed along the survey lines, the towed hydrophone streamer or OBH's will receive the returning acoustic signals and transfer the data to the on-board processing system. The OBH's and sonobuoys will be deployed by the *R/V Maurice Ewing*.

All planned geophysical data acquisition activities will be conducted by LDEO scientists, with on-board assistance from the scientists who have proposed the study. The survey will be conducted in the deep ocean depths (>1000 m or 3281 ft) of the Bermuda Rise. The survey program will consist of approximately 2400 km (1296 nm) of survey lines. There will be two intersecting seismic reflection and refraction lines, each approximatel600 km (324 nm) long. One line will be oriented north-south along a magnetic isochron, and the other line will be oriented east-west along the presumed track of the hotspot. The point of intersection of these two lines will be in close vicinity of Bermuda Island. Each of the two lines will be surveyed twice. Along each line, the upper crustal structure will be determined by acquiring multibeam sonar, multichannel seismic (MCS), and sonobuoy refraction data. Then, a linear array of OBH's will be deployed for refraction shooting. The specific configuration of the airgun array will differ between the MCS and OBH surveys (described later in this document). There will be additional operations associated with equipment testing, startup, line changes, and repeat coverage of any areas where initial data quality is sub-standard.

The procedures to be used for the 2003 seismic survey will be similar to those used during previous seismic surveys by LDEO, e.g., in the equatorial Pacific Ocean (Carbotte *et al.*, 1998, 2000). The proposed program will use conventional seismic methodology with a towed airgun array as the energy source and a towed streamer containing

hydrophones as the receiver system. In addition, sonobuoys and OBH's will also be used at times as the receiver system. In addition, a multi-beam bathymetric sonar will be operated from the source vessel continuously throughout the entire cruise, and a lower-energy sub-bottom profiler will also be operated during most of the survey. The Bermuda cruise will likely commence on November 14, 2003, and continue until the third week of December, 2003. Exact dates of the activity may vary by a few days due to weather conditions of the need to repeat some lines if data quality is substandard.

During seismic acquisition, the vessel will travel at 4–5 knots (7.4–9.3 km/hr). During the MCS survey, the airgun array to be used will consist of 20 2000–psi Bolt airguns. The standard 20–gun array will include airguns ranging in chamber volume from 80 to 850 in^3, with a total volume of 8,575 in^3. These airguns will be spaced in an approximate rectangle of dimensions of 35 m (115 ft)(across track) by 9 m (30 ft)(along track). Seismic pulses will be emitted at intervals of approximately 20 seconds. The 20–sec spacing corresponds to a shot interval of about 50 m (164 ft). After the lines have been surveyed using MCS, the hydrophone streamer will be retrieved and OBH's will be deployed. During OBH refraction, an augmented 20–gun array will be used and configured for a total volume of approximately 11,000 in^3 by changing smaller gun chambers for larger volume chambers (ranging from 145 to 875 in^3). Seismic pulses will be emitted at intervals of 240 seconds during OBH acquisition. LDEO believes that even though the augmented 20–gun array will have a total air discharge volume of approximately 2400 in^3 more than the standard 20–gun array, this will not significantly increase the source output since the number of guns has a greater effect on source output than discharge volume.

The dominant frequency components for both airgun arrays is 0 - 188 Hz. The standard 20–airgun array (MCS survey) will have a peak sound source level of 255 dB re 1 μPa or 262 dB peak-to-peak (P-P), and will be towed at a depth of 7.5 m (24.5 ft). The augmented 20–airgun array (OBH survey) will have a peak sound source level of 256 dB re 1 μPa or 263 dB P-P, and will be towed at a depth of 9.0 m (29.5 ft). Because the actual source is a distributed sound source (20 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level. Also, because of the directional nature of the sound from the airgun array, the effective source level for sound propagating in near-horizontal directions will be substantially lower.

Along with the airgun operations, two additional acoustical data acquisition systems will be operated during most or all of the cruise. The ocean floor will be mapped with an Atlas Hydrosweep DS–2 multibeam 15.5–kHz bathymetric sonar, and a 3.5–kHz sub-bottom profiler will also be operated along with the multi-beam sonar. These mid-frequency sound sources are commonly operated from the *Maurice Ewing* simultaneous with the airgun array.

The Atlas Hydrosweep is mounted in the hull of the *R/V Maurice Ewing*, and it operates in three modes, depending on the water depth. The first is a shallow-water mode when water depth is <400 m (1312.3 ft). The source output is 210 dB re 1 μPa-m rms and a single 1–millisec pulse or ''ping'' per second is transmitted, with a beamwidth of 2.67 degrees fore-aft and 90 degrees in athwartship. The beamwidth is measured to the 3 dB point, as is usually quoted for sonars. The other two modes are deep-water modes. The Omni mode is identical to the shallow-water mode except that the source output is 220 dB rms. The Omni mode is normally used only during start up. The Rotational Directional Transmission (RDT) mode is normally used during deep-water operation and has a 237–dB rms source output. In the RDT mode, each ''ping'' consists of five successive transmissions, each ensonifying a beam that extends 2.67 degrees fore-aft and approximately 30 degrees in the cross-track direction. The five successive transmissions (segments) sweep from port to starboard with minor overlap, spanning an overall cross-track angular extent of about 140 degrees, with tiny (<1 millisec) gaps between the pulses for successive 30–degree segments. The total duration of the ''ping'', including all 5 successive segments, varies with water depth but is 1 millisec in water depths <500 m (1640.5 ft) and 10 millisec in the deepest water. For each segment, ping duration, is 1/5th of these values or 2/5th for a receiver in the overlap area ensonified by two beam segments. The ''ping'' interval during RDT operations depends on water depth and varies from once per second in <500 m (1640.5 ft) water depth to once per 15 seconds in the deepest water.

The sub-bottom profiler is normally operated to provide information about the sedimentary features and bottom topography that is simultaneously being mapped by the Hydrosweep. The energy from the sub-bottom profiler is directed downward by a 3.5–kHz transducer mounted in the hull of the *Maurice Ewing*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Pulse interval is 1 second but a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause. Most of the energy in the sound pulses emitted by this multi-beam sonar is at mid-frequencies, centered at 3.5 kHz. The beamwidth is approximately 30° and is directed downward. Maximum source output is 204 dB re 1 μPa, 800 watts, while nominal source output is 200 dB re 1 μPa, 500 watts. Pulse duration will be 4, 2, or 1 ms, and the bandwith of pulses will be 1.0 kHz, 0.5 kHz, or 0.25 kHz, respectively.

Along the two selected seismic lines, data will first be acquired using multibeam sonar, multichannel seismic, and sonobuoys. A total of 96 sonobuoys will be available, and the *Ewing* system allows two sonobuoys to be recorded at any time. The sonobuoy profiles will be analyzed during the MCS shooting and streamer recovery on each line. The preliminary results from the sonobuoy refraction will be used to plan the OBH deployment pattern on the subsequent deep refraction survey. Twenty OBH's will be deployed for each line.

Additional information on the airgun arrays, Atlas Hydrosweep, and sub-bottom profiler specifications is contained in the application, which is available upon request (see **ADDRESSES**).

Comments and Responses

A notice of receipt of LDEO's application for seismic work in the Northwest Atlantic Ocean near Bermuda and proposed IHA was published in the **Federal Register** on October 9, 2003 (68 FR 58308). That notice described in detail the proposed activity and the marine mammal species that may be affected by it. That information is not repeated here. During the 30–day public comment period, comments were received from the Marine Mammal Commission (Commission).

Comment 1: The Commission believes that NMFS' preliminary determinations are reasonable, provided NMFS is satisfied that the proposed mitigation and monitoring activities are adequate to detect marine mammals in the vicinity of the proposed operations and to ensure that marine mammals are not being taken in unanticipated ways or numbers. However, the Commission notes that the probability of detecting marine mammals about to enter or already inside the presumed safety limits is probably close to zero at night. Observers will generally not be on duty, and bridge personnel will have limited time to search for marine mammals. The

Federal Register notice for the proposed IHA states that''[a]n image-intensifier night-vision device (NVD) will be available for use at night,'' but previous **Federal Register** notices have stated that ''past experience has shown that NVDs are of limited value for this purpose.'' There is no discussion of why nighttime operations are considered necessary, why experienced marine mammal observers will not be on duty during nighttime hours, or how effective the observation efforts are expected to be. The efficacy of visual monitoring during some of the times that airguns would be in use and under some of the conditions likely to be encountered (e.g., during night time operations or in heavy sea states) is highly questionable. The Commission notes that NMFS has previously estimated in a **Federal Register** notice dated March 19, 2001, that visual observation efforts were expected to detect about 5 percent of animals inside safety limits (66 FR 15380). Although the effectiveness of visual observations will depend on several factors, it appears likely that many, if not most, marine mammals will go undetected under the proposed monitoring scheme. If additional information is available regarding the efficacy of visual monitoring from the vessel to be used, then that information should be provided to justify NMFS' confidence that the proposed monitoring program will be adequate. If no such information is available, then NMFS should seek alternative means of ensuring that the required monitoring program is likely to detect most marine mammals in or near the safety zones. In addition, the Commission notes that it is unclear whether vessel-based passive acoustic monitoring will be conducted as an adjunct to visual monitoring during the daytime and particularly at night to detect, locate, and identify marine mammals and, if not, why not.

Response: Nighttime operations are necessary due to cost considerations. The daily cost to the federal government to operate vessels such as the *Ewing* is approximately $33,000 to $35,000/day (Ljunngren, pers. comm. May 28, 2003). If the vessel is prohibited from operating during nighttime, it is possible that the trip would require an additional three to five days, or up to $105,000 to $175,000 more, depending on average daylight at the time of work.

Taking into consideration the additional costs of prohibiting nighttime operations and the likely impact of the activity (including mitigation and monitoring), NMFS has determined that the mitigation required by the IHA ensures that the activity will have the least practicable adverse impact on the affected species or stocks. In summary, marine mammals will have sufficient notice of a vessel approaching with operating seismic airguns (at least one hour in advance), thereby giving them an opportunity to avoid the approaching array; if ramp-up is required after an extended power-down, two marine mammal observers will be required to monitor the safety radii using night vision devices for 30 minutes before ramp-up begins and verify that no marine mammals are in or approaching the safety radii; ramp-up may not begin unless the entire safety radii are visible; and ramp-up may occur at night only if one airgun with a sound pressure level of at least 180 dB has been maintained during interruption of seismic activity. Therefore, it is likely that the 20–gun array will not be ramped-up from a shut-down at night. See Mitigation and Monitoring for more details.

It is also noted that at times, pinnipeds and even some small cetaceans will approach a vessel during transmissions (the vessel itself moving forward at about 3–5 knots) from the side of the vessel or the stern, meaning that the animal is voluntarily approaching a noise source that is increasing in strength as the animal gets closer. Experience indicates that pinnipeds will come from great distances to scrutinize seismic-reflection operations. Seals have been observed swimming within airgun bubbles only 10 m (33 ft) away from active arrays. Also, Canadian scientists, who were using a high-frequency seismic system that produced sound frequencies closer to pinniped hearing than those used by the *Ewing*, describe how seals frequently approached close to the seismic source, presumably out of curiosity. Therefore, NMFS has concluded that this mitigation requirement is reasonable because the bridge-watch will be concentrating on marine mammals approaching the vessel from the bow. Also, the night-vision ability of the trained bridge-watch staff will be better than observers elsewhere on the vessel where normal ship-board lighting is more likely. Finally, an observer is still required to be on standby, meaning he or she will be in the vicinity of the bridge and is not precluded from conducting observations during night-time.

The methodology for visual observations was changed since the 5 percent estimate (noted by the Commission above), resulting in a revised estimate of 9 percent efficacy (67 FR 46712, July 16, 2002). That figure includes both daytime and nighttime periods of observation. The rate increases to 18 percent based only on daytime monitoring. However, NMFS shipboard marine mammal assessment surveys estimate a higher rate of efficacy. It should be understood that these efficacy ratings were based on most difficult marine mammals to sight, such as harbor porpoise and Cuvier's beaked whales, and not those more easily sighted.

Passive acoustic means of monitoring was found to be 25 percent effective. However, shipboard passive acoustics do not allow scientists to determine a marine mammal's distance from the vessel through triangulation; the vessel operator could determine only that a marine mammal is some unknown distance from the vessel. In order to triangulate on the animal, a system similar to that used in the Gulf of Mexico (GOM) Sperm Whale Seismic Study (SWSS) in May, 2003 would be needed. The passive acoustical monitoring equipment that was used onboard the *Ewing* during the GOM SWSS is not the property of LDEO or the *Ewing*, and therefore is not available for the Bermuda cruise. LDEO is presently evaluating the scientific results of the passive sonar from the SWSS trip to determine whether it is practical to incorporate it into future seismic research cruises. NMFS expects a report on this analysis shortly.

Finally, NMFS notes that the monitoring methods employed on the *Ewing* are standard methods used onboard vessels for conducting marine mammal abundance surveys and under IHA's. NMFS would welcome the Commission's participation in its annual workshop in Seattle, WA to discuss similar monitoring methodology used in oil exploration and production, including vessel seismic operations, in Arctic waters or in another venue. NMFS is especially interested in exploring with the Commission the potential for alternative, practical, monitoring methodology for use in waters too far from shore-side facilities to make aircraft surveillance practical. Recently, LDEO submitted its required monitoring report for the IHAs issued for the *Ewing's* seismic work in the Gulf of Mexico (68 FR 32460, May 30, 2003) and Hess Deep (68 FR 41314, July 11, 2003). Copies of those documents are available upon request (see **ADDRESSES**).

Comment 2: Several species of cetaceans for which LDEO is seeking incidental take authority stay submerged on most dives for more than 30 minutes. The Commission questions whether conducting monitoring ''for at least 30 minutes prior to the planned start of airgun operations'' during the day and at night is sufficient to detect those species.

Response: NMFS believes that a 30–minute pre-ramp-up monitoring period is sufficient considering that the ramp-up period will increase Sound Pressure Level (SPL) at a rate no greater than 6 dB per 5–minutes for a ramp-up duration of approximately 25 min for the 20–gun array and a total monitoring period of approximately 55 minutes. Also, while some whale species may dive for up to 45 minutes, it is unlikely that the ship's bridge watch would miss a large whale surfacing from its previous dive if it is within a mile or two of the vessel.

Comment 3: The **Federal Register** notice for the proposed IHA and the applicant's request notes that there are several species of beaked whales in the proposed survey area, but the notice does not indicate that additional caution with respect to these species may be necessary or propose any post-survey monitoring of the sort that would be needed to detect animals that may have been taken other than by harassment.

Response: NMFS shares the Commission's concern regarding the possible relationship between low-frequency seismic survey transmissions and the beaked whale strandings in the Gulf of California. However, beaked whales in the Gulf of Mexico have been exposed to seismic noise for several decades, yet mass stranding events do not appear in the stranding record. Therefore, NMFS believes that additional factors probably also influence whether beaked whales will be affected in ways other than the expected reaction of vacating the immediate vicinity of the noise, similar to the reactions of other marine mammal species. For LDEO's survey near Bermuda, NMFS has decided to include additional monitoring requirements within the IHA (see Monitoring below).

Mitigation

For the seismic operations in the Bermuda Rise area in 2003, LDEO will use two different configurations of a 20–airgun array. The airguns comprising these arrays will be spread out horizontally, so that the energy from the arrays will be directed mostly downward.

The sound pressure fields were modeled by LDEO in relation to distance and direction from the standard and augmented 20–gun arrays as shown in Figures 5 and 6 of the application, respectively (LDEO Bermuda 2003). Since the sound pressure fields around both configurations of the 20–gun array are similar, the marine mammal safety radii for the augmented 20–gun array will be used for the duration of the cruise. The radius around the augmented 20–gun array where the received level would be 180 dB re 1 μPa (rms) (the current level established for onset of Level A harassment of cetaceans) is estimated as 925 m (3035 ft). The radius around the augmented 20–gun array where the received level would be 190 dB re 1 μPa (rms), (the current level established for onset of Level A harassment of pinnipeds), is estimated as 300 m (984 ft). A calibration study was conducted prior to these surveys to determine the actual radii corresponding to each sound level. These actual radii will be used to define the safety radii to be used for this study. Until then, or if those measurements appear defective, LDEO will use a precautionary 1.5 times the modeled 180- (cetaceans) and 190- (pinnipeds) dB radii as the safety radii.

The directional nature of the airgun array to be used in this project is an important mitigating factor, resulting in lower sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level. Because the actual seismic source is a distributed sound source rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level.

The following mitigation measures, as well as marine mammal monitoring, will be adopted during the Bermuda seismic survey program, provided that doing so will not compromise operational safety requirements: (1) Speed or course alteration; (2) power-down procedures; (3) shut-down procedures; and (4) ramp-up procedures.

Course Alteration

If a marine mammal is detected outside the appropriate safety radius and, based on its position and the relative bearing, is likely to enter the safety radius, the vessel's speed and/or direct course will be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach or enter the safety radius. If the mammal appears likely to enter the safey radius, further mitigative actions will be taken, i.e., either further course alterations or power- or shut-down of the airguns.

Power-down and Shut-down Procedures

Airgun operations will be powered- or shut-down immediately when cetaceans or pinnipeds are seen within or about to enter the appropriate 180–dB (rms) or 190–dB (rms) safety radius. If a marine mammal is detected outside the safety radius but is likely to enter it, and if the vessel's course and/or speed cannot be changed to avoid having the marine mammal enter the safety radius, the airguns will be powered-down before the mammal is within the safety radius. If a mammal is already within the safety radius when first detected, the airguns will be powered-down immediately. If a marine mammal is seen within the appropriate safety radius of the array while the guns are powered-down, airgun operations will be shut-down. A power-down involves decreasing the number of airguns in use such that the radius of the 180–dB zone is decreased to the extent that marine mammals are not in the safety radii. A power-down may also occur when the vessel is moving from one seismic line to another. For the power-down procedure, one airgun (either 80 or 145 in^3) will be operated during the interruption of seismic survey. Airgun activity (after both power-down and shut-down procedures) will not resume until the marine mammal has cleared the safety radius. The animal has cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the radius for 15 min (small odontocetes and pinnipeds) or 30 min (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm and beaked whales).

If a cetacean is detected close to the airgun array during a power-down, modeled safety radii for a single gun will be maintained. If the standard 20–gun array is used, the single gun that will be firing is 80 in^3, and for the augmented array, it is 145 in^3. The safety radii for the larger 145 in^3 gun will be used for mitigation purposes. Since no calibrations have been done to confirm the modeled safety radii for this single gun, conservative (1.5 times the safety radius) radii will be used: 48 m or 158 ft (the conservative radius is 72 m or 236 ft) for cetaceans, and 17 m or 56 ft (the conservative radius is 26 m or 85 ft) for pinnipeds.

Ramp-up Procedure

LDEO will employ a ramp-up procedure when commencing operations using the 20–gun array. Ramp-up will begin with the smallest gun in the array (80 in^3 for the standard array and 145 in^3 for the augmented array), and guns will be added in a sequence such that the source level of the array will increase at a rate no greater than 6 dB per 5–minute period over a total duration of about 25 minutes. This ramp-up procedure will

be followed when the airgun array begins operating after a specified-duration period without airgun operations. Under normal operational conditions (vessel speed of about 4 knots or 7.4 km/hr), the *Maurice Ewing* would travel 900 m (2953 ft) in about 7 minutes and a ramp-up will be required after a power-down or shut-down period lasting 7 minutes or longer if the *Ewing* tows a 20–airgun array. If the towing speed is reduced to 3 knots or less, a ramp-up will be required after a ''no shooting'' period lasting 10 minutes or longer. Based on the same calculation, a ramp-up procedure will be required after a 6 minute period if the speed of the source vessel was 5 knots. During the ramp-up procedures, the safety zone for the full-gun array will be maintained.

Ramp-up will not occur if the safety radius has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime. If the airguns are started up at night, two marine mammal observers will monitor for marine mammals near the source vessel for 30 minutes prior to start up of airgun operations and during the subsequent ramp-up procedures. If the safety radius has not been visible for that 30 minute period (e.g., during darkness or fog), ramp-up will not commence unless one airgun with an SPL of at least 180 dB has been maintained during the interruption of seismic activity. Therefore, it is likely that the 20–gun array will not be ramped up from a shut-down at night or in thick fog, since the safety radii for this array will not be visible during those conditions.

Monitoring and Reporting

LDEO will conduct marine mammal monitoring of its seismic survey near Bermuda in order to verify that the taking of marine mammals, by harassment, incidental to conducting the seismic survey will have a negligible impact on marine mammal stocks and to ensure that these harassment takings are at the lowest level practicable.

Marine Mammal Monitoring

At least two vessel-based observers dedicated to marine mammal observations within the vicinity of the array will be stationed aboard LDEO's seismic survey vessel for the seismic survey near Bermuda. One or two marine mammal observers aboard the seismic vessel will search for and observe marine mammals whenever seismic operations are in progress during daylight hours, and if feasible, during periods without seismic activity. Airgun operations will be suspended when marine mammals are observed within, or about to enter, designated safety radii, where there is a possibility of Level A harassment. The observers will watch for marine mammals from the highest practical vantagepoint on the vessel, which is either the bridge or the flying bridge. On the *R/V Maurice Ewing*, the observer's eye level will be approximately 11 m (36 ft) above sea level when stationed on the bridge, allowing for good visibility within a 210° arc for each observer. If observers are stationed on the flying bridge, the eye level will be 14.4 m (47.2 ft) above sea level.

The observer(s) will systematically scan the area around the vessel with 7 X 50 Fujinon reticle binoculars or with the naked eye during the daytime. At night, night vision equipment will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent). Laser rangefinding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. At least two observers will be based aboard the vessel, and at least one will be an experienced marine mammal observer. Observers will be appointed by LDEO with NMFS concurrence. Observers will be on duty in shifts of duration no longer than 4 hours.

Two vessel-based observers will monitor for marine mammals near and in the safety radii for at least 30 minutes prior to and during all daylight airgun operations including ramp-ups, after an extended shut-down, and during any nighttime startups of the airguns. Use of two simultaneous observers will increase the proportion of the marine mammals present near the source vessel that are detected. Observers will not be required to be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this period and will call for the airguns to be powered-down if marine mammals are observed in or about to enter the safety radii. LDEO bridge personnel will also assist in detecting marine mammals and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during ongoing operations at night. At least one marine mammal observer will be on ''standby'' at night, in case bridge personnel see a marine mammal. An image-intensifier night-vision device (NVD) will be available for use at night. As discussed earlier, ramp-up will not occur if the safety radius has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime. If the airguns are started up at night, two marine mammal observers will monitor for marine mammals near the source vessel for 30 minutes prior to start up using NVDs. The 30–minute observation period is only required prior to commencing seismic operations following a shut-down of the 20–gun array for more than 1 hour. After 30 minutes of observation, the ramp-up procedure will be followed.

In addition to the vessel-based visual monitoring of marine mammals, LDEO will implement a monitoring program, with approval from NMFS, to detect, to the greatest extent practicable, any marine mammal/sea turtle stranding that may result from this activity. The monitoring program will contain the following elements: (1) aerial or terrestrial monitoring of all beaches shoreward to the *Ewing's* trackline; (2) the availability on a 24–hour basis of at least one veterinarian trained in conducting necropsies; (3) establishment of a communications network with one or more marine mammal veterinarians, beach monitors and the Bermuda Biological Station; and (4) an established protocol for conducting necropsies and securing labs for proper analysis, ensuring site security and the preservation, storage and transport of biological samples.

Reporting

When a marine mammal sighting occurs, the following information about the sighting will be recorded: (1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to seismic vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace; and (2) time, location, heading, speed, activity of the vessel (shooting or not), sea state, visibility, cloud cover, and sun glare. The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables.

All mammal observations and airgun shutdowns will be recorded in a standardized format. Data will be entered into a custom database using a laptop computer when observers are off-duty. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical or other

programs for further processing and archiving.

A draft report will be submitted to NMFS within 90 days after the end of the seismic program in the Bermuda Rise area. The report will describe the operations that were conducted and the marine mammals that were detected. The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The draft report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways. The draft report will be considered the final report unless comments and suggestions are provided by NMFS within 60 days of its receipt of the draft report.

Estimates of Take by Harassment for the Bermuda Cruise

As described previously (68 FR 17909, April 14, 2003) and in the LDEO application, animals subjected to sound levels ≤160 dB may alter their behavior or distribution, and therefore might be considered taken by Level B harassment under NMFS' current criteria.

The estimates of takes by harassment are based on the number of marine mammals that might be exposed to seismic sounds≥160 dB re 1 μPa (rms) by operations with the 20–airgun array planned for the project. Taken from year-round marine mammal density aerial survey data that has been summarized by geographic location and calendar season (CETAP 1982), LDEO used densities for the ''Entire Atlantic Stratum'' during the autumn period to estimate the numbers of marine mammals that are likely to be present in the proposed survey area near Bermuda. These densities are probably overestimates of the numbers that are likely to be present, because much of the proposed seismic survey area is farther from shore, in greater water depths, and in generally much less productive waters. Because the CETAP (1982) surveys were conducted from an airplane, few beaked whales were seen or identified, and densities of beaked whales were estimated to be zero during the autumn surveys. More than likely there are small numbers of beaked whales in the proposed survey area throughout the year, so LDEO used the mean density for the entire year to estimate the densities of beaked whales that might be present.

Except for beaked whales, LDEO used its best estimate of density to compute a best estimate of the number of marine mammals that may be exposed to seismic sounds ≥160 dB re 1 μPa (rms). The best density estimates were multiplied by the linear extent of the proposed survey (1200 km or 648 n.mi. for each of the 8575 and approximately 11,000 in^3 arrays) and by twice the 160–dB safety radius around the applicable 20–airgun arrays to estimate the ''best estimate'' of the numbers of animals of each species that might be exposed to sound levels ≥160 dB re 1 μPa (rms) during the proposed seismic survey program.

Based on this method, table 3 in the LDEO application gives the best estimates, as well as maximum estimates, of densities for each species or species group of marine mammal that might be exposed to received levels ≥160 dB re 1 P~a (rms), and thus potentially taken by Level B harassment during seismic surveys in the proposed study area of the Northwest Atlantic Ocean near Bermuda. It is assumed that the 20–airgun array would be used for all surveys but that air volume would be 8575 in^3 for half of the survey and approximately 11,000 in^3 for half of the survey. Delphinidae would account for 94 percent of the overall estimate for potential taking by harassment (i.e., 10,292 of 10,910), with short-beaked common dolphins (3941) and pilot whales (3345) believed to account for about 71 percent of all delphinids in the area of the proposed seismic survey, and with smaller numbers of bottlenose dolphins (1871), Risso's dolphins (858), and striped dolphins (277) accounting for most of the remaining 29 percent. While there is no agreement regarding any alternative ''take'' criterion for dolphins exposed to airgun pulses, if only those dolphins exposed to ≥170 dB re 1 μPa (rms) were to be affected sufficiently to be considered taken by Level B harassment, then the best estimate for common dolphins would be 1191 rather than 3941 during the Bermuda Rise cruise, and for pilot whales it would be 1011 instead of 3345. These are based on the predicted 170–dB radius around the 20–airgun arrays (2600 m or 8530 ft for the 8575 in^3 array and 2900 m or 9514 ft for the approximately 11,000 in^3 array), and are considered to be more realistic estimates of the number of these species that may be harassed. Therefore, the total number of animals likely to be harassed is considerably lower than the 10,910 animals that LDEO has estimated.

Conclusions

Effects on Cetaceans

The proposed airgun array configurations are larger than those used in many seismic projects; however, shot intervals are longer than during many surveys and so marine mammals will be exposed to fewer seismic pulses than during many other similar seismic surveys. The pulse interval for the 8575 in^3 gun array is 20 seconds and is 240 seconds for the approximately 11,000 in^3 array.

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6 to 8 km (3.2 to 4.3 nm) and occasionally as far as 20–30 km (10.8–16.2 nm) from the source vessel. Some bowhead whales in Arctic waters avoided waters within 30 km (16.2 nm) of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes, and even for bowheads may only apply during migration.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. There are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance and/or other changes in behavior when near operating seismic vessels.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment.'' Reactions by mysticetes are expected to involve small numbers of individual cetaceans because few mysticetes occur in the area where seismic surveys are proposed. Reactions by mysticetes are expected to involve small numbers of individual cetaceans. For fin whales, LDEO's best estimate is that 501 fin whales, or 1.1 percent of the estimated North Atlantic population for this species (IWC 2003) will be exposed to sound levels ≥160 dB re 1 μPa (rms) during the proposed cruise near Bermuda. Therefore, based on the relatively low numbers of marine mammals that will be exposed at levels ≥160 dB and the expected impacts at these levels, NMFS has determined that this action will have a negligible impact on the affected species or stocks.

Larger numbers of odontocetes may be affected by the proposed activities, but the population sizes of most of the species are large and the numbers potentially affected are small relative to the population sizes. 38 sperm whales, or 0.3 percent of the estimated North Atlantic sperm whale population, would receive seismic sounds ≥160 dB. Similarly, 78 beaked whales from the 5 beaked whale species may be affected by the proposed activities. This is 2.4 % of the estimated total of all 5 species of beaked whales (3196) that occur along the northeast coast of the U.S. Because the CETAP (1982) surveys were conducted from an airplane, few beaked whales were seen, or at least identified, and densities of beaked whales were estimated to be zero during the autumn surveys. However, LDEO believes there are probably small numbers of beaked whales in the proposed survey area throughout the year, so LDEO used the mean density for the entire year to estimate the densities of beaked whales that might be present during autumn. Most of the proposed seismic survey area is outside of the area for which this estimate was made, and only a very small part of beaked whale habitat in the North Atlantic was included in the estimate. Thus the actual population estimate is more than likely much larger than 3196, and the percentage of animals that might receive seismic sounds ≥160 dB during the proposed cruise is believed to be less than 1 percent of the 3196 estimated North Atlantic population of the 5 species of beaked whales.

The best estimate of the total number of common dolphins, pilot whales, bottlenose dolphins, Risso's dolphins and striped dolphins that might be exposed to ≥160 dB re 1 μPa (rms) in the proposed survey area near Bermuda are 3941, 3345, 1871, 858 and 277, respectively. Of these, about 1191, 1011, 565, 259 and 84, respectively might be exposed to ≥170 dB. These figures are <0.1 to <1.1 percent of the North Atlantic population. Based on the relatively low numbers of marine mammals that will be exposed at levels ≤160 dB and the expected impacts at these levels, NMFS has determined that this action will have a negligible impact on the affected species or stocks.

Altogether, the mitigation measures explained in this document (See Mitigation) will reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

Effects on Pinnipeds

Very few if any pinnipeds are expected to be encountered during the seismic survey near Bermuda. However, a few stray hooded and grey seals could be encountered. The best estimate of the numbers of each of the more common (but unlikely) species that might be taken by Level B harassment is no more than two and is most likely zero. It is estimated that a maximum of 10 pinnipeds (five for each species) may be affected by the seismic survey. None of the pinniped species is considered endangered or depleted.

No pinnipeds regularly occur in the survey area and thus none are expected to be encountered. If pinnipeds are encountered, the seismic activities would have, at most, a short-term effect on their behavior and no long-term impacts on individual seals or their populations. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment. Therefore, based on these effects and the relatively low numbers of pinniped species that may be exposed, NMFS has determined that this action will have a negligible impact on the affected species or stocks.

Endangered Species Act (ESA)

NMFS has concluded consultation under section 7 of the ESA on NMFS' issuance of an IHA to take small numbers of marine mammals, by harassment, incidental to conducting an oceanographic seismic survey in the Northwest Atlantic Ocean near Bermuda by LDEO. The consultation concluded with a biological opinion that this action is not likely to jeopardize the continued existence of marine species listed as threatened or endangered under the ESA. No critical habitat has been designated for these species in the area of the survey; therefore, none will be affected. A copy of the Biological Opinion is available upon request (see **ADDRESSES**).

National Environmental Policy Act (NEPA)

On August 7, 2003, the NSF made a determination, based on information contained within its Environmental Assessment (EA), that implementation of the subject action is not a major Federal action having significant effects on the environment within the meaning of Executive Order 12114. NSF determined therefore, that an environmental impact statement would not be prepared. On October 9, 2003 (68 FR 58308), NMFS noted that the NSF had prepared an EA for this activity and made it available upon request. In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has reviewed the information contained in NSF's EA and determined that the NSF EA accurately and completely describes the proposed action alternative, reasonable additional alternatives, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Therefore, based on this review and analysis, NMFS is adopting the NSF EA under 40 CFR 1506.3 and has issued its own Finding of No Significant Impact. As a result, NMFS has determined that it is not necessary to issue either a new EA, supplemental EA or an environmental impact statement for the issuance of an IHA to LDEO for this activity. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

Determinations

Based on the information contained in the LDEO application, the NSF EA, the October 9, 2003, proposed authorization notice (68 FR 58308) and this document, NMFS has determined that conducting a marine seismic survey by the *R/V Maurice Ewing* in the Northwest Atlantic Ocean near Bermuda by LDEO would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal species or stocks; and would not have an unmitigable adverse impact on the availability of stocks for subsistence uses. This activity will result, at worst, in a temporary modification in behavior by affected species of marine mammals. While behavioral modifications may be made by these species as a result of seismic survey activities, this behavioral change is expected to result n no more than a negligible impact on the affected species. Also, while the number of actual incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document and required under the IHA. For these reasons therefore, NMFS has determined that the requirements of section 101(a)(5)(D) of the MMPA have been met and the authorization can be issued.

Authorization

NMFS has issued an IHA to take small numbers of marine mammals, by harassment, incidental to conducting a marine seismic survey by the *R/V Maurice Ewing* in the Northwest Atlantic Ocean near Bermuda to LDEO for a 1–year period, provided the mitigation, monitoring, and reporting requirements described in this document and the IHA are undertaken.

Dated: November 13, 2003.

Donna Wieting,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–29037 Filed 11–19–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111303A]

Marine Fisheries Advisory Committee; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of meetings of the Marine Fisheries Advisory Committee (MAFAC) from December 9 through 11, 2003.

DATES: The meetings are scheduled as follows:

December 9, 2003, 8:30 a.m. - 4:30 p.m.

December 10, 2003, 9.00 a.m. - 4:30 p.m.

December 11, 2003, 10:45 a.m. - 4:30 p.m.

ADDRESSES: The meetings will be held at Holiday Inn Martinique on Broadway, 49 West 32nd Street, New York, New York. Requests for special accommodations may be directed to MAFAC, Office of Constituent Services, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Laurel Bryant, Designated Federal Official; telephone: (301) 713–2379 ext. 171.

SUPPLEMENTARY INFORMATION: As required by section 10(a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of meetings of MAFAC. MAFAC was established by the Secretary of Commerce (Secretary)on February 17, 1972, to advise the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of the Nation are adequate to meet the needs of commercial and recreational fisheries and of environmental, state, consumer, academic, tribal, and other national interests.

Matters to Be Considered

December 9, 20003

Review Ocean Commission status, summarize and discuss Constituent sessions 2003; and review National Standards 1 Guidelines and the Implementation of the Endangered Species Act and Essential Fish Habitat.

December 10, 2003

Report and discuss NOAA Fisheries' Bycatch Implementation Plan.

December 11, 2003

Review Budget Planning, wrap up reports and discuss schedule for next meeting and charter renewal.

December 12, 2003

Committee will make final reports to NOAA Fisheries and adjourn.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to MAFAC (see **ADDRESSES**).

Dated: November 14, 2003.

John Oliver,

Deputy Assistant Administrator for Operations,National Marine Fisheries Service

[FR Doc. 03–29035 Filed 11–19–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102903B]

Marine Mammals; File No. 732–1487

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Paul Ponganis, Ph.D. has been issued an amendment to scientific research Permit No. 732–1487–03.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

This minor amendment extends the expiration date of the permit from June 30, 2004 to June 30, 2005.

Dated: November 14, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–29036 Filed 11–19–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

November 14, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection announcing limits.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854);

Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in China and exported during the period January 1, 2004 through December 31, 2004 are based on the limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection to establish the 2004 limits. Carryforward applied to the 2003 limits has been deducted from the 2004 limits.

These limits are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body. However, as the ATC and all restrictions thereunder will terminate on January 1, 2005, no adjustment for carryforward (borrowing from next year's limits for use in the current year) will be available.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Information regarding the availability of the 2004 CORRELATION will be published in the **Federal Register** at a later date.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 14, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 2004, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 2004 and extending through December 31, 2004, in excess of the following levels of restraint:

Category	Twelve-month limit
Group I	
200, 218, 219, 226, 237, 239pt. [1], 300/301, 313–315, 317/326, 331pt. [2], 333–336, 338/339, 340–342, 345, 347/348, 351, 352, 359–C [3], 359–V [4], 360–363, 410, 433–436, 438, 440, 442–444, 445/446, 447, 448, 611, 613–615, 617, 631pt. [5], 633–636, 638/639, 640–643, 644, 645/646, 647, 648, 651, 652, 659–C [6], 659–H [7], 659–S [8], 666pt. [9], 845 and 846, as a group.	1,177,098,174 square meters equivalent.
Sublevels in Group I	
200	852,327 kilograms.
218	12,048,926 square meters.
219	2,725,489 square meters.
226	12,746,159 square meters.
237	2,334,096 dozen.
300/301	2,423,182 kilograms.
313	45,461,137 square meters.
314	55,735,486 square meters.
315	141,681,032 square meters.
317/326	24,915,312 square meters of which not more than 4,766,788 square meters shall be in Category 326.
331pt.	2,211,238 dozen pairs.
333	117,888 dozen.
334	355,560 dozen.
335	387,929 dozen.
336	195,182 dozen.
338/339	2,331,725 dozen of which not more than 1,770,033 dozen shall be in Categories 338–S/339–S [10].
340	804,295 dozen of which not more than 402,148 dozen shall be in Category 340–Z [11].
341	696,915 dozen of which not more than 430,955 dozen shall be in Category 341–Y [12].
342	277,017 dozen.
345	126,650 dozen.
347/348	2,303,209 dozen.
351	651,185 dozen.
352	1,643,919 dozen.
359–C	706,281 kilograms.
359–V	971,520 kilograms.
360	9,325,474 numbers of which not more than 6,177,149 numbers shall be in Category 360–P [13].
361	4,849,843 numbers.
362	7,903,255 numbers.
363	22,899,052 numbers.
410	1,059,175 square meters of which not more than 849,044 square meters shall be in Category 410–A [14] and not more than 849,044 square meters shall be in Category 410–B [15].
433	20,831 dozen.
434	13,320 dozen.

Category	Twelve-month limit
435	24,462 dozen.
436	15,534 dozen.
438	26,375 dozen.
440	38,837 dozen of which not more than 22,192 dozen shall be in Category 440–M [16].
442	39,886 dozen.
443	128,859 numbers.
444	212,873 numbers.
445/446	281,062 dozen.
447	70,548 dozen.
448	22,256 dozen.
611	6,270,756 square meters.
613	8,615,225 square meters.
614	13,538,210 square meters.
615	28,184,093 square meters.
617	19,691,942 square meters.
631pt.	330,228 dozen pairs.
633	63,140 dozen.
634	686,909 dozen.
635	724,570 dozen.
636	568,421 dozen.
638/639	2,506,986 dozen.
640	1,385,249 dozen.
641	1,312,236 dozen.
642	380,981 dozen.
643	548,139 numbers.
644	3,605,043 numbers.
645/646	809,845 dozen.
647	1,616,029 dozen.
648	1,154,641 dozen.
651	852,132 dozen of which not more than 154,543 dozen shall be in Category 651–B [17].
652	3,234,833 dozen.
659–C	451,128 kilograms.
659–H	3,173,412 kilograms.
659–S	701,306 kilograms.
666pt.	530,098 kilograms.
845	2,414,080 dozen.
846	189,886 dozen.
Group II	
332, 359–O [18], 459pt. [19] and 659–O [20], as a group	41,052,778 square meters equivalent.
Group III	
201, 220, 224–V [21], 224–O [22], 225, 227, 369–O [23], 400, 414, 469pt. [24], 603, 604–O [25], 618–620 and 624–629, as a group.	48,634,805 square meters equivalent.
Sublevels in Group III	
224–V	4,100,648 square meters.
225	7,286,166 square meters.
Group IV	
852	392,820 square meters equivalent.
Levels not in a Group	
369–S [26]	621,077 kilograms.
863–S [27]	8,919,240 numbers.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[4] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[5] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[6] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[8] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[9] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[10] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[11] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[12] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[13] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[14] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[15] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.3030, 5112.11.3060, 5112.11.6030, 5112.11.6060, 5112.19.6010, 5112.19.6020, 5112.19.6030, 5112.19.6040, 5112.19.6050, 5112.19.6060, 5112.19.9510, 5112.19.9520, 5112.19.9530, 5112.19.9540, 5112.19.9550, 5112.19.9560, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[16] Category 440–M: only HTS numbers 6203.21.9030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[17] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[18] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545 (Category 359pt.).

[19] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[20] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[21] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[22] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[23] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.0020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[24] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[25] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[26] Category 369–S: only HTS number 6307.10.2005.

[27] Category 863–S: only HTS number 6307.10.2015.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 2003 shall be charged to the applicable category limits for that year (see directive dated October 9, 2002) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Committee for the Implementation of Textile Agreements.

[FR Doc. 03–29016 Filed 11–19–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of the forthcoming outbrief on Technology for Machine-to-Machine ISR Integration. The purpose of the meeting is to allow the SAB leadership to advise SAF/USI

an outbrief of the study. This meeting will be closed to the public.

DATES: November 18, 2003.

ADDRESSES: Pentagon (SAF/USI), Room 4C1000, Washington, DC 20330.

FOR FURTHER INFORMATION CONTACT: Paul Hazell, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–28954 Filed 11–19–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of the forthcoming meeting of the 2003 Science and Technology Review. The purpose of the meeting is to allow the SAB leadership to discuss S&T reviews. Because classified and contractor proprietary information will be discussed, this meeting will be closed to the public.

DATES: December 4, 2003.

ADDRESSES: Pentagon, AF/SB Conference Room, 4D982, Washington, DC 20330.

FOR FURTHER INFORMATION CONTACT: Major Dwight Pavek, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–28955 Filed 11–19–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of the forthcoming outbrief on Technology for Machine-to-Machine ISR Integration. The purpose of the meeting is to allow the SAB leadership to advise AF/XOS an outbrief of the study. This meeting will be closed to the public.

DATES: November 19, 2003.

ADDRESSES: Pentagon (AF/XOS), Room 4C1000, Washington DC 20330.

FOR FURTHER INFORMATION CONTACT: Paul Hazell, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–28956 Filed 11–19–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Western Hemisphere Institute for Security Cooperation Board of Visitors; Meeting

AGENCY Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the meeting of the Board of Visitors (VoV) for the Western Hemisphere Institute for Security Cooperation (WHINSEC). Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463). This board was chartered on February 1, 2002 in Compliance with the requirements set forth in 10 U.S.C. 2166.

Dates: December 11–12, 2003.

Time: 9 a.m. to 5:30 p.m. (December 11) and 8:45 a.m. to 12 p.m. (December 12).

Location: Pratt Hall, Building 35, 7011 Morrison Ave., Fort Benning, GA 31905.

Proposed Agenda: The WHINSEC BoV will receive status briefings of actions taken on last year's BoV recommendations and on new activities and efforts since December 2002; look into any matters it deems important; meet with groups of WHINSEC faculty and standents; and prepare for its initial session for 2004. The Board will also develop its draft observations and recommendations to forward to the Secretary of Defense and the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Ken LaPlante, Executive Liaison, WHINSEC, Army G–3 at (703) 692–7419 or LTC Linda Gould, Chief, Latin American Branch, Army G–3 at (703) 693–7419.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Please note that the Board will recess on December 11 for lunch between 12:00 p.m. and 1:30 p.m. The DFO had set aside 3 p.m. to 3:30 p.m. on December 11 for public comments by individuals and organizations. Public comment and presentations will be limited to two minutes each and members of the public desiring to make oral statements or presentations must inform the contact personnel, in writing. Requests must be received before Friday, December 5, 2003. Mail written presentations and requests to register to attend the public sessions to: LTC Gould or Mr. LaPlante at HQDA Army G–3 (Room 38473), 400 Army Pentagon, Washington, DC 20310. Public seating is limited, and is available on a first come, first served basis.

John C. Speedy III,

Designated Federal Officer, WHINSEC BoV

[FR Doc. 03–29011 Filed 11–19–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership for the U.S. Army Acquisition Executive

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: November 13, 2003.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army Acquisition Executive are:

1. Edward Bair, Program Executive Officer, Intelligence, Electronic Warfare, and Senors, AAE.
2. Ernestine Ballard, Deputy ASA (Policy & Procurement), OASA (Acquisition, Logistics & Technology).
3. Donald Barker, Deputy Program Executive Officer, Tactical Missiles and Smart Munitions.
4. MG Joseph L. Bergantz, Program Executive Officer, Aviation.

5. James T. Blake, Deputy to the Commander, PEO STRI.

6. Paul Bogosian, Deputy Program Executive for Aviation, AAE.

7. T. Kevin Carroll, Program Executive Officer, Enterprise Information Structure, AAE.

8. Donald L. Damstetter, Jr., Deputy Assistant Secretary for Plans, Programs, and Resource, OASA (Acquisition, Logistics & Technology).

9. Edward G. Elgart, Director, CECOM Acquisition Center.

10. Kevin J. Flamm, Program Manager for Chemical Demilitarization Operations OASA (Acquisition, Logistics & Technology).

11. Craig D. Hunter, Deputy Assistant Secretary of the Army (Defense Exports and Cooperation), OASA (Acquisition, Logistics & Technology).

12. Joann H. Langston, Competition Advocate of the Army, Army Acquisition Executive Support Agency.

13. Russell W. Lenz, Director, Simulation and Training Technology Center, Research, Development and Engineering Command.

14. BG Michael R. Mazzucchi, Program Executive Officer, Command, Control, and Communications (Tactical).

15. Steven L. Messervy, Program Manager, Joint Simulation Systems, Army Acquisition Executive Support Agency.

16. Levator Norsworthy, Jr., Deputy General Counsel (Acquisition), Office of the General Counsel.

17. Michael A. Parker, Deputy to the Commander, U.S. Army Soldier & Biological Chemical Command.

18. John C. Perrapato, Deputy Program Executive Officer, Command and Control Systems, AAE.

19. Shelba J. Proffitt, Deputy Program Executive Officer, Air and Missile Defense, AAE.

20. Sandra O. Sieber, Director, Army Contracting Agency.

21. Albert P. Puzzuoli, Deputy Program Executive Officer, Armored Systems Modernization, AAE.

22. Wimpy D. Pybus, Deputy Assistant Secretary of the Army for Integrated Logistics Support, OASA (Acquisition, Logistics & Technology).

23. BG Stephen M. Seay, Program Executive Officer, PEO STRI.

24. BG Jeffrey A. Sorenson, Program Executive Officer, Tactical Missiles.

25. MG John M. Urias, Program Executive Officer, Air Missile Defense/ Deputy Command General for Research, Development and Acquisition, U.S. Army Space and Missile Defense Command.

26. MG Joseph L. Yakovac, Program Executive Officer, Ground Combat Systems.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–29008 Filed 11–19–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership for the U.S. Army Office of the Surgeon General

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: November 13, 2003.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army Office of The Surgeon General are:

1. MG Kenneth L. Farmer, Chairperson, Deputy Surgeon General.

2. Mr. Mark R. Lewis, Director, Plans, Resources and Operations, Office of the Deputy Chief of Staff, G–1.

3. Ms. Zita M. Simutis, Director, Army Research Institute.

4. Mr. Jack E. Hobbs, Project Director, Army Workload and Performance System.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–29009 Filed 11–19–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for a Flood Damage Reduction Study, Missouri River Levees System Units L–455 and R 471–460, Buchanan County, MO and Doniphan County, KS

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers, Kansas City District (KCD), intends to prepare a Draft Environmental Impact Statement (DEIS) and Feasibility Study of flood damage reduction measures for property currently afforded flood protection by the Missouri River Levee System (MRLS) Units L–455 and R 471–460, in Buchanan County, Missouri and Doniphan County, Kansas. The purpose of this DEIS is to consider the economic, environmental, and social impacts that may occur as a result of various alternatives being considered in a flood damage reduction study, concerning flood protection provided by the existing MRLS Units L–455 and R 471–460. The study would determine the existing level of flood protection as well as possible flood damage reduction measures beyond what currently exists, under the authority of Section 216 of the 1970 Flood Control Act.

FOR FURTHER INFORMATION CONTACT: Ms. Maria Chastain-Brand, Formulation Section, Planning Branch, ATTN: CENWK–PM–PF, U.S. Army Engineer District, Kansas City, 601 East 12th Street, Kansas City, MO 64106–2896, Phone 816–983–3107 or *Maria E. Chastain-Brand@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. The U.S. Army Corps of Engineers, KCD, intends to prepare a DEIS and Feasibility Study of flood damage reduction measures for property currently afforded flood protection by the MRLS Units L–455 and R 471–460, in Buchanan County, Missouri and Doniphan County, Kansas. The purpose of this DEIS is to consider the economic, environmental, and social impacts that may occur as a result of various alternatives being considered in a flood damage reduction study. The Study would determine the existing level of flood protection as well as possible flood damage reduction measures beyond what currently exists, under the authority of Section 216 of the Flood Control Act.

2. The MRLS Units L–455 and R 471–460, are existing flood damage reduction projects which provide local flood protection for agricultural needs, the metropolitan area of St. Joseph, Missouri and the communities of Wathena and Elwood in Kansas. The two levees units are located on opposite sites of the Missouri River.

Levee unit L–455 is located on the left bank of the Missouri River in Buchanan County, Missouri, and connects to high ground in the southwestern part of St. Joseph, Missouri. The levee unit extends from Missouri River mile 447.3 downstream to mile 437.3 and then upstream along Contrary Creek. Levee unit L–455 is 15.6 miles long, averages 13 feet in height, and protects approximately 7,500 acres of urban and rural areas from flooding. Rural lands consist of about 6,500 acres. Urban lands include industrial, commercial, and residential areas of the city of St. Joseph, Missouri, including the residential and recreational development in the Lake Contrary area.

Levee unit R 471–460 is located on the right bank of the Missouri River between river mile 441.7 and 456.6 in eastern Doniphan County, Kansas, and a portion of western Buchanan County, Missouri. This levee unit is 13.8 miles long, averages 14.8 feet in height and protects approximately 13,500 acres of rural and urban areas from flooding. Rural lands consist of about 10,000 acres. Urban lands include the communities of Elwood and Wathena, Kansas. It also includes the area within an oxbow, which is a part of St. Joseph, Missouri and contains the Rosecrans Memorial Air National Guard Base.

3. KCD's study will evaluate the no action alternative as well as various structural and non-structural alternatives to determine:

a. Flood damage reduction costs and benefits;

b. Regional social and economic impacts; and

c. Environmental impacts and mitigation measures.

Reasonable alternatives KCD will examine include the feasibility of various structural and non-structural measures to reduce flood damage within areas protected by the existing MRLS Units L–455 and R 471–460. Structural alternatives may include reinforcing the existing structures, raising the existing levee with earth fill, floodwalls with a corresponding rise of appurtenances, or other change to the existing levee systems. Non-structural measures may include the development of contingency plans.

4. Scoping Process

a. A public workshop/scoping meeting will be held in the spring of 2004 in St. Joseph, MO area. The exact date, time, and location of the scoping meeting will be announced when the details are finalized. Additional workshops and meetings will be held as the study progresses to keep the public informed. Coordination meetings will be held as needed with the affected/concerned local, State, and Federal governmental entities, and tribes. These workshops and meetings, as well as any meetings which were previously held regarding this project, will serve as the collective scoping process for the preparation of the DEIS. Draft documents forthcoming from the study will be distributed to Federal, State, and local agencies, as well as interested members of the general public, for review and comment.

b. Potential issues to be analyzed in depth include evaluations of:

(1) Level of flood protection provided by the existing flood protection project and need for increased level of protection;

(2) Costs and benefits associated with alternatives that increase the flood protection level of the existing flood protection project;

(3) Fish and wildlife resources;

(4) Recreation;

(5) Cultural resources.

c. Environmental consultation and review will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as per regulations of the Council of Environmental Quality (code of Federal Regulations Parts 40 CFR 1500–1508), and other applicable laws, regulations, and guidelines.

5. The anticipated date of availability of the DEIS for public review is late 2004.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–29010 Filed 11–19–03; 8:45 am]

BILLING CODE 3710–KN–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Programmatic Environmental Impact Statement for Coastal Erosion Protection and Community Relocation, Shishmaref, AK

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Engineer District, Alaska, intends to prepare a Draft Programmatic Environmental Impact Statement (DEIS) to evaluate the feasibility of constructing erosion protection alternatives and community relocation alternatives at Shishmaref, Alaska. Shishmaref, population 562, is on a barrier island on the Chukchi Sea on the northwestern coast of Alaska. The shoreline at the community is being rapidly eroded by storm waves possibly because the ice pack has been forming later in the autumn than in the past, allowing more of the force of late season storm energy to reach the shore. The programmatic DEIS will determine whether Federal action is warranted, and if so, and community relocation is selected, site alternatives will be addressed in more detail in a second tier of the EIS process.

FOR FURTHER INFORMATION CONTACT: Lizette Boyer (907) 753–2637, Alaska District, U.S. Army Corps of Engineers, Environmental Resources Section (CEPOA–EN–CW–ER), P.O. Box 6898, Elmendorf AFB, AK 99506–6898. E-mail: *Lizette.P.Boyer@poa02.usace.army.mil.*

SUPPLEMENTARY INFORMATION: This study is authorized under Section 203, 33 U.S.C. Tribal Partnership Program. The community of Shishmaref has existed on Sherichef Island for centuries. The four-mile-long island, formed by littoral drift, is steadily eroding along the Chucki Sea. As early as the 1950's the community began taking steps to fight the annual erosion problem. Strong wave and current action cause massive scouring and erosion of the fine sand embankment. Bank revetment structures (gabions filled with sand and concrete mattresses) were installed but failed to stop the erosion for long. Severe fall storms in 1989, 1990, and 1997 undermined the protective structures and caused buildings to be moved or abandoned. The late formation of the shorefast ice pack in recent years aggravates erosion damage during fall storms. Without shore protection structures and continued maintenance of them, all the community infrastructure is in jeopardy.

The programmatic DEIS will consider alternatives including the continuation of erosion protection structures to prevent land and property losses. The community has obtained funding for efforts to protect a stretch of the beach to the west of the school property where a Bureau of Indian Affairs road is at risk. The Corps of Engineers currently is conducting an emergency bank protection study to protect the school. Longer term protection for the

community would require that erosion protection be extended past the school property and to adjacent roads along the shoreline. The feasibility of further and more extensive bank protection would be analyzed and compared with relocation alternatives. Relocation would mean the abandonment of the Shishmaref community on the island. Relocation alternatives include moving the people of Shishmaref to a larger hub community such as Nome or Kotzebue where they would be incorporated into the fabric of that community; moving the population to a smaller, closer community such as Wales or Deering, which would involve developing additional infrastructure in those locations, and constructing a new town site on the mainland. The last alternative would be based on engineering criteria, historical tribal area boundaries, and corridors to subsistence sites.

Issues: The programmatic DEIS will consider the need of Shishmaref to preserve its community identity and the potential impacts of the alternatives on the cultural resources and infrastructure of the community. In addition, the programmatic DEIS will address the importance of maintaining the community's traditional subsistence lifestyles, while providing modern infrastructure and housing. Issues associated with relocation to an existing community include property and business losses, impacts of social/cultural changes, and impacts on the infrastructure capacity of the receiving location. Issues associated with relocation and construction of a new town site includes engineering constructability criteria and environmental suitability. Constructability criteria include geologic stability, availability of fill material, and potable water sources. Environmental issues include effects to endangered species and wildlife habitat, and justifiable and practicable mitigation measures. Other resources and concerns will be identified through scoping, public involvement, and interagency coordination.

Scoping: A copy of this notice and additional public information will be sent to interested parties to initiate scoping. All parties are invited to participate in the scoping process by identifying any additional concerns, issues, studies, and alternatives that should be considered. A scoping meeting will be held in Shishmaref, Alaska, in early 2004 at a place and time to be announced. The programmatic DEIS is scheduled for release in 2005 or 2006.

Guy R. McConnell,

Chief, Environmental Resources Section.

[FR Doc. 03–29007 Filed 11–19–03; 8:45 am]

BILLING CODE 3710–NL–M

DEPARTMENT OF EDUCATION

Meeting of the President's Board of Advisors on Tribal Colleges and Universities

AGENCY: White House Initiative on Tribal Colleges and Universities, U.S. Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the President's Board of Advisors on Tribal Colleges and Universities (the Board) and is intended to notify the general public of its opportunity to attend. This notice also describes the functions of the Board. Notice of the Board's meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act and by the Board's charter.

Agenda: The purpose of the meeting will be to review and comment on Federal agencies' Three-Year Plans and discuss the format and content of the Board's required report to the President.

Date and Time: December 2, 2003–9 a.m. to 4 p.m. and December 3, 2003–9 a.m. to 12 Noon.

Location: Embassy Suites Hotel, 4315 Swenson Street, Las Vegas, NV 89119.

FOR FURTHER INFORMATION CONTACT: Toney Begay, Special Assistant, White House Initiative on Tribal Colleges and Universities, U.S. Department of Education, Suite 408, 555 New Jersey Avenue, NW., Washington, DC 20208. Telephone: 202–219–2181. Fax: 202–208–2174.

SUPPLEMENTARY INFORMATION: The Board is established by Executive Order 13270, dated July 3, 2002, to provide advice regarding the progress made by Federal agencies toward fulfilling the purposes and objectives of the order. The Board also provides recommendations to the President through the Secretary of Education on ways the Federal government can help tribal colleges: (1) Use long-term development, endowment building and planning to strengthen institutional viability; (2) improve financial management and security, obtain private sector funding support, and expand and complement Federal education initiatives; (3) develop institutional capacity through the use of new and emerging technologies offered by both the Federal and private sectors; (4) enhance physical infrastructure to facilitate more efficient operation and effective recruitment and retention of students and faculty; and (5) help implement the No Child Left Behind Act of 2001 and meet other high standards of educational achievement.

The general public is welcome to attend the December 2–3, 2003, meeting. However, space is limited and is available on a first-come, first-serve basis. Individuals who need accommodations for a disability in order to attend the meeting (*i.e.* interpreting services, assistive listening devices, materials in alternative format) should notify Toney Begay at (202) 219–2181 no later than November 18, 2003. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

A summary of the activities of the meeting and other related materials that are informative to the public will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the White House Initiative on Tribal Colleges and Universities, United States Department of Education, Suite 408, 555 New Jersey Avenue, NW., Washington, DC 20208.

Dated: November 14, 2003.

Rod Parge,

Secretary, Department of Education.

[FR Doc. 03–28968 Filed 11–19–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Policy Statement; Solicitation of Comments on the Policy for Statistical Information Based on Petroleum Supply Reporting System Survey Data

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Policy statement; solicitation of comments on the policy for statistical information based on Petroleum Supply Reporting System survey data.

SUMMARY: The EIA is requesting comments on the policy for statistical information based on Petroleum Supply Reporting System (PSRS) survey data collected and disseminated beginning in 2004. This request is based on EIA's mandate for carrying out a central, comprehensive, and unified energy data and information program responsive to

users' needs for credible, reliable, and timely energy information that will improve and broaden understanding of petroleum supply in the United States.

DATES: Comments must be filed by December 22, 2003. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Comments on this policy should be directed to Stefanie Palumbo, Petroleum Division. To ensure receipt of the comments by the due date, submission by FAX (202–586–5846) or e-mail (*stefanie.palumbo@eia.doe.gov*) is recommended. The mailing address is Petroleum Division, EI–42, Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. Alternatively, Stefanie Palumbo may be contacted by telephone at (202) 586–6866.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ms. Palumbo at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA provides the public and other Federal agencies with opportunities to comment on collections of energy information conducted by EIA. As appropriate, EIA also requests comments on important issues relevant to the dissemination of energy information. Comments received help the EIA when preparing information collections and information products necessary to support EIA's mission.

The purpose of the Petroleum Supply Reporting System (PSRS) surveys is to collect data to meet EIA's mandates and energy data users' needs for credible, reliable, and timely energy information on the petroleum industry. Adequate evaluation of the industry requires detailed, comprehensive data on production, receipts, inputs, regional movements, imports, and stocks of crude oil, petroleum products, and natural gas liquids in the United States. The survey information is used to create statistics disseminated by EIA in various information products including the *Weekly Petroleum Status Report, This Week in Petroleum,* the *Petroleum Supply Monthly,* and the *Petroleum Supply Annual* available on EIA's Web site at *http://www.eia.doe.gov/oil_gas/petroleum/info_glance/petroleum.html.*

EIA's petroleum supply program provides Congress, other government agencies, businesses, trade associations, and private research and consulting organizations with statistics for analysis, projections, and monitoring purposes. To be most effective, EIA's petroleum supply statistical information must be available by product detail at sub-U.S. geographic breakdowns such as by Petroleum Administration for Defense (PAD) District, Refining District, and State.

The types of information collected in the PSRS surveys and the level of detail in statistical information disseminated by EIA follow a pattern first established by the Bureau of Mines in 1917. The PSRS surveys include weekly, monthly, and annual surveys designed to provide information on petroleum supply at various levels of detail given tradeoffs between timeliness and improved accuracy. For 2004, the PSRS surveys are expected to include the following forms:

- EIA–800, Weekly Refinery and Fractionator Report,
- EIA–801, Weekly Bulk Terminal Report,
- EIA–802, Weekly Product Pipeline Report,
- EIA–803, Weekly Crude Oil Stocks Report,
- EIA–804, Weekly Imports Report,
- EIA–805, Weekly Terminal Blenders Report,
- EIA–810, Monthly Refinery Report,
- EIA–811, Monthly Bulk Terminal Report,
- EIA–812, Monthly Product Pipeline Report,
- EIA–813, Monthly Crude Oil Report,
- EIA–814, Monthly Imports Report,
- EIA–815, Monthly Terminal Blenders Report,
- EIA–816, Monthly Natural Gas Liquids Report,
- EIA–817, Monthly Tanker and Barge Movement Report,
- EIA–819, Monthly Oxygenate Report, and
- EIA–820, Annual Refinery Report.

The specific forms and data elements in the PSRS surveys change over time to reflect the industry. However, the overall purpose of the PSRS continues to be providing credible, reliable, and timely information on the petroleum industry. The information is integral to adequately understanding the U.S. petroleum supply situation. Detailed information at low level geographic breakdowns is needed on production, receipts, inputs, regional movements, imports, and stocks of crude oil, petroleum products, and natural gas liquids.

Most PSRS survey information is collected under a pledge of confidentiality. For information collected under a pledge of confidentiality, EIA does not publicly release names or other identifiers of survey respondents linked to their submitted data. However, for many data items, EIA does not apply disclosure limitation to statistics based on the survey data.

Disclosure limitation involves methods used to avoid the possibility that individually-identifiable information reported by a survey respondent may be inferred from published statistics. In accordance with EIA's existing policy for PSRS statistical information, most petroleum supply statistical information disseminated by EIA has not been subjected to disclosure limitation methods (the policy of not using disclosure limitation on petroleum supply statistical information has been in effect since EIA's creation in 1977 and was announced in the **Federal Register** on August 7, 1986 (61 FR 28415)). Therefore, when statistics are based on PSRS data from fewer than three respondents or are dominated by data from one or two large respondents and are not subjected to disclosure limitation methods, it may be possible for a knowledgeable person to estimate the data reported by a specific respondent.

While disclosure limitation has not been used on the majority of statistics based on the PSRS survey data, disclosure limitation has been used for statistics based on new products or product breakdowns that have occurred since 1986. Petroleum Supply Monthly (and corresponding Petroleum Supply Annual) tables that use currently use disclosure limitation are: Table 28, ''Refinery Input of Crude Oil and Petroleum Products by PAD and Refining Districts,'' Table 29, ''Refinery Net Production of Finished Petroleum Products by PAD and Refining Districts,'' Table 30, ''Refinery Stocks of Crude Oil and Petroleum Products by PAD and Refining Districts,'' Table 51, ''Stocks of Crude Oil and Petroleum Products by PAD District,'' Table 52, ''Refinery, Bulk Terminal, and Natural

Gas Plant Stocks of Selected Petroleum Products by PAD District and State,'' Table D2, ''Monthly Fuel Ethanol Production and Stocks by PAD Districts,'' and Table D3, ''Monthly Methyl Tertiary Butyl Ether (MTBE) Production and Stocks by PAD Districts.''

II. Current Actions

Beginning in January 2004, EIA proposes to extend its 1986 policy of not applying disclosure limitation to statistics based on PSRS survey data to all PSRS survey information collected under a pledge of confidentiality. With increases in the number of different petroleum products, enlarged product detail breakdowns, and declines in the number of companies reporting on many of the PSRS surveys, the policy not to use disclosure limitation helps to ensure EIA's ability to disseminate detailed petroleum, supply information.

EIA is requesting public comments on this policy. This policy will result in EIA providing the maximum amount of PSRS information to the public, and will facilitate public understanding of the petroleum industry. However, it also means that a knowledgeable person may be able to estimate the value of selected data items provided by specific respondents.

III. Request for Comments

The public should comment on the actions discussed in item II. The questions below are the issues on which EIA is seeking public comments.

A. Does EIA's proposed policy not to use disclosure limitation methods for statistics based on PSRS survey information collected under a pledge of confidentiality and disseminated beginning in 2004 maximize the utility of the data to data users?

B. Is the possibility that a knowledgeable user might be able to estimate a respondent's contribution to a statistic an acceptable risk to data providers?

Comments submitted in response to this notice will be considered by EIA. The comments will also become a matter of public record.

After consideration of the comments, EIA will issue its policy regarding the use of disclosure limitation methods for statistics based on PSRS survey data. The policy will be announced in a **Federal Register** notice issued by EIA.

Statutory Authority: Section 52 of the Federal Energy Administration Act (Pub. L. 93–275, 15 U.S.C. 790a).

Issued in Washington, DC, November 14, 2003.

Guy F. Caruso,

Administrator, Energy Information Administration.

[FR Doc. 03–28993 Filed 11–19–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–00371; FRL–7335–1]

The Association of American Pesticide Control Officials State FIFRA Issues Research and Evaluation Group; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Issues Research and Evaluation Group (SFIREG) will hold a 2–day meeting, beginning on December 8, 2003 and ending December 9, 2003. This notice announces the location and times for the meeting, and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, December 8, 2003 from 8:30 a.m. until 5 p.m. and December 9, 2003, from 8:30 a.m. until noon.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 300 Army-Navy Drive, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: *mcduffie.georgia@epa.gov*.

Philip H. Gray, SFIREG Executive Secretary, P.O. Box 1249, Hardwick, VT 05843–1249; telephone number (802) 472–6956; fax (802) 472–6957; e-mail address: *aapco@vtlink.net*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in SFIREG's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. You are invited and encouraged to attend the meetings and participate as appropriate. If you have any question regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

This action is directed to the public in general, and may be of particular interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the FIFRA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–00371. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Tentative Agenda

This unit provides tentative agenda topics for the 2–day meeting.

1. Reports from SFIREG Regional Representatives and Working Committee Chairs.
2. Issues papers/action items.
3. Laboratory Directors Issue Paper.
4. EPA (Office of Water/Office of Pesticide Program) ''Interim Statement Guidance/NPDES''/Public Comments/ Updates.
5. Electronic labeling.
6. EPA/SLA Strategies/eCommerce enforcement compliance monitoring and enforcement.
7. Americans with Disabilities Act: Issues for State pesticide program issues.
8. Pesticide, container, and product label disposal issues briefing.
9. FIFRA ''2(ee)'' discussion.
10. Proposal for Pre-SFIREG cooperative agreement priority recommendations.
11. Endangered Species update/ litigation, public comment, agency proposals.
12. National Pesticide Field Database/ update.
13. U.S. Department Of Transportation hazard materiel transportation security requirements/ briefing.
14. Additional topics as offered via ongoing Regional Pre-SFIREG meetings.

List of Subjects

Environmental protection, Pesticide and pests.

Dated: November 14, 2003.

Linda Vlier Moos,

Acting Associate Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 03–29006 Filed 11–19–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7589–3]

Notice of Extension of Public Comment Period on the Document Entitled Guidance on Selecting the Appropriate Age Groups for Assessing Childhood Exposures to Environmental Contaminants (External Review Draft)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period.

SUMMARY: This notice extends the comment period for the document entitled Guidance on Selecting the Appropriate Age Groups for Assessing Childhood Exposures to Environmental Contaminants. (External Review Draft). The availability of this document was originally announced in the **Federal Register** on September 22, 2003 (68 FR 55047).

DATES: Comments must be received by Monday December 22, 2003.

ADDRESSES: The document is available via the Internet from *http://cfpub.epa.gov/ncea/raf/recordisplay.cfm?deid=55887.* Instructions for submitting comments are provided in the July 30, 2003 **Federal Register** notice, which is accessible from this website.

FOR FURTHER INFORMATION CONTACT: Marilyn Brower, Risk Assessment Forum Staff (8601D), 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: 202–564–3363; fax: 202–565–0061; e-mail: *brower.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: In the September 22, 2003 **Federal Register** (68 FR 55047), EPA announced the availability of, and opportunity to comment on, the document entitled Guidance on Selecting the Appropriate Age Groups for Assessing Childhood Exposures to Environmental Contaminants. (External Review Draft, February, 2003, EPA/630/P–03/003A). The comment period was scheduled to close on November 21, 2003. This notice extends the comment period until December 22, 2003. EPA will consider all comments received by this date in finalizing the document.

As announced in the **Federal Register** September 22, 2003, a panel of external experts, organized by Versar, Inc., a contractor to EPA, will review this document concurrent to the public comment period described in this notice.

Dated: November 14, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–29005 Filed 11–19–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7589–1]

AAA Metal Refinishing & Chrome Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has entered into an Agreement for Recovery of Past Cost (Agreement) at the AAA Metal Refinishing & Chrome Superfund Site (Site) located in Tampa, Hillsborough County, Florida, with Donald Garrity, and the Donald J. Garrity Revocable Trust. EPA will consider public comments on the Agreement until December 22, 2003. EPA may withdraw from or modify the Agreement should such comments disclose facts or considerations which indicate the Agreement is inappropriate, improper, or inadequate. Copies of the Agreement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Superfund Enforcement & Information Management Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ann Mayweather at the above address within 30 days of the date of publication.

Dated: October 31, 2003.

Rosalind Brown,

Chief, Superfund Information & Management Branch, Waste Management Division.

[FR Doc. 03–29002 Filed 11–19–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7589–2]

Madison County Sanitary Landfill Superfund Site; Notice Of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has entered into an Agreement for Recovery of Past and Future UAO Oversight Costs (Agreement) at the Madison County Sanitary Landfill Superfund Site (Site) located in Madison County, Florida, with ITT Industries, Inc. and ITT Thompson Industries, Inc. EPA will consider public comments on the Agreement for thirty days. EPA may withdraw from or modify the Agreement should such comments disclose facts or considerations which indicate the Agreement is inappropriate, improper, or inadequate. Copies of the Agreement

are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region 4, Superfund Enforcement & Information Management Branch, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comment may be submitted to Greg Armstrong at the above address on or before December 22, 2003.

Dated: November 7, 2003.

Anita Davis,

Acting Chief, Superfund Information & Management Branch, Waste Management Division.

[FR Doc. 03–29003 Filed 11–19–03; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, December 2, 2003, 9:30 a.m. Eastern Time.

PLACE: Clarence M. Mitchell Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Announcement of Notation Votes, and

2. Invited Panelists—Discussion of the EEOC Mediation Program and the Workplace Benefits of Mediation.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings.

FOR FURTHER INFORMATION CONTACT: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: November 18, 2003.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 03–29179 Filed 11–18–03; 12:19 pm]

BILLING CODE 6750–06–M

FEDERAL MARITIME COMMISSION

[Docket No. 03–13]

BAX Global Inc. v. Lykes Lines Limited, LLC.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (''Commission'') by BAX Global Inc. (''Complainant'') against Lykes Lines Limited, LLC (''Respondent''). Complainant contends that Respondent violated sections 10(b)(2)(A), 10(b)(4)(A), 10(b)(4)(E), and 10(d)(1) of the Shipping Act, 46 U.S.C. app. 1709, by: not providing service in accordance with its published tariff; engaging in unfair or unjustly discriminatory practices concerning rates or charges, and adjustment and settlement of claims; and failing to establish, observe and enforce just and reasonable regulations and practices. Specifically, Complainant alleges that Respondent violated the Shipping Act by collecting and refusing to refund demurrage charges that accrued while Complainant's cargo was detained by the U.S. Customs Service through no fault of the Complainant. Complainant requests that a hearing in this matter take place at the Complainant's Irvine, CA offices, and seeks an order finding Respondent to have violated the sections cited above and such other and further order(s) as the Commission determines to be proper, and awarding reparations for the unlawful conduct in the amount of $98,885 plus interest, attorney fees or such other sum at the Commission may determine to be proper.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this manner, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by November 15, 2004 and the final decision of the Commission shall be issued by March 15, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–28951 Filed 11–19–03; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 4, 2003.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Kenneth R. Lehman and Joan Abercrombie Lehman, Medway, Massachusetts; to acquire voting shares of Service Bancorp, Inc., Medway, Massachusetts, and thereby indirectly acquire voting shares of Strata Bank, Medway, Massachusetts.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Randall E. Vail, Lake Mills, Wisconsin; to acquire additional voting shares of The Greenwood's Bancorporation, Inc. Lake Mills, Wisconsin, and thereby indirectly acquire additional voting shares of The Greenwood's State Bank, Lake Mills, Wisconsin.

2. Raymond Abel, Mediapolis, Iowa; to retain control of Mediapolis Bancorporation, Mediapolis, Iowa, and thereby indirectly retain voting shares of Mediapolis Savings Bank, Mediapolis, Iowa.

3. Kenneth and Shirley Aspelmeier, Mediapolis, Iowa, together and with Lynne McBridge of Waterloo, Iowa, David Aspelmeier, Case Aspelmeier, and Samuel Aspelmeier, all of West

Branch, Iowa, also known as the Aspelmeier Family; to retain control of Mediapolis Bancorporation, Mediapolis, Iowa, and thereby indirectly acquire Mediapolis Savings Bank.

4. Donald and Carol Schmidgall, Hartzell and Marian Schmidgall, Jon and Julie Schmidgall, Ronald and Jane Schmidgall, Mediapolis, Iowa, also known as the Schmidgall Family; to retain control of Mediapolis Bancorporation, Mediapolis, Iowa, and thereby indirectly acquire Mediapolis Savings Bank, Mediapolis, Iowa.

Board of Governors of the Federal Reserve System, November 14, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–28940 Filed 11–19–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Office of Governmentwide Policy; Revision of the Standard Form 1103

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration, Office of Governmentwide Policy revised Standard Form 1103, U.S. Government Bill of Lading to reflect the new regulation on transportation payments and audits. This form is now used only for overseas and international shipments. All other shipments follow the procedures in 41 CFR 102–118.

SF 1103 (which new title is U.S. Government Bill of Lading—International and Domestic Overseas Shipments) is authorized for local reproduction. You can obtain the updated camera copy in two ways:

On the Internet. Address: *http://w3.gsa.gov//web/c/newform.nsf/MainMenu?OpenForm,* or;

From GSA, Forms Management, Attn.: Barbara Williams, (202) 501–0581.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581 for availability of the form and Ed Davis, General Services Administration (202) 208–7638 for any other information.

DATES: Effective November 20, 2003.

Dated: November 5, 2003.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 03–28939 Filed 11–19–03; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0229]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under the Prescription Drug User Fee Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection contained in the guidance for industry on Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under the Prescription Drug User Fee Act of 1992 (PDUFA).

DATES: Submit written or electronic comments on the collection of information by January 20, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under the Prescription Drug User Fee Act (OMB Control Number 0910–0518)

FDA is requesting OMB approval under the PRA (44 U.S.C. 3507) for the reporting and recordkeeping requirements contained in the guidance for industry entitled ''Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under Prescription Drug User Fee Act.'' This guidance discusses how the agency will implement a pilot program for frequent scientific feedback and interactions between FDA and applicants during the investigational phase of the development of certain Fast Track drug and biological products. Applicants are being asked to apply to participate in the pilot 2 program.

In conjunction with the June 2002 reauthorization of the PDUFA, FDA agreed to meet specific performance goals (PDUFA goals). The PDUFA goals include two pilot programs to explore the continuous marketing application

(CMA) concept. The CMA concept builds on the current practice of interaction between FDA and applicants during drug development and application review and proposes opportunities for improvement. Under the CMA pilot program, pilot 2, certain drug and biologic products that have been designated as Fast Track (i.e., products intended to treat a serious and/or life-threatening disease for which there is an unmet medical need) are eligible to participate in the program. Pilot 2 is an exploratory program that will allow FDA to evaluate the impact of frequent scientific feedback and interactions with applicants during the investigational new drug application (IND) phase. Under the pilot program, a maximum of one Fast Track product per review division in the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) will be selected to participate. This guidance provides information regarding the selection of participant applications for pilot 2, the formation of agreements between FDA and applicants on the IND communication process, and other procedural aspects of pilot 2. FDA will begin accepting applications for participation in pilot 2 on October 1, 2003.

The guidance describes one collection of information: Applicants who would like to participate in pilot 2 must submit an application (pilot 2 application) containing certain information outlined in the guidance. The purpose of the pilot 2 application is for the applicants to describe how their designated Fast Track product would benefit from enhanced communications between the FDA and the applicant during the product development process.

FDA's regulation at § 312.23 (21 CFR 312.23) states that information provided to the agency as part of an IND must be submitted in triplicate and with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs. Both 21 CFR part 312 and FDA Form 1571 have a valid OMB control number (OMB control number 0910–0014), which expires January 31, 2006.

In the guidance document, CDER and CBER ask that a pilot 2 application be submitted as an amendment to the application for the underlying product under the requirements of § 312.23; therefore, pilot 2 applications should be submitted to the agency in triplicate with Form FDA 1571. The agency recommends that a pilot 2 application be submitted in this manner for two reasons: (1) To ensure that each pilot 2 application is kept in the administrative file with the entire underlying application, and (2) to ensure that pertinent information about the pilot 2 application is entered into the appropriate tracking data bases. Use of the information in the agency's tracking databases enables the agency to monitor progress on activities.

Under the guidance, the agency asks applicants to include the following information in the pilot 2 application:

- Cover letter prominently labeled ''Pilot 2 Application;''
- IND number;
- Date of Fast Track designation;
- Date of the end-of-phase 1 meeting, or equivalent meeting, and summary of the outcome;
- A timeline of milestones from the drug or biological product development program, including projected date of NDA/biologic license application submissions;
- Overview of the proposed product development program for a specified disease and indication(s), providing information about each of the review disciplines (e.g., chemistry/manufacturing/controls, pharmacology/toxicology, clinical, clinical pharmacology, and biopharmaceutics);
- Rationale for interest in participating in pilot 2, specifying the ways in which development of the subject drug or biological product would be improved by frequent scientific feedback and interactions with FDA and the potential for such communication to benefit public health by improving the efficiency of the product development program; and
- Draft agreement for proposed feedback and interactions with FDA.

This information will be used by the agency to determine which Fast Track products are eligible for participation in pilot 2. Participation in this pilot program will be voluntary.

Based on the number of approvals for Fast Track designations and data collected from the review divisions and offices within CDER and CBER, FDA estimates that in fiscal year 2002, 109 drug product applications and 46 biological products had Fast Track designation. FDA anticipates that approximately 85 drug product applicants (respondents) and approximately 29 biological product applicants (respondents) will submit at least one pilot 2 application. Based on information collected from offices within CDER and CBER, the agency further anticipates that the total responses, i.e., the total number of applications received for pilot 2, will be 90 for drug products and 35 for biological products. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information to be submitting in a pilot 2 application in accordance with the guidance, is estimated to be approximately 80 hours. Based on FDA's experience, we expect it will take respondents this amount of time to obtain and draft the information to be submitted with a pilot 2 application. Therefore, the agency estimates that applicants will use approximately 10,000 hours to complete the pilot 2 applications.

On September 29, 2003, this guidance was approved on an emergency basis, which expires on March 30, 2004. This notice of request is to receive approval in the normal PRA process.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Pilot 2 Application	No. of Respondents	No. of Responses per Respondent	Total Responses	Hours per Response	Total Hours
CDER	85	1.06	90	80	7,200
CBER	29	1.20	35	80	2,800
Total					10,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 14, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–28984 Filed 11–19–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Open: December 2, 2003, 8 to 4.

Agenda: Program reports and presentations; Business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8141, Bethesda, MD 20892–8327, (301) 496–4218.

Name of Committee: National Cancer Advisory Board.

Closed: December 2, 2003, 4 to Recess.

Agenda: Review intramural program site visit outcomes; Discussion of confidential personnel issues.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8141, Bethesda, MD 20892–8327, (301) 496–4218.

Name of Committee: National Cancer Advisory Board.

Open: December 3, 2003, 8 to Adjournment.

Agenda: Program reports and presentations; Business of the Board.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8141, Bethesda, MD 20892–8327, (301) 496–4218.

This meeting is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's Home page: *deainfo.nci.nih.gov/advisory/ncab.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 13, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28982 Filed 11–19–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Transplant Immunology.

Date: December 10, 2003.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Multi-Center Clinical Trial on Liver Disease.

Date: December 12, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carolyn Miles, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *milesc@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 13, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28976 Filed 11–19–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Contract Review.
Date: December 2, 2003.
Time: 8:30 a.m. to 2 p.m.
Agenda: To review and evaluate contract proposals.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 435–5337.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Rapid Response to College Drinking—U18 Application.
Date: December 9, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 435–5337.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Training Grants Review—T32.
Date: December 11, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 435–5337.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Rapid Response to College Drinking—U18 application.
Date: December 16, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 435–5337.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of Fellowship Applications (F31 & F31).
Date: December 17, 2003.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.
Contact Person: Dorita Sewell, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892, (301) 443–2890, *dsewell@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: November 13, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28978 Filed 11–19–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Review of Research Service Awards—T32.
Date: November 21, 2003.
Time: 1:30 p.m. to 2:30 p.m..
Agenda: To review and evaluate grant applications.
Place: Room 820, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Yan Z Wang, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculosketetal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892, (301) 594–4957.

This notice is being published less that 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 13, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28979 Filed 11–19–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, ''Clinical Trials Network Pharmacy Support''.
Date: December 19, 2003.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate contract proposals.
Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 435–1438.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: November 13, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28980 Filed 11–19–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health. The Meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health, Review of Laboratory of Cellular and Molecular Regulation and Section on Molecular Neurobiology.

Date: November 30–December 2, 2003.

Time: 8: p.m. to 3 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 36, 9000 Rockville Pike, Room 1B07 Bethesda, MD 20892.

Contact Person: Susan Koester, PhD., Executive Secretary Associate Director for Science, Intramural Research Program, National Institute of Mental Health, NIH, Building 10, Room 4N222, MSC 1381, Bethesda, MD 20892–1381, 301–496–3501.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 13, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28981 Filed 11–19–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, 2RG1 SSS 8 03 Member Conflict.

Date: November 18, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul Parakkal, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–435–1176, *parakkap@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, EGFR Signaling in Human Tumors.

Date: November 18, 2003.

Time: 5:30 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG–1 SSS8 02 Member Conflict.

Date: November 26, 2003.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul Parakkal, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–435–1176, *parakkap@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review of Two Protein Biophysics Proposals.

Date: December 3, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sergei Ruvinov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tailored Intervention for Melanoma Patients' Families.

Date: December 4, 2003.

Time: 1 p.m. to 1:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee S. Mann, MA, JD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677, *mannl@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Care for HCT Caregivers: A Randomized Intervention Trial.

Date: December 5, 2003.

Time: 9:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee S. Mann, MA, JD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677, *mannl@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer and Internet Support Groups.

Date: December 8, 2003.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20814, (Telephone Conference Call).
Contact Person: Deborah L. Young-Hyman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 451–8008, *younghyd@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nursing Research: Child and Family.
Date: December 8, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Gertrude K. McFarland, FAAN, DNSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, (301) 435–1784, *msfariag@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cortex.
Date: December 9, 2003.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Global Health Research Initative Program for New Foreign Investigators.
Date: December 10, 2003.
Time: 8:30 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ping Fan, MD, PhD, Scientific Review Administrator, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5154, MSC 7840, Bethesda, MD 20892, (301) 435–1740, *fanp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, EAR.
Date: December 10, 2003.
Time: 10 a.m. to 11 a.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249, *kimmj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ELSI Member Conflict Review.
Date: December 10, 2003.
Time: 11 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Building 31, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, Buildign 31, Room B2B37, Bethesda, MD 20892, (301) 402–0838, *pozzattr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS Clinical and Metabolic Diseases.
Date: December 10, 2003.
Time: 11 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Abraham P. Bautista, MS, PhD, Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genomic Technology and Cytogenetics.
Date: December 10, 2003.
Time: 12 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Sally Ann Amero, PhD, Scientific Review, Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7826, Bethesda, MD 20892, 301–435–1159, *ameros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fungal Pathogenesis.
Date: December 11, 2003.
Time: 1:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 03: AIDS Vaccine R21 Applications.
Date: December 12, 2003.
Time: 9 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.
Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 13, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28983 Filed 11–19–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center, November 21, 2003, 9 a.m. to November 21, 2003, 12 p.m., which was published in the **Federal Register** on October 20, 2003, FR 68, 202–59946.

The meeting is being changed from open to partially closed. The meeting will be closed from 10:45 to 11:30 in accordance with the provisions set forth in section 522b(c)(6), Title 5 U.S.C., as amended for discussion of personal qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

Dated: November 13, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28977 Filed 11–19–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Office of the Chief Information Officer; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of Homeland Security (DHS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). The Office of the Chief Procurement Officer is soliciting comments concerning a proposed new collection, Post-Contract Award Information.

DATES: Written comments should be received on or before January 20, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Oversight, Attn: Angelie Jackson, 245 Murray Drive, Bldg. 410 (RDS), and Washington, DC 20528. Direct e-mail to *acquisition@dhs.gov*, and reference the information collection for post-award documents. Comments should also be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of Homeland Security.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Oversight, Attn: Angelie Jackson, 245 Murray Drive, Bldg. 410 (RDS), Washington, DC 20528; (202) 692–4211. Direct e-mail to *acquisition@dhs.gov*, and reference the information collection for post-award documents.

SUPPLEMENTARY INFORMATION:

Title: Post-Contract Award Information.

• This date is entered by the Office of the Federal Register's Scheduling Office.

Abstract: This notice provides a request to include a designated OMB Control Number on information requested from contractors. The information requested is specific to each contract, and is required for DHS, including its Organizational Elements to evaluate properly the progress made and/or management controls used by contractors providing supplies or services to the Government and to determine contractors' compliance with the contracts, in order to protect the Government's interest.

Current Actions: New Submission.

Type of Review: New collection.

Affected Public: Businesses and individuals contracting with the DHS.

Estimated Number of Respondents: 5,574.

Estimated Time per Respondent: 14 hours.

Estimated Total Annual Burden Hours: 78,036.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Steve Cooper,

Chief Information Officer.

[FR Doc. 03–29049 Filed 11–19–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Chief Information Officer

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of Homeland Security (DHS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Office of the Chief Procurement Officer, Acquisition Policy and Oversight within DHS is soliciting comments concerning a proposed new collection, Solicitation of Proposal Information for Award of Public Contracts.

DATES: Written comments should be received on or before January 20, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Oversight, Attn: Angelie Jackson, 245 Murray Drive, Bldg. 410 (RDS), Washington, DC 20528. Direct e-mail to *acquisition@dhs.gov,* and reference the information collection for pre-award documents. Comments should also be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of Homeland Security.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Oversight, Attn: Angelie Jackson, 245 Murray Drive, Bldg. 410 (RDS), Washington, DC 20528; (202) 692–4211. Direct e-mail to *acquisition@dhs.gov,* and reference the information collection for pre-award documents.

SUPPLEMENTARY INFORMATION:

Title: Solicitation of Proposal Information for Award of Public Contracts.

Abstract: This notice provides a request to include a designated OMB Control Number on information requested from prospective contractors. The information requested is specific to each acquisition solicitation, and is required for DHS to evaluate properly the capabilities and experiences of potential contractors who desire to provide the supplies and/or services to be acquired. Evaluation will be used to determine which proposals most benefit the Government.

Current Actions: New submission.

Type of Review: New collection.

Affected Public: Businesses and individuals seeking contracting opportunities with the DHS.

Estimated Number of Respondents: 7,584.

Estimated Time per Respondent: 14 hours.

Estimated Total Annual Burden Hours: 106,176.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Steve Cooper,

Chief Information Officer.

[FR Doc. 03–29050 Filed 11–19–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Chief Information Officer

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of Homeland Security (DHS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Office of the Chief Procurement Officer is soliciting comments concerning a proposed new collection, Regulation on Agency Protests.

DATES: Written comments should be received on or before January 20, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Oversight, Attn: Angelie Jackson, 245 Murray Drive, Bldg. 410 (RDS), and Washington, DC 20528. Direct e-mail to *acquisition@dhs.gov,* and reference the information collection for protests. Comments should also be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of Homeland Security.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Oversight, Attn: Angelie Jackson, 245 Murray Drive, Bldg. 410 (RDS), Washington, DC 20528; (202) 692–4211. Direct e-mail to *acquisition@dhs.gov,* and reference the information collection for protests.

SUPPLEMENTARY INFORMATION:

Title: Regulation on Agency Protests.

Abstract: This notice provides a request to include the designated OMB Control Number on information requested from contractors. The information is requested from contractors so that the Government will be able to evaluate protests effectively and provide prompt resolution of issues in dispute when contractors file agency level protests.

Current Actions: New Submission.

Type of Review: New collection.

Affected Public: Businesses and individuals seeking and who are currently contracting with the DHS.

Estimated Number of Respondents: 54.

Estimated Total Annual Burden Hours: 108.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Steve Cooper,

Chief Information Officer.

[FR Doc. 03–29051 Filed 11–19–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Chief Information Officer; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of Homeland Security (DHS), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Office of the Chief Procurement Officer is soliciting comments concerning five proposed new collections. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces five information collection requests. Before submitting the package to the Office of Management and Budget (OMB), the Department of Homeland Security is soliciting comments on specific aspects of the collection as described below. The ICR describes the nature of the information collection and its expected cost and burden.

Comments are invited on: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval.

DATES: Comments must be submitted on or before January 20, 2004.

ADDRESSES: Submit written comments identified by the DHS form numbers, by email to *acquisition@dhs.gov* or by mail to the Department of Homeland Security, (OCPO, Acquisition Policy & Oversight), Attn: Angelie Jackson, 2456 Murray Drive, Bldg. 410(RDS), Washington, DC 20528. Comments should also be submitted to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of Homeland Security.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) should be directed to the Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Oversight, Attn: Angelie Jackson, 245 Murray Drive, Bldg. 410 (RDS), Washington, DC 20528; (202) 692–4211. Direct e-mail to *acquisition@dhs.gov,* and reference the relative form number.

SUPPLEMENTARY INFORMATION:

Title: Information collection authority under Homeland Security Acquisition Regulation (HSAR). Form(s): DHS Form 0700–01, Cumulative Claim and Reconciliation Statement; DHS Form 0700–02, Contractor's Assignment of Refunds, Rebates, Credits, and other Amounts; DHS Form 0700–03, Contractor's Release; DHS Form 0700–04, Employee Claim for Wage Restitution; and DHS Form 0700–05,

Contractor Report of Government Property.

Abstract: The requested approval of the new control number covers the information and collection requirements contained in (HSAR) 48 CFR Chapter 30 including the following forms: DHS Form 0700–01, DHS Form 0700–02, DHS Form 0700–03, DHS Form 0700–04, and DHS Form 0700–05. These forms will be used by contractors and/or contract employees during contract administration.

Annual Estimated Burden: The annual estimated burden is 3,428 hours.

Nature of burden	Total annual paper burden (total respondents × frequency × response time) = burden
* Submit forms to provide the data required by various FAR clauses to facilitate contract closeout:	
DHS Form 0700–01	493 × 1 × 1 = 493
DHS Form 0700–02	493 × 1 × 1= 493
DHS Form 0700–03	493 × 1 × 1= 493
* Submit claim form for non-payment of wages. Information needed to seek restitution, via the General Accounting Office for contractor employees:	
DHS Form 0700–04	22 × 1 × 1 = 22
* Submit annual reports of Government furnished or contractor acquired property. Ensures the proper use, accountability, and maintenance of Government-owned property:	
DHS Form 0700–05	624 × 1 × 1 = 624
* Submit report on results of physical inventory of Government property. Ensures all discrepancies in Government owned property are reported:	
DHS Form 0700–05	624 × 1 × 1 = 624
* Provide the quantity and unit cost of each item of Government property:	
DHS Form 0700–05	624 × 1 × 1 = 624

The asterisk (*) denotes that the requested information is, in the strictest sense of the word, contract administration data. It is not data of a general nature solicited from the public at large. This information is furnished to the Government by contractors who are being paid to meet all the terms and conditions of the contract.

Current Actions: New Submission.

Type of Review: New collection.

Affected Public: Businesses and individuals seeking and who are currently contracting with the DHS.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Steve Cooper,

Chief Information Officer.

[FR Doc. 03–29052 Filed 11–19–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–16506]

Chemical Transportation Advisory Committee and Towing Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee of the Chemical Transportation Advisory Committee (CTAC) on Hazardous Cargo Transportation Security and the Towing Safety Advisory Committee (TSAC) Working Group on Ammonium Nitrate will meet jointly to prepare comments to the Coast Guard regarding the potential addition of dry bulk ammonium nitrate and ammonium nitrate fertilizers that are classified as oxidizers to the definition of Certain Dangerous Cargoes. These meetings will be open to the public.

DATES: The CTAC Subcommittee on Hazardous Cargo Transportation Security and the TSAC Working Group on Ammonium Nitrate will meet on Tuesday, December 2, 2003, from 1 p.m. to 4 p.m., Wednesday, December 3, 2003, from 8 a.m. to 4 p.m. and Thursday, December 4, 2003 from 8 a.m. to 4 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before November 24, 2003. Requests to have a copy of your material distributed to each member of the Subcommittee and Working Group should reach the Coast Guard on or before November 24, 2003.

ADDRESSES: The Subcommittee on Hazardous Cargo Transportation Security and the TSAC Working Group on Ammonium Nitrate will meet at the Bayer Corporation Building, Robinson Plaza 2, 100 Bayer Road, Pittsburgh PA 15205. Send written material and requests to make oral presentations to Commander Robert J. Hennessy, Executive Director of CTAC, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Commander Robert J. Hennessy, Executive Director of CTAC, or Mr. Gerald Miante, Assistant Executive Director of TSAC, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Subcommittee Meeting on December 2–3, 2003

Discuss potential impact to industry if dry bulk ammonium nitrate and ammonium nitrate fertilizers that are classified as oxidizers are added to the definition of Certain Dangerous Cargoes.

Agenda of Subcommittee Meeting on December 4, 2003

Prepare draft of the final report to CTAC and TSAC.

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished. At the discretion of the Chair, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director and submit written material. If you would like a copy of your material distributed to each member of the Committee in advance of a meeting, please submit 25 copies to the Executive Director (see **ADDRESSES** and **DATES**).

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone the Executive Director as soon as possible.

Dated: November 12, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 03–29027 Filed 11–19–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by December 22, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–077020

Applicant: Barbara Watson, East New Market, MD.

The applicant requests a permit to import the sport-hunted of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–079033

Applicant: U.S. Fish and Wildlife Service/Cabeza Prieta National Wildlife Refuge, Ajo, AZ.

The applicant requests a permit to import up to 15 live Sonoran pronghorn antelope (*Antilocapra americana sonoriensis*) from the wild in Mexico for the purpose of enhancement of the survival of the species and scientific research in accordance with the U.S. Fish and Wildlife Service's Sonoran pronghorn recovery plan. This notification covers activities to be conducted by the applicant over a five-year period.

PRT–077487, 077489

Applicant: Steve Martin's Working Wildlife, Frazier Park, CA.

The applicant requests permits to export and re-import captive born tigers (*Panthera tigris*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: 077487, Asia, and 077489, Rhia. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

PRT–079014

Applicant: Virginia Tech, Department of Biomedical Sciences & Pathobiology, Blacksburg, VA.

The applicant requests a permit to import non-invasively collected samples of urine, hair, and feces of chimpanzee (*Pan troglodytes*) from Mahale Mountains National Park, Tanzania for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations keep governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete application or requests for a public hearing on this application should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

PRT–079001

Applicant: Ralph F. Duceour, Pleasanton, CA.

The applicant requests a permit to import a polar bear (Ursus maritimus) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Dated: October 31, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–28987 Filed 11–19–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application of Endangered Species Recovery Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We announce our receipt of an application to conduct certain activities pertaining to enhancement of survival of endangered species.

DATES: Written comments on this request for a permit must be received December 22, 2003.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director-Ecological Services, U.S. Fish and Wildlife Service, PO Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; telephone 303–236–7400; facsimile 303–236–0027.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with this application are available for review, subject to the

requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone 303–236–7400.

SUPPLEMENTARY INFORMATION: The following applicant has requested issuance of an enhancement of survival permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Applicant: Jeff Hagener, Montana Department of Fish, Wildlife and Parks, Helena, Montana, TE–077698.

The applicant requests a permit for the future take of Westslope cutthroat trout (*Oncorhynchus clarki lewsi*) in conjunction with recovery in Montana. The permit application includes a proposed Candidate Conservation Agreement with Assurances, in which the applicant voluntarily implements conservation activities to benefit the Westslope cutthroat trout. Candidate Conservation Agreements with Assurances encourage implementation of conservation efforts and reduce threats to species that are proposed for listing under the Endangered Species Act.

Dated: October 21, 2003.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 03–28973 Filed 11–19–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Stockbridge-Munsee, Casino, Sullivan County, NY

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs, with the cooperation of the Stockbridge-Munsee Community, Band of Mohican Indians (Tribe), intends to gather the information necessary for preparing an Environmental Impact Statement (EIS) for the proposed Stockbridge-Munsee Casino, Town of Thompson, Sullivan County, New York. The purpose of the proposed action is to help the Stockbridge-Munsee Community meet tribal economic needs and to serve as one part of the land claim settlement between the Tribe and the State of New York. This notice also announces a public scoping meeting to identify potential issues and content for inclusion in the EIS.

DATES: Written comments on the scope and implementation of this proposal must arrive by December 19, 2003. The public scoping meeting will be held December 4, 2003, at 7 p.m.

ADDRESSES: You may mail, hand carry or telefax written comments to, Franklin Keel, Regional Director, Eastern Regional Office, Bureau of Indian Affairs, 711 Stewarts Ferry Pike, Nashville, Tennessee 37214, telefax (615) 467–1701.

The public scoping meeting will be held at the Sullivan County Government Center, Legislative Meeting Room, 2nd Floor, 100 North Street, Monticello, New York 12701.

FOR FURTHER INFORMATION CONTACT: Jim Kardatzke, (615) 467–1675.

SUPPLEMENTARY INFORMATION: The Tribe proposes that 333 acres of land into trust on behalf of the Tribe, on which the Tribe, through a development agreement with trading Cove New York, proposes to build a casino. The property is located on County Highway 161 at State Route 17, Exit 107, in the town of Thompson, Sullivan County, New York. The project would consist of a 584,000 square foot casino and supporting facilities, including food and beverage outlets, retail facilities, a service station, a warehouse and parking, to be constructed entirely on the proposed trust acquisition. In a second phase of the proposed project, a hotel would be built immediately adjacent to the casino.

The Tribe prepared and submitted to the BIA an Environmental Assessment (EA) on the proposed action in February, 2001, that was released for public comment in December, 2002. The BIA has withdrawn this EA and elected to complete an EIS. The EA will, however, serve as a part of the scoping process for the EIS.

Issues identified to date to be addressed in the EIS include, but are not limited to the following:

- Soil erosion and sediment control—design of construction controls to manage exposed soils.
- Stormwater management—design of stormwater controls to manage runoff from the developed area from both a water quality and quantity standpoint.
- Wetlands—minimization and avoidance of direct or indirect wetland impacts and mitigation plans for unavoidable impacts.
- Wildlife and fisheries—measures to avoid and minimize impacts to species, including listed species.
- Historical and archeological resources—identification and avoidance of cultural resources.
- Traffic—analysis of future traffic and proposal of adequate mitigation.
- Air quality—analysis of local and regional air quality impacts from mobile sources.
- Socio-economic—project effects on local economy (including population and housing) and public services.
- Utilities—provision of water supply and wastewater treatment to the project and how provision of those services may affect existing capacities.
- Cumulative effects—review of cumulative environmental impacts of the project when considered together with other reasonably foreseeable development projects in the region.
- Alternatives to the preferred alternative.

The range of issues and alternatives addressed in the EIS may be further expanded based on comments received in response to this notice, or to the scoping meeting announced in this notice.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: November 12, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 03–29087 Filed 11–19–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–PB–24 1A]

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act; OMB Approval Number 1004–0194

The Bureau of Land Management (BLM) has sent a request to extend the current information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On July 30, 2002, the BLM published a notice in the **Federal Register** (67 FR 49369) requesting comment on this information collection. The comment period ended on September 30, 2002. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0194), at OMB–OIRA via facsimile to (202) 395–6566 or e-mail to *OIRA_DOCKET@omb.eop.gov.* Please provide a copy of your comments to the Bureau of Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the property functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Surface Management Activities under the General Mining Law of 1872 (43 CFR 3809).

OMB Approval Number: 1004–0194.

Bureau Form Numbers: 3809–1, 3809–2, 3809–4, 3809–4a, and 3809–5.

Abstract: The Bureau of Land Management (BLM) collects and uses the information to manage the surface management activities under the General Mining Law of 1872 and the regulations at 43 CFR 3809.

Frequency: Occasional.

Description of Respondents: Individuals, groups, or corporations.

Estimated Completion Time:

Information collected	Public burden hours/action	Estimated number actions	Total burden hours	Total public burden cost
Notices (nonform)				
Small Exploration	16	193	3,088	$231,600
Medium Exploration	48	193	9,264	694,800
Sub Total		386	12,352	926,400
Plan of Operations				
Exploration	48	15	720	64,800
Placer	160	67	10,720	964,800
Open Pit	480	45	21,600	1,944,000
Industrial	160	8	1,280	115,200
Underground	160	7	1,120	100,800
Milling	160	8	1,280	115,200
Sub Total		150	36,720	3,304,800
NEPA				
Exploration	320	15	4,800	336,000
EA (Simple)	320	82	26,240	1,836,800
EA (Standard)	890	45	40,050	3,600,000
EIS	2,480	8	19,840	4,075,600
Sub Total		150	90,930	9,848,400
Section 106—NHPA Forms	30	150	4,500	744,490
Financial Guarantee				
Notices	[1] 8	386	51	2,040
Plans of Operations	[1] 8	150	21	840
Bond/Surety Riders or Change of Operator	[1] 8	180	24	960

Information collected	Public burden hours/action	Estimated number actions	Total burden hours	Total public burden cost
Sub Total		716	96	3,840
Grand Total		1,552	144,598	14,827,930

[1] Minutes.

Annual Responses: 1,552.

Application Fee Per Response: 0.

Annual Burden Hours: 144,598.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: November 6, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–29000 Filed 11–19–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1430–ES; N–43020]

Notice of Termination of Recreation and Public Purposes Act Classification, Pershing County, NV

SUMMARY: This notice terminates the segregative effect of Recreation & Public Purposes Act classification as it pertains to the following described 40 acres of public lands: Mount Diablo Meridian, T. 27 N., R. 31 E., Section 20: NE¼NE¼, Nevada. On May 21, 1987, 40 acres were classified for an application under the Recreation & Public Purposes Act for a lease/conveyance to the Lovelock Racing Association for a stock car racing track, motocross motorcycle track, and BMX bicycle track. No further action was taken.

The land is hereby open to the operation of the public land and mining laws, subject to valid existing rights. The segregative effect of the classification order is removed upon publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Realty Specialist Barbara Kehrberg, Bureau of Land Management, Winnemucca Field Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445, (775) 623–1500.

Dated: October 14, 2003.

Terry Reed,

Field Manager.

[FR Doc. 03–28962 Filed 11–19–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–110–1220–BG]

Closure To Use of Public Lands in Colorado

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of closure.

SUMMARY: The Bureau of Land Management (BLM) gives notice that the area known locally as the South Face of China Wall in Colorado is closed to discharging of firearms.

EFFECTIVE DATE: This closure is effective October 15, 2003, and remains in effect until rescinded or modified by the Field Office Manager.

ADDRESSES: Maps showing the location of and information pertaining to the above closure are available at the BLM, White River Field Office, 73544 Highway 64, Meeker, Colorado 81641.

SUPPLEMENTARY INFORMATION: Under 43 CFR 8364, the following area (South Face of China Wall) is closed to discharging of firearms:

Township 1 North, Range 94 West, 6th Principal Meridian
Section 15: E½SE¼NE¼, E½SE¼, SW¼SE¼
Section 21: E½E½SE¼, SE¼SE¼NE¼
Section 22: NW¼
Containing approximately 200 acres more or less of public land.

This closure is necessary to protect the public in general, more specifically people and property located adjacent to the area identified in the above legal land description and the boundary of the Town of Meeker. The Town of Meeker and Rio Blanco County officials support this closure.

FOR FURTHER INFORMATION CONTACT: For further information contact Chris Ham, Recreation Specialist, or Kent E. Walter, Field Office Manager, BLM, White River Field Office, 73544 Highway 64, Meeker, Colorado 81641, at (970) 878–3800.

Dated: September 30, 2003.

Kent E. Walter,

Field Office Manager.

[FR Doc. 03–28964 Filed 11–19–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1040–JH, NV–030–1220–MA; Closure Notice No. NV–030–04–001]

Emergency Closure of Federal Lands, Lyon County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure in Lyon County, Nevada.

SUMMARY: Notice is hereby given that certain public lands at the west end of Wilson Canyon, along the West Walker River in Lyon County, Nevada, are closed to camping and all motorized vehicles. This closure is necessary in order to prevent further adverse effects to soils, vegetation, water resources, visual resources, wildlife, and wildlife habitat. It will remain in effect until such time as a plan amendment to the Carson City Consolidated Resource Management Plan can be completed to address long-term management of public lands in Wilson Canyon. These lands are in close proximity to private property, a well-traveled State highway, and an area popular with off-highway vehicle enthusiasts. Some resource damage already has taken place and the potential for additional adverse effects occurring as a result of camping and unrestricted off-highway vehicle use in the riparian zone is substantial and significant.

EFFECTIVE DATE: This closure goes into effect November 20, 2003, and will remain in effect until the Manager, Carson City Field Office, determines it is no longer needed.

FOR FURTHER INFORMATION CONTACT: John O. Singlaub, Manager, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Telephone (775) 885–6000.

SUPPLEMENTARY INFORMATION: The authorities for the closure and restrictions are 43 CFR 8341.2 and 43 CFR 8364.1. Any person who fails to comply with a closure or restriction order is subject to arrest and fines in accordance with applicable provisions of 18 U.S.C. 3571 and/or imprisonment not to exceed 12 months. This order applies to all forms of camping and

motorized vehicle use excluding (1) any emergency or law enforcement vehicle while being used for emergency purposes, and (2) any vehicle whose use is expressly authorized in writing by the Manager, Carson City Field Office.

The public lands affected by the closure order are located north of Nevada Highway 208 at the west end of Wilson Canyon and include certain public lands within:

Mt. Diablo Meridian

T.11N., R.24E.
Sec. 24, N½ NE¼,
T.11N., R.25E.
Sec. 18, Lot 4, SE¼ SW¼ and S½ SE¼
Sec. 19, Lot 1, N½ NE¼ and NE¼ NW¼.

The public lands affected by the restriction order constitute approximately 51 acres.

These lands are depicted on maps posted in the Carson City Field Office and at the area affected by the emergency closure. Copies of these maps also may be obtained from the Field Office.

Dated: October 2, 2003.

John O. Singlaub,

Manager, Carson City Field Office.

[FR Doc. 03–28961 Filed 11–19–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–04–1020–PH]

New Mexico Resource Advisory Council, Notice of Call for Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for a vacant position on the Bureau of Land Management (BLM) New Mexico Resource Advisory Council (RAC). The RAC provides advice and recommendations to BLM on land use planning and management of the public lands within New Mexico. Public nominations will be considered until December 22, 2003.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of land administered by BLM. Section 309 of FLPMA directs the Secretary to select 15-member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The vacant position for the New Mexico RAC is Category 1 representing any holders of Federal grazing permits and representatives of energy and mineral development, timber industry, transportation or rights-of-way, off-highway vehicle use, and commercial recreation.

Individuals may nominate themselves or others. Nominees must be residents of New Mexico. Nominees should have demonstrated a commitment to collaborative resource decisionmaking. Letters of reference must accompany all nominations from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

FOR FURTHER INFORMATION CONTACT: Theresa Herrera, New Mexico State Office, Office of External Affairs, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, (505) 438–7517.

Dated: October 20, 2003.

Jesse J. Juen,

Associate State Director.

[FR Doc. 03–28959 Filed 11–19–03; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820–PH]

Notice of Public Meeting: Northeast California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U. S. Department of the Interior, Bureau of Land Management (BLM) Northeast California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Thursday and Friday, January 22 and 23, 2004, in the Conference Room of the Bureau of Land Management's Surprise Field Office, 602 Cressler St., Cedarville, California. On Jan. 22, the meeting begins at noon and adjourns for the day at 5 p.m. On January 23, the meeting begins at 8 a.m. and ends at noon. Time for public comment will be set aside at 11 a.m. January 23.

FOR FURTHER INFORMATION CONTACT: Tim Burke, Field Manager, BLM Alturas Field Office, 708 West 12th St., Alturas, CA, (530) 233–4666; or BLM Public Affairs Officer Joseph J. Fontana, telephone (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northeast California and Northwest Nevada. At this meeting, agenda topics will include development of a drought policy for the Alturas, Eagle Lake and Surprise field offices, pre-scoping for development of a western juniper management strategy, land use planning and an update on a proposed conservation easement for the Kramer Ranch. The RAC will also hear status reports from the managers of the Eagle Lake, Alturas and Surprise field offices. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: November 14, 2003.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 03–28974 Filed 11–19–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820–PO]

Notice of Public Meeting: Northwest California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U. S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Thursday, Feb. 5, 2004 at the BLM Ukiah Field Office, 2550 North State St.,

Ukiah, California, and Friday, Feb. 6, 2004, at the Point Arena Lighthouse, 45500 Lighthouse Rd., Point Arena, California. On Feb. 5, the meeting begins at 10 a.m. at the Ukiah Field Office for a field tour to the Stornetta Ranch property near Point Arena. On Feb. 6, the meeting begins at 8 a.m. in the museum of the Point Arena Lighthouse. Time for public comments has been set aside for 11 a.m.

FOR FURTHER INFORMATION CONTACT: Rich Burns, Field Manager, BLM Ukiah Field Office, 2550 North State St., Ukiah, California, (707) 468–4000; or BLM Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. At this meeting, agenda topics will include review of the draft management plan for the King Range National Conservation Area, an update on development of a land use plan for the California Coastal National Monument, and reports on BLM's Sustaining Working Landscapes initiative and development of a sage grouse conservation strategy. The RAC members will also hear status reports from the Arcata, Redding and Ukiah field office managers. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and lunch. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: November 14, 2003.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 03–28975 Filed 11–19–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NMNM 109118]

Public Land Order No. 7591; Withdrawal of Lands for the Federal Law Enforcement Training Center; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 1,920.80 acres of lands from location and entry under the United States mining laws, for a period of 20 years, for protection, operation and maintenance of the Department of Homeland Security's Federal Law Enforcement Training Center.

EFFECTIVE DATE: November 20, 2003.

FOR FURTHER INFORMATION CONTACT: Russ Sorensen, BLM Carlsbad Field Office, 620 East Greene, Carlsbad, New Mexico 88220, (505) 234–5963.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described lands are hereby withdrawn from location and entry under the United States mining laws, 30 U.S.C. Ch. 2 (2000), for the Department of Homeland Security to protect, operate, and maintain their Federal Law Enforcement Training Center:

New Mexico Principal Meridian

T. 16 S., R. 25 E.,
Sec. 27;
Sec. 28, E½E½;
Sec. 33, E½NE¼ and SE¼;
Sec. 34, NW¼ and SW¼;
Sec. 35, S½S½.
T. 17 S., R. 25 E.,
Sec. 3, lots 3 and 4, S½NW¼, and N½N½S½;
Sec. 4, lots 1 and 2, and S½NE¼.

The areas described aggregate 1,920.80 acres in Eddy County.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: October 30, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–28965 Filed 11–19–03; 8:45 am]

BILLING CODE 4810–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 670 1232 FH]

Notice of Proposed Supplementary Rules on Public Land in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplementary rules for payment of special recreation permit fees immediately upon arrival at the Imperial Sand Dunes Recreation Area.

SUMMARY: The Bureau of Land Management (BLM)'s El Centro Field Office is proposing supplementary rules. These rules will apply to the public lands within the El Centro Resource Field Office, California Desert District, Imperial County, California. The supplementary rules require the payment of special recreation permit fees immediately upon arrival. Any primary vehicle while on public lands within the Planning Area Boundary or the recreation area must display a weekly or seasonal permit for the areas described above. The rules are needed in order to enhance the Imperial Sand Dunes Recreation Fee Program and to provide revenue for resource protection and for public health and safety.

DATES: You should submit your comments by December 22, 2003. In developing final rules, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES:

Mail: Bureau of Land Management, El Centro Field Office, 1661 S. 4th St., El Centro, CA 92243.

Personal or messenger delivery: Bureau of Land Management, El Centro Field Office, 1661 S. 4th St., El Centro, CA 92243.

Internet e-mail: *Neil_Hamada@ca.blm.gov.*

FOR FURTHER INFORMATION CONTACT: Neil Hamada, Dunes Manager, Imperial Sand Dunes Recreation Area, Bureau of Land Management, El Centro Field Office, 1661 S. 4th St., El Centro, CA 92243 , (760) 337–4451.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures.
II. Discussion of the Supplementary Rules.
III. Procedural Matters.

I. Public Comment Procedures

Electronic Access and Filing Address

You may view an electronic version of these proposed supplementary rules at BLM's Internet Home page: *http://www.blm.gov.* You may also comment via the Internet to (insert local comment Web site). Please also include ''Attention: {insert RIN number}'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (phone number).

Written Comments

Written comments on the proposed supplementary rules should be specific, confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal you are addressing. BLM may not necessarily consider or include in the Administrative Record for the final supplementary rules comments BLM receives after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

Comments, including names, streets addresses, and other contact information of respondents, will be available for public review at El Centro Field Office, 1661 S. 4th St., El Centro, CA 92243, during regular business hours (7:45 a.m. to 3:45 p.m.), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, Fax or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Discussion of the Supplementary Rules

The El Centro Field Office is proposing supplementary rules for the Imperial Sand Dunes Recreation Area (ISDRA), as provided for in the Visitor Services regulations of the Bureau of Land Management (BLM). The supplementary rules would require the payment of special recreation permit fees immediately upon arrival. Any primary vehicle while on public lands within the Planning Area Boundary or the recreation area would be required to display a weekly or seasonal permit for the areas described below. The supplementary rules are not inconsistent with the preferred alternative in the Imperial Sand Dunes Recreation Area Management Plan. Special Recreation Permit fees were initially implemented in January 1999. Supplementary rules were published on December 17, 1998 (63 FR 69646), to establish those fees. The new supplementary rules only clarify the existing rules, and are intended to be appended to the 1998 supplementary rules. They are written only to clarify when the public pays their special recreation permit fee. The rules are consistent with the proposed Imperial Sand Dunes Recreation Area Management Plan (RAMP). The RAMP's objectives are to provide a safe and enjoyable experience to the public visiting the dunes and the BLM employees and volunteers maintaining the natural resources. The goals are to reduce or eliminate assaults, drug use, driving under the influence of drugs or alcohol, theft, and any unruly behavior that may lead to any of these, and to encourage users to obey all safety rules and regulations, so as to prevent accidents. The implementation of special recreation permit fees in the dunes will provide the resources necessary to meet these goals and objectives.

These supplementary rules will apply to the public lands within the area identified in the Imperial Sand Dunes Recreation Area Management Plan as the Planning Area Boundary, Mammoth Wash Management Area, North Algodones Dunes Wilderness Management Area, Gecko Management Area, Glamis Management Area, Adaptive Management Area, Ogilby Management Area, Dune Buggy Flats Management Area, and the Buttercup Management Area. BLM has determined these supplementary rules necessary to enhance the Imperial Sand Dunes Recreation Fee Program and to provide revenue for resource protection and for public health and safety.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. The supplementary rules will not have an effect of $100 million or more on the economy. They are not intended to affect commercial activity, but merely clarify when a fee that is already charged must be paid.

The supplementary rules will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. The proposed supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules will not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor will they raise novel legal or policy issues.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make the proposed supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rules clearly stated?

(2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce their clarity?

(4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the proposed supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM has determined that these proposed supplementary rules requiring the payment of special recreation permit fees immediately upon arrival at Imperial Sand Dunes Recreation Area and certain other locations are purely administrative in nature. Therefore, they are categorically excluded from environmental review under section

102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. In addition, the proposed rules do not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM, Chapter 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions that do not individually or cumulatively have a significant effect on the human environment, that have been found to have no such effect in procedures adopted by a Federal agency, and for which neither an environmental assessment nor an environmental impact statement is required.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The supplementary rule does not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. It merely makes clear when a fee that is already charged must be paid. Therefore, BLM has determined under the RFA that the proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

The supplementary rules do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). Again, the supplementary rules merely clarify when a fee that is already charged must be paid. The supplementary rules have no effect on business—commercial or industrial—use of the public lands.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. They merely clarify when a fee that is already charged must be paid. Therefore, the Department of the Interior has determined that the proposed rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed rules will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. They merely clarify when a fee that is already charged must be paid. Therefore, in accordance with Executive Order 13132, BLM has determined that these proposed rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that these proposed rules would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments [Replaces Executive Order 13084]

In accordance with Executive Order 13175, we have found that the final supplementary rules do not include policies that have tribal implications. They merely clarify when a fee that is already charged must be paid.

Paperwork Reduction Act

These supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of the supplementary rules is Chief Area Ranger Robert Zimmer, Bureau of Land Management, El Centro Field Office.

Supplementary Rules for Payment of Special Recreation Permit Fees Immediately Upon Arrival at the Imperial Sand Dunes Recreation Area

Under 43 CFR 8365.1–6, the Bureau of Land Management will enforce the following supplementary rules on the public lands within the area identified as defined in the Imperial Sand Dunes Recreation Area Management Plan as the Planning Area Boundary, Mammoth Wash Management Area, North Algodones Dunes Wilderness Management Area, Gecko Management Area, Glamis Management Area, Adaptive Management Area, Ogilby Management Area, Dune Buggy Flats Management Area, and the Buttercup Management Area. These lands are within the Imperial Sand Dunes Special Recreation Management Area within the lands managed by the El Centro Field Office of the California Desert District, California. You must follow these rules:

Sec. 1 When must visitors pay the special recreation permit fees?

You must pay the special recreation permit fees immediately upon arrival.

Sec. 2 How must permits be displayed?

Any primary vehicle while on public lands within the Planning Area Boundary or the recreation area must display a weekly or seasonal permit for the areas described above.

Sec. 3 What are the penalties for violations of these rules?

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7 if you violate any of these supplementary rules on public lands within the boundaries established in the rules, you may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Dated: October 7, 2003.

Mike Pool,

State Director.

[FR Doc. 03–28960 Filed 11–19–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 80808]

Notice of Proposed Withdrawal; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed withdrawal.

SUMMARY: The U.S. Department of Energy has filed an application to withdraw approximately 11,985 acres of public land managed by the Bureau of Land Management for two alternative disposal cell sites, for the Moab Mill Site uranium mill tailings, and four alternative borrow material areas in Grand County, Utah. The Department of Energy is preparing an environmental impact statement to determine whether the uranium mill tailings will be left in place or moved to one of the two disposal sites identified on public lands,

and which, if any, of the borrow areas will be needed. Should relocation be the chosen alternative, the actual amount of land to be withdrawn for the repository would be approximately two to three sections (1,280 to 1,920 acres.)

This notice segregates the lands for up to two years from location and entry under the United States mining laws, including the mineral leasing laws, subject to valid existing rights. In accordance with the regulations contained in 43 CFR 4110.4–2(b), this notice serves as the two-years' prior notification to grazing permittees should the public lands below be selected for the Moab Mill Site Remediation Project and become unavailable for livestock grazing.

DATES: Comments must be received on or before February 18, 2004.

ADDRESSES: Comments should be sent to the Moab Field Manager, 82 East Dogwood Avenue, Moab, Utah 84532.

FOR FURTHER INFORMATION CONTACT: Mary von Koch, Realty Specialist, Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532, at (435) 259–2128.

SUPPLEMENTARY INFORMATION: On September 5, 2003, an application was received from the Department of Energy to withdraw the following described public lands from location and entry under the United States mining laws, including the mineral leasing laws, subject to valid existing rights:

Salt Lake Meridian

Crescent Junction Disposal Site and Borrow Area

T. 21 S., R. 19 E.,
Sec. 22, those lands south of the Bookcliffs;
Sec. 23, those lands south of the Bookcliffs;
Sec. 24, lots 1 to 3, inclusive, lot 4, those lands north of the railroad right-of-way (R/W), those lands in the W½ south of the Bookcliffs, and those lands in the W½E½ north of the railroad R/W;
Sec. 25, those lands in the N½NW¼ north of the railroad R/W;
Sec. 26, those lands in the N½ and NW¼SW¼ north of the railroad R/W.
Sec. 27, N1/2, N1/2 SW1/4, those lands in the S1/2 SW1/4 and SE ¼ north of the railroad R/W.

The area described contains approximately 2,241 acres in Grand County.

Klondike Flats Disposal Site and Borrow Area

T. 23 S., R. 19 E.,
Sec. 23, E½;
Sec. 24, W½, and those lands in the E½ lying west of the U.S. Highway 191 R/W;
Secs. 25, 26, and 35.

The area described contains approximately 2,819 acres in Grand County.

Floy Wash Borrow Area

T. 22 S., R. 18 E.,
Sec. 4, lot 5, W½SE¼, excluding the Interstate Highway 70 and railroad R/W;
Sec. 9, lots 3, 4, S½NW¼, and SW¼.

The area described contains approximately 374 acres in Grand County.

Courthouse Syncline Borrow Area

T. 23 S., R. 19 E.,
Sec. 4, lots 1–4, inclusive, S½N½, and S½;
Sec. 5, lots 1–4, inclusive, S½N½, and S½;
Sec. 7, lots 1–12, inclusive, and E½;
Sec. 8, All.

The area described contains approximately 2,730 acres in Grand County.

Tenmile Borrow Area

T. 23 S., R. 18 E.,
Sec. 26, S½;
Sec. 33, SE¼;
Sec. 34, NE¼, and S½;
Sec. 35, N½, and SW¼.
T. 24 S., R. 18 E.,
Sec. 3, lots 1–4, inclusive, and S½N½;
Sec. 4, lots 1–4, inclusive, and S½N½.

The area described contains approximately 2,062 acres in Grand County.

Blue Hills Road Borrow Area

T. 24 S., R. 19 E.,
Sec. 3, S½;
Sec. 4, SE¼;
Sec. 10, N½;
Sec. 11, All;
Sec. 12, S½.

The area described contains approximately 1,760 acres in Grand County.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to the Moab Field Manager.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period until November 20, 2005, the lands will be segregated as specified above unless the application is canceled or the withdrawal is approved prior to that date.

Public meetings will be held in connection with the proposed withdrawal during the preparation of the environmental impact statement that will analyze options for disposal of the uranium tailings. A notice of the time and place will be published by the U.S. Department of Energy in the **Federal Register** at least 30 days before the scheduled date of the meetings.

Dated: October 2, 2003.

Margaret Wyatt,

Moab Field Office Manager.

[FR Doc. 03–29001 Filed 11–19–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF LABOR

Bureau of International Labor Affairs; U.S. National Administrative Office National Advisory Committee for the North American Agreement on Labor Cooperation; Notice of Cancellation of Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Cancellation of meeting.

SUMMARY: Notice of Cancellation of Meeting Scheduled for November 24, 2003.

The U.S. National Administrative Office hereby cancels the meeting of the National Advisory Committee for the North American Agreement on Labor Cooperation scheduled for November 24, 2003. This meeting was previously announced in the **Federal Register** of November 6, 2003 (68 F.R. 62831).

FOR FURTHER INFORMATION CONTACT: Lewis Karesh, designated Federal Officer, U.S. NAO, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S–5205, Washington, DC 20210. Telephone 202–693–4900 (this is not a toll free number).

Signed at Washington, DC, on November 14, 2003.

Lewis Karesh,

Acting Director, U.S. National Administrative Office.

[FR Doc. 03–28999 Filed 11–19–03; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under Section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold a meeting on December 16, in Room N3437 (A–C), U.S. Department of Labor, located at 200 Constitution Avenue, NW., Washington, DC. The meeting is open to the public and will begin at 9 a.m. on December 16 and end at approximately 4 p.m.

Agenda items will include updates on activities of both the Occupational Safety and Health Administration (OSHA) and the National Institute for

Occupational Safety and Health (NIOSH), as well as follow-up reports from OSHA/NIOSH staff regarding NACOSH workgroups. Presentations will also be made on the following subjects: Whistleblower updates, Employee Fatality Trends, and Workplace Violence.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Wilfred Epps at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the committee and will be included in the record of the meeting. Because of the need to cover a wide variety of subjects in a short period of time, there is usually insufficient time on the agenda for members of the public to address the committee orally. However, any such requests will be considered by the Chair who will determine whether or not time permits. Any request to make an oral presentation should state the amount of time desired, the capacity in which the person would appear, and a brief outline of the content of the presentation. Individuals with disabilities who need special accommodations should contact Veneta Chatmon (phone: 202–693–1912; fax: 202–693–1634) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 at the Department of Labor Building (202–693–2350). For additional information contact: Wilfred Epps, Occupational Safety and Health Administration (OSHA); Room N3641, 200 Constitution Avenue, NW., Washington, DC 20210, (phone: 202–693–1857; fax: 202–693–1641; e-mail *Epps.Wil@dol.gov*); or check the National Advisory Committee on Occupational Safety and Health information pages located at *www.osha.gov.*

Signed at Washington, DC this 13th day of November 2003.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 03–28998 Filed 11–19–03; 8:45 am]

BILLING CODE 4510–26–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

November 12, 2003.

TIME AND DATE: 10 a.m., Thursday, December 4, 2003.

PLACE: Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session:

Secretary of Labor v. *Georges Colliers, Inc.,* Docket No. EAJ 2002–02. (Issues include whether the petition for review by Georges Colliers, Inc. was timely filed; whether the issues raised on brief by Georges Colliers, Inc. exceeded the scope of its petition; and whether the judge erred in denying the application made by Georges Colliers, Inc. for fees and expenses under the Equal Access to Justice Act, 5 US.C.. 504 *et seq.*)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

FOR FURTHER INFORMATION CONTACT: Jean Ellen, (202) 434–9950, (202) 708–9300 for TDD Relay, 1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 03–29146 Filed 11–18–03; 11:51 am]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–148]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council (NAC), Minority Business Resource Advisory Committee.

DATES: Thursday, December 11, 2003, 9 a.m. to 4 p.m., and Friday, December 12, 2003, 9 a.m. to 12 Noon.

ADDRESSES: NASA Langley Research Center, Bldg. 1219, Room 225, Hampton, VA 23681.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to those of the public.

The agenda is as follows:

—Review of Previous Meeting
—Return to Flight
—NAC Meeting Report
—Overview of Langley Small Business Program
—NASA Safety Center
—Public Comment
—Agency Small Disadvantaged Business Update
—Committee Panel Reports
—New Business

Attendees will be requested to contact Vernon Vann at (757) 864–2456 to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to contact Vernon Vann at (757) 864–2456 to provide the following information: Full name; gender; date/place of birth; citizenship; employee/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Mr. Vernon Vann via email at *a.v.vann@larc.nasa.gov* or by telephone at (757) 864–2456. Attendees will be escorted at all times.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

June Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–28950 Filed 11–19–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Materials Research (DMR) #1203.

Dates and Times:

December 4, 2003; 7:30 a.m.–6 p.m. (open 9:30–12, 1–4:45).

December 5, 2003: 7:30 a.m.–4 p.m. (open 9–10:30).

Place: University of Pennsylvania, Philadelphia, PA.

Type of Meeting: Part Open.

For Further Information Contact:

Dr. Maija Kukla, Program Director, Materials Research Science and Engineering Centers, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4940.

Purpose of Meeting: To provide advice and recommendations concerning progress of Materials Research Science and Engineering Center.

Agenda:

December 4, 2003—Open for Director's overview of Materials Research Science and Engineering Center and presentations.

December 5, 2003—Closed to review and evaluate progress of Materials Research Science and Engineering Center.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 18, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–29151 Filed 11–18–03; 12:15 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

FPL Energy Seabrook, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of FPL Energy Seabrook, LLC (licensee) to withdraw its March 22, 2002, application for proposed amendment to Facility Operating License No. NPF–86 for the Seabrook Station, Unit No. 1, located in Rockingham County, New Hampshire.

The proposed amendment would have revised Technical Specification (TS) 3/4.9.13, ''Spent Fuel Storage,'' and associated TS figures and index.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 14, 2002, (67 FR 34489). However, by letter dated September 15, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 22, 2002, and the licensee's letter dated September 15, 2003, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 13th day of November, 2003.

For the Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–29020 Filed 11–19–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 3, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, December 3, 2003–11:45 a.m.–1:15 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Sam Duraiswamy (telephone: 301–415–7364) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: November 13, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–29017 Filed 11–19–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Human Factors; Notice of Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on December 2, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, December 2, 2003—1 p.m. until 5 p.m.

The purpose of this meeting is to review the proposed revisions to Standard Review Plan Chapter 18, ''Human Factors Engineering.'' The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Medhat M. El-Zeftawy (telephone 301–415–6889), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons

planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: November 12, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–29018 Filed 11–19–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on December 3, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 3, 2003—8 a.m.—11:30 a.m.

The purpose of this meeting is to discuss the Virgil C. Summer Nuclear Station license renewal application and the NRC staff's draft Safety Evaluation Report. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, South Carolina Electric and Gas Company, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Marvin D. Sykes (telephone 301–415–8716), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: November 13, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–29019 Filed 11–19–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48787; File No. SR–BSE–2003–17]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Establishing Fees for the Proposed Boston Options Exchange Facility

November 14, 2003

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 14, 2003 the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE seeks to enact fees for the proposed Boston Options Exchange (''BOX'') facility. Proposed new language is *italicized.*

* * * * *

Fee Schedule

Sec. 1 Trading Fees for Public Customer Accounts

None.

Sec. 2 Trading Fees Broker Dealer Proprietary Accounts

a. *$0.20 per contract traded;*

—or—

b. $ 0.40 per contract traded against an order the Trading Host filters to prevent trading through the NBBO, pursuant to the procedures set forth in Chapter V, Section 16(b) of the BOX Rules.

c. Plus, where applicable, any surcharge for options on ETFs that are passed through by BOX. The applicable surcharges are as follows:

(1) $ 0.10 per contract for options on the ETF Nasdaq 100 (''QQQs'').

Sec. 3 Market Maker Trading Fees

a. Per contract trade execution fee:

1. $ 0.20 per contract traded in assigned classes;

—or—

2. $ 0.20 per contract traded in unassigned classes;

-or-

3. $ 0.40 per contract traded against an order the Trading Host filters to prevent trading through the NBBO, pursuant to the procedures set forth in Chapter V, Section 16(b) of the BOX Rules.

4. Plus, where applicable, any surcharge for options on ETFs that are passed through by BOX. For a list of applicable ETF surcharges, see Section 2(c), above.

b. Minimum Activity Charge (''MAC'')

The ''notional MAC'' per options class (see table below) is the building block for the determination of the BOX Market Maker's monthly total MAC which is payable at the end of each month if the per contract fee of $ 0.20 per contract traded, when multiplied by the Market Maker's actual trade executions for the month, does not result in a total trading fee payable to BOX at least equal to the monthly total MAC.

The MAC is totaled across all classes assigned to a Market Maker so that volume for one class is fungible against other classes for that Market Maker. As a result, although the volume on a given class needed to reach an implicit cost of $0.20 a contract may not be achieved, this can be compensated by volume in excess of the MAC on another class.

1. MAC ''Levels.''

The table below provides the MAC for each of the six ''categories'' of options classes listed by BOX. The category for each class is determined by its total trading volume across all U.S. options exchanges as determined by OCC data. The classifications will be adjusted at least twice annually (in January and July, based on the average daily volume for the preceding six month period).

Class category	*OCC average daily volume (# of contracts)*	*MAC per market marker per appointment per month*
A	*<100,000*	*$15,000*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Class category	OCC average daily volume (# of contracts)	MAC per market marker per appointment per month
B	50,000 to 99,999	3,000
C	25,000 to 49,999	2,000
D	10,000 to 24,999	750
E	5,000 to 9,999	250
F	Less than 5,000	100

2. MAC ''Adjustments.''

The MAC will not be applied during the first three calendar months following launch. Furthermore, the MAC will be ''indexed'' to BOX's overall market share as determined by OCC clearing volumes. At the beginning of each calendar month, BOX will calculate its market share for the previous month (market share equals total BOX traded volume divided by the total OCC cleared volume for the classes that BOX has listed). If BOX's overall market share is less than 10%, BOX will reduce the MAC applicable for each Market Maker according to the following table.

BOX market share	MAC applicable rate
0% to 4.99%	33.3%
5% to 9.99%	66.7%
10% and more	full MAC

c. Volume discount on total volume traded across all assigned classes (calculated on monthly basis)

BOX will provide volume discounts to Market Makers who are particularly active on BOX. The discount is applied only after a Market Maker meets the minimum level of activity necessary to avoid paying a MAC for assigned classes. This discount is calculated monthly for the previous calendar month's total trading volume across all the classes that the Market Maker holds an appointment as follows:

Average daily volume as appointed Market Maker (applicable only if MAC thresholds are achieved)	Per contract
For all contracts up to a volume of 25,000 contracts	0
For the contracts traded between 25,000 and 50,000 (First Discount Threshold)	$0.03
For the contracts traded above a total of 50,000 (Second Discount Threshold)	$0.05

Example: Suppose that, in a given month which had twenty (20) trading days, a BOX Market Maker executed 1.2 million contracts. Of this total, 1.1 million executions were in the 100 classes for which he holds a market maker appointment; the total trading fees due to BOX before discount is $220,000 ($.20 multiplied by 1.2 million contracts).

The total volume across his appointments is an average daily volume (''ADV'') of 55,000 contracts per day. 25,000 of these contracts (the excess over the first ''threshold'' of 25,000 ADV up to the second threshold of 50,000 ADV) are subject to a discount of $0.03; an additional 5,000 of these contracts are subject to the second tier discount of $0.05.

- *First threshold discount: 25,000 × $0.03 × 20 days = $15,000*
- *Second threshold discount: 5,000 × $0.05 × 20 days = $5,000*
- *Total discount: $20,000*
- *Net trading fees due to BOX for month: $200,000 ($220,000 − $20,000)*
- *''Implied'' trading fee per contract for Market Maker in assigned classes: $200,000/1,100,000 = $0.1818*

Sec. 4 InterMarket Linkage

The following fees are in effect on a Pilot basis, to expire on January 31, 2004.

a. Per contract, billed to BOX Participant

1. BOX trade triggered by an away market Satisfaction (''S'') request.	$.40
Billed to BOX Participant having executed the offending side of the trade subject to the S request. 2. Routing by BOX of PA and P orders, and S requests to away market	Free

b. Per contract, billed to away market

1. S request received from away market and executed on BOX.	Free
2. Inbound P and PA orders Same as if were BOX Participant.	$.20

Sec. 5 Technology Fees

a. Point of Presence (''PoP'') Connection Fee

BOX's Points of Presence are the sites where BOX Participants connect to the BOX network for communication with the BOX Trading Host. Each of these PoPs is operated by a third party supplier under contract to BOX. The amount to be paid by each BOX Participant is variable based on his particular configuration, the determining factors being the number of physical connections a BOX Participant has and the bandwidth associated with each.

- *''Installation'' and ''Hosting'' costs are related to the physical installation of equipment (generally routers though possibly other hardware) at the PoP site. BOX Participants will be required to pay this fee only if they have physical installations at the BOX PoP and for which BOX incurs fees from its own service suppliers*
- *''Cross Connect'' fees are per physical connection and vary by size from the smallest (T–1) to the largest (CAT 5)*

Setup (one time change, not applicable for BOX Participants connected prior to launch)

Installation	$350
Cross connect per T–1	$250
Cross connect per T–3	$350
Cross connect per CAT 5	$500

Monthly (applicable only after launch)

Hosting	$200
Cross connect per T–1	$100
Cross connect per T–3	$200
Cross connect per CAT 5	$250

b. CMS Order Routing Service

This service is optional for BOX Participants and is offered as an alternative to the FIX and proprietary gateways to the BOX Trading Host.

The CMS Gateway is a service provided by BOX to those BOX Participants who use the CMS protocol for routing orders. CMS may only be used for agency activities (and not for proprietary orders and market maker activities).

Monthly (applicable only after launch)

Per firm	*$250*

c. Back Office Trade Management Software (''TMS'')

TMS is optional software which BOX Participants may subscribe to in order to manage their BOX trades prior to their transmission by BOX to OCC.

Monthly Per User Within the Same BOX Participant (applicable only after launch)

Users 1 to 5	*$300*
Users 6 to 10	*$250*
Users 11 and up	*$200*

d. Testing/Support for Third Party Service Providers

Third Party Service Providers, generally either Independent Software Vendors (''ISVs'') who provide ''front end'' trading software systems or service bureaus which provide and operate order routing systems for broker dealers, may connect to the BOX Trading Host test platform. This is necessary both to establish initial compatibility of their software as well as to maintain this connectivity as the BOX Trading Host implements upgrades and evolutions. This fee is charged directly to the Third Party Service Provider, not the Options Participant, and is not charged to BOX Participants who connect their proprietary software systems to the BOX Trading Host.

One Time (not applicable for providers connected prior to launch)

Connection setup	*$10,000*
Disconnection	$500

Monthly (applicable only after launch)

Maintenance Fee	$500

Sec. 6. Compliance Examination Assessment

Monthly

Firms for which BOX assumes examination responsibilities	*$1,500*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In conjunction with the anticipated launch of the proposed BOX, the BSE is proposing fees related to the BOX market. The fees would apply to the following three constituents in the BOX market:

- Public Customers,[3]
- broker-dealers, and
- Market Makers.[4]

The BSE believes that the fees for each of these constituents, in combination with unfettered access to the BOX market for Market Makers and broker-dealers, would establish a low cost structure that would attract order flow to BOX and would promote competitive pricing.

a. Public Customers

Orders on behalf of Public Customers would not be subject to a trading fee. Also, the BSE notes that in keeping with the Exchange's flat and open philosophy for BOX, BOX Options Participants [5] who act as agents on behalf of Public Customers (*i.e.* Order Flow Providers (''OFP'')) [6] would not have to pay seat, lease, or access fees. BSE believes some of this cost savings would be passed on to Public Customers in the form of price improvement. In fact, the BSE believes that the only cost to an Options Participant, acting solely as agent for orders on behalf of Public Customers, would be, in most cases, the Point of Presence Connection Fee.

b. Broker Dealer Proprietary Accounts

As a base trading fee, executions on behalf of broker-dealer proprietary accounts would be charged a $0.20 per contract trade execution fee or a $0.40 fee for executions which result from the NBBO filter process. In addition to the base trading fee, executions on behalf of broker-dealer proprietary accounts would be charged any passed through licensing fees for Exchange-Traded funds (''ETF''), if applicable.[7] These fees would be competitive with other electronic exchanges and would be significantly lower than the fees charged for orders executed through the auto-execution systems of the floor based exchanges.[8] Additionally, unlike most options exchanges, there would be no Payment-for-Order-Flow or marketing surcharges.

As noted above, there would be a $0.40 per contract fee for the execution against the exposure of an order which BOX's automatic trading system (''Trading Host'') filters against trading through the national best bid or offer (''NBBO''), pursuant to the NBBO filter procedures set forth in Chapter V, Section 16(b) of the proposed BOX Rules. The Exchange would be levying this fee to broker-dealers for the costs of providing a service, the NBBO filter process, which would not be offered on any other options exchange. The BSE notes that the services provided by other options exchanges, such as ''step-up-and-match'' capabilities (which the BSE believes fall short of BOX's NBBO filter process) are not available to broker-dealers.

c. Market Makers

As a base trading fee, Market Makers would be charged a $0.20 per contract trade execution fee for both assigned and unassigned classes or $0.40 for executions which result from the NBBO filter process. In addition to the base trading fee, Market Makers would be charged any passed through licensing fees for ETF, if applicable. As discussed below, a Market Maker would be charged a higher fee if the Market Maker does not meet certain minimum trade volume thresholds. In addition, a Market Maker would receive a discount if other trade volume thresholds are exceeded.

[3] A Public Customer is a person that is not a broker or dealer in securities.

[4] A Market Maker is a firm or organization that is registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the proposed BOX Rules.

[5] The term ''Options Participant'' or ''Participant'' means a firm, or organization that is registered with the Exchange for purposes of participating in options trading on BOX as an ''Order Flow Provider'' or ''Market Maker.''

[6] The terms ''Order Flow Provider'' or ''OFP'' mean those Options Participants representing as agent Customer Orders on BOX and those non-Market Maker Participants conducting proprietary trading.

[7] $0.10 per contract for options on Nasdaq 100 (''QQQ'') is the only surcharge on ETFs that would be applicable upon BOX's launch.

[8] For example, the International Securities Exchange (''ISE'') charges a non-public customer (a broker-dealer) a $0.12–$0.21 (depending on ISE A.D.V.) per contract execution fee plus a $.03 comparison fee. The Chicago Board Options Exchange (''CBOE'') charges a non-public customer for an equity option RAES execution a $0.30 RAES fee + $0.20 transaction fee + $0.05 trade match fee for a total fee of $0.55. BOX would charge a non-public customer a $.20 per contract trading fee or a $0.40 per contract trading fee for executions resulting from the NBBO filter process, as set forth in Chapter V, Section 16(b) of the proposed BOX Rules. *See* Section 2 of the BOX Fee Schedule.

As stated in the previous paragraph, similar to the fee charged to broker-dealers, there is a $0.40 per contract fee for the execution against the exposure of an order which the Trading Host filters against trading through the NBBO, pursuant to the NBBO filter procedures set forth in Chapter V, Section 16(b) of the proposed BOX Rules. However, the motivation behind charging this fee to Market Makers is different than the motivation behind levying this fee to broker-dealers. The Exchange proposes to apply this fee to Market Makers so as to incent Market Makers to aggressively post quotations at the NBBO. That is, if a Market Maker establishes, or quotes at, the NBBO, the Market Maker would not be charged this fee as the NBBO filtering process would not be required. However, the BSE believes that this fee would not be of such a level so as to deter Market Makers from executing with orders exposed through the filtering process.

The BSE represents that the BOX market model features very low barriers to entry for Market Makers. All other U.S. options exchanges have costly barriers to entry for market making firms in their expenses for the purchase or lease of seats or trading bins, which run, in some cases, to as much as $16,000,000. For example, on the ISE, a recent sale of a Series B–2 (CMM trading privileges) share was for $1.6 million in Bin 5 on October 8, 2003, a bin covering only 60 of the 600 options classes presently listed on the ISE. Purchase of all 10 bins at that price would equal $16,000,000. [9] BOX has no such costly seat or bin purchase or lease requirements and has structured its fees so as to render Market Maker appointments accessible to qualified firms. In addition, efficiencies gained by Market Makers using the BOX technology would allow them to manage more classes with less resources, significantly reducing operating costs when compared to traditional floor based exchanges.

i. Comparison of Market Maker Costs on BOX versus Floor-Based Exchange

The BSE estimates that a member-firm of a floor based options exchange would need a minimum of fifteen individuals to act as Market Makers in order to be able to effectively manage the trading of 250 classes. On BOX, the same result can be achieved with two to three traders acting in the capacity of Market Makers, thus accruing substantial cost savings in salaries, bonuses and other personnel related costs alone, which, under a conservative estimate, could be at least $1 million annually.

Additionally, all of the existing floor based options exchanges have various facility and floor related fees (which, in the case of some of the floor-based exchanges, are set forth in several pages of detail in their schedules of miscellaneous fees). These types of fees simply do not exist on BOX. Because of the considerable franchise related and other fixed costs [10] on the existing floor-based exchanges, it is difficult to make a meaningful item-by-item comparison with an all-electronic market structured like BOX. Nevertheless, the BSE believes that when all relevant costs are considered there is a strikingly higher overall trading cost to market makers for trading on one of the floor-based exchanges when compared to the cost of trading on BOX. While the per contract execution fees on BOX would be competitive with the existing exchanges, BOX Market Makers would not have to bear nearly the same level of fixed costs as do members of the existing exchanges.

ii. BOX Minimum Activity Charge (''MAC'')

Another key feature of the BOX market model is an ''open'' policy regarding the number of Market Makers that are allowed to be appointed to any class after the first six months of trading, as compared to a ''closed model'' of specialists, Designated Primary Market Makers (''DPMs''), and PMMs on the other options exchanges. This unique approach is not without costs to BOX however. The key factor driving BOX costs is the total number of Market Maker appointments,[11] as BOX's hardware and telecommunication infrastructure must accommodate the heavy message traffic generated by Market Makers. Trade executions are expected to represent a small percentage of the overall BOX traffic, yet would account for the majority of BOX's revenue.

The BSE believes that the low barriers to entry for the BOX market, coupled with the pent up demand for the ability to make markets in the U.S. options industry, as demonstrated by the number of market making applications for the proposed BOX market, would result in BOX having significantly more Market Makers per class than other markets.[12] Accordingly, the BSE could experience a financial burden in relation to its proposed BOX facility if it attempted to accommodate this extra demand by adding capacity to the BOX trading engine without some guaranteed off-setting revenue. Therefore, the pricing model proposed for the Market Maker firms is comprised of a Minimum Activity Charge (MAC) and a volume discount. The base trading fee per contract executed for a Market Maker is $0.20. If a Market Maker's monthly trading activity is low, the MAC may be applicable. The actual MAC for a given options class would vary periodically with industry-wide trading volume, as determined by Options Clearing Corporation (''OCC'') clearing data (see MAC Level chart below). If the total trading fees for a Market Maker in a given month do not exceed the total MAC for the classes for which a Market Maker holds appointments, Market Makers would be charged the MAC, rather than the trading fee. In no case would the MAC be charged in addition to the trading fees. [13]

Throughout the BOX development process, the BSE has strived to minimize the cost of entry to participants, while at the same time ensuring that BOX would recoup its operating costs. The MAC for each class was established to accomplish three objectives: (1) Recoup BOX's monthly operating costs; (2) provide one of the most cost competitive fee schedules in the U.S. options market; and (3) provide proper incentives for OFPs to send order flow to BOX.

[9] BSE also notes that the last sale of a Primary Market Maker (''PMM'') membership on the ISE was $7.5 million on September 29, 2003. BOX has no PMM equivalent and therefore lacks this significant entry cost.

[10] For instance, on the CBOE, in addition to the substantial up front cost of buying a seat (last sale on October 21, 2003 was $280,000), there are numerous one time and recurring facility charges such as booth fees, facilities fees, storage fees, access fees, in-crowd phone fees, maintenance fees, phonemail fees, coat room service fees, charges for lost or damaged jackets, badge fees, on-floor line fees, shelf rental fees, in-house pager fees, handset fees, satellite television fees, terminal rental fees, technology fees, paper ticket fees, and several others to which the BOX market has no counterpart.

[11] The total number of Market Maker appointments refers to the number of registered Market Makers per class. For example, if there are 100 classes with an average of ten Market Makers per class, there are 1,000 appointments.

[12] The BSE has received 54 Market Maker applications. 32 Market Makers are ready for the BOX launch and participated in the initial allocation of class appointments. Based on the appointments allocated, BOX would have an average of 14 Market Makers per class after the first six months of trading.

[13] For instance, if the total contracts traded in 25 classes in which a Market Maker holds appointments in a given month is 75,000 which, at the base trading fee rate of $ 0.20 represent total trading fees of $15,000, but the total MAC for the 25 classes is $16,400, the Market Maker will be obligated to pay the MAC of $16,400 for the month, rather than the calculated rate of $15,000.

iii. Determination of the MAC for a Given Options Class

For purposes of determining the MAC for each options class listed by BOX, the options classes listed by BOX would be divided into six classes, based on the total trading volume of each class across all U.S. options exchanges as determined by OCC data. The classifications would be adjusted at least twice annually (in January and July, based on the average daily volume for the preceding six month period).

Class category	OCC average daily volume (# of contracts)	MAC per market maker per appointment per month
A	>100,000	$15,000
B	50,000 to 99,999	3,000
C	25,000 to 49,999	2,000
D	10,000 to 24,999	750
E	5,000 to 9,999	250
F	Less than 5,000	100

The proposed MAC represents the OCC market share per Market Maker of approximately 1% with an implicit transaction fee per contract of $0.20. For example, for options on Nasdaq 100 shares (QQQ) (Class Category A because of its high daily trading volume), the execution volume required by each Market Maker that results in an effective rate of $0.20 per contract would be 3,750 contracts. This is equivalent to 0.9% of OCC volume on this class. The MAC for QQQ would be $15,000 per month, which is equal to 3,750 contracts per day ($15,000/$0.20/20 trading days).

Although a Market Maker may not achieve enough trades to meet its MAC in a class in a given month, its implicit cost per contract would only increase by minimal amounts. For instance, if a Market Maker is assigned to all the currently proposed 250 classes, based on first and second quarter 2003 OCC volume, the monthly MAC for that Market Maker would be $104,400. To reach an effective cost of $0.20 per contract, this Market Maker would need to trade at least 522,000 contracts (and the Trading Fee, rather than the MAC, would apply). If the Market Maker traded only 400,000 contracts, his implicit cost per contract would be $0.26. The MAC is totaled across all classes assigned to a Market Maker so that volume for one class is fungible against other classes for that Market Maker. As a result, although the volume on a given class needed to reach an implicit cost of $0.20 a contract may not be achieved, this can be compensated for by volume in excess of the MAC on another class, as the following table exemplifies.

In the example below, a Market Maker holds appointments on eleven options classes. The related MAC for each class is shown in the second column; the total of this column is the Market Maker's Total MAC for that month. The Market Maker's actual traded volume for each class for the month is provided in the third column. If the fees payable to BOX for his traded volume, at a rate of $0.20 per contract, do not total to at least the total MAC for a given month, he would instead be billed the Total MAC ($12,100).

Since the Total MAC in the above table is greater than the Total Trading Fee calculated from actual volume for the month, the Market Maker must pay the Total MAC. This gives him an implied trading fee per contract of slightly more than $0.21 ($12,100 divided by 57,500) which is, of course, still very competitive with the other options exchanges, particularly when factoring in the substantial fixed costs of seat or bin memberships, either leased or owned that have no counterpart on BOX.

In summary, the ''notional MAC'' per options class is the building block for the determination of each Market Maker's monthly MAC. At the end of each month, a Market Maker would be obligated to pay the Total MAC, instead of the Total Trading Fee, if the per contract trading fee of $0.20, when multiplied by the Market Maker's actual trade executions for the month, does not result in a Total Trading Fee payable to BOX at least equal to the MAC.

The MAC would not be applied during the first three calendar months following launch. Furthermore, the MAC would be ''indexed'' to BOX's overall market share as determined by OCC clearing volumes. At the beginning of each calendar month, BOX would calculate its market share for the previous month (market share equals the total BOX traded volume divided by the total OCC cleared volume for the classes that BOX has listed). If BOX's overall market share is less than 10%, BOX would reduce the MAC applicable for each Market Maker according to the following table:

TABLE A.—SAMPLE MONTHLY MAC FOR A MARKET MAKER

Appointed Class	MAC $	Actual volume traded	Trading fee $
A	3,000	15,000	3,000
B	2,000	12,000	2,400
C	2,000	10,000	2,000
D	2,000	7,000	1,400
E	750	2,000	400
F	750	2,000	400
G	750	2,500	500
H	250	1,500	300
I	250	1,000	200
J	250	2,500	500
K	100	2,000	400
Totals	12,100	57,500	11,500

BOX market share	MAC applicable rate
0% to 4.99%	33.3%
5% to 9.99%	66.7%
10% and more	full MAC

The BSE has determined that a fixed dollar amount for the MAC, rather than a percentage of OCC volume for each class, is preferable for determining the MAC. With a fixed dollar amount, Market Makers would be better able to know in advance their costs and be able to adjust their operations, minimize other costs and react to ensure they meet their monthly fee objectives. A percentage calculation would not allow Market Makers to achieve this objective as the fee would be variable monthly and Market Makers would not be able to plan their activities accordingly. The Exchange believes that a fixed dollar amount is easier to manage and thus is more in line with the spirit of the MAC.

iv. Adjustment of MAC Categories

The BSE would review the MAC categories at least twice per year in January and July. Although the MAC applicable to each category would remain constant, the category applicable to each class would be reviewed to reflect new OCC volume data for each class. The January review would be based on actual OCC volume for the last 6 months of the previous year, and the June review would be based on the first 6 months of current year. If exceptional events or news occur in a given class, the Exchange may review the MAC level for that class at anytime. The BSE would file with the Commission any changes to its fees pursuant to section 19 of the Act.[14]

v. Volume Discounts

The Exchange would also provide a volume discount if a Market Maker's average daily volume in a given month exceeds certain thresholds, including the minimum level of activity necessary to avoid paying a MAC for assigned classes. A Market Maker's activity will first be applied to meeting his MAC requirement. The volume discount will apply to any additional activity. The BSE believes that the volume levels are realistic and achievable, and that the discount levels are substantial so as to incent Market Makers to participate in the BOX market and provide customers with the beneficial effects of both low cost trading, as well as enhanced price improvement opportunities through BOX's unique Price Improvement Period. The Volume Discounts would be as follows:

Average daily volume as appointed Market Maker (applicable only if MAC thresholds are achieved)	Per contract
For all contracts up to a volume of 25,000 contracts	0
For the contracts traded between 25,000 and 50,000 (First Discoubt Threshold)	$0.03
For the contracts traded above a total of 50,000 (Second Discount Threshold)	0.05

As an example of how the Volume Discount would apply, suppose that, in a given month which had twenty (20) trading days, a Market Maker executed 1.2 million contracts. Of this total, 1.1 million executions were in the 100 classes for which he holds a market maker appointment; the total trading fees due to BOX before discount would be $220,000 ($0.20 multiplied by 1.1 million executions).

The total volume across his appointments would be an average daily volume (''ADV'') of 55,000 contracts per day. 25,000 of these contracts (the excess over the first ''threshold'' of 25,000 ADV up to the second threshold of 50,000 ADV) would be subject to a discount of $0.03; an additional 5,000 of these contracts would be subject to the second tier discount of $0.05. The following discounts would apply:

- First threshold discount: 25,000 × $0.03 × 20 days = $15,000
- Second threshold discount: 5,000 × $0.05 × 20 days = $5,000
- Total discount: $20,000
- Net trading fees due to BOX for month: $200,000 ($220,000 − $20,000)
- ''Implied'' trading fee per contract for Market Maker in assigned classes: $200,000/1,100,000 = $0.1818

The Exchange believes that the total actual trading costs for Market Makers on the proposed BOX market, when compared to the actual total costs of trading on all of the existing options exchanges, pose very low barriers to access and entry into the U.S. options trading arena. The BSE strongly believes that lower total costs for Market Makers in combination with unfettered access (*i.e.*, no purchase or lease requirements and open class appointments) and automated price time priority trading would create a competitive market on BOX in which Market Makers would have the proper incentives to pass on their cost savings in the form of better quotes, tighter spreads and price improvement to all market participants.

d. *Other Fees*

i. InterMarket Linkage

The Exchange is also proposing various other fees, including fees for trades executed via the InterMarket Linkage (''Linkage''). These Linkage fees include charges to Options Participants, such as those for a trade in the BOX market which is triggered by an away market's satisfaction request,[15] as well as a charge levied on away markets for inbound Principal (''P'') and Principal as Agent (''PA'') orders. This charge to an away market would not be in addition to any other per contract charges on BOX and is equivalent to the regular trading fee for Market Maker and broker-dealer accounts on BOX. The side of a BOX trade opposite an inbound P or PA order would be billed normally as any other BOX trade.[16]

As with all of the existing exchanges, the BSE is proposing that its fees related to the Linkage be approved on a pilot basis, until January 31, 2004. If, in concert with the other options exchanges, the BSE seeks to extend the pilot period for the effectiveness of these fees, such an extension would be the basis of a subsequent rule filing.

ii. Compliance Assessment if BSE is DOEA

Also included in the proposed fee schedule for the BOX market is a monthly compliance assessment for firms for which the BSE assumes examination responsibilities under the inter exchange allocation process pursuant to Rule 17d–2 of the Act.[17]

iii. Technology and Other Fees

The proposed fee schedule also includes certain technology fees. These include fees for services such as installation and hosting fees for Point of Presence Connection. BOX's Points of Presence (''PoP'') are the sites where BOX Participants connect to the BOX network for communication with the BOX Trading Host. Each of these PoPs is operated by a third party supplier under contract to BOX. Through connection fees, BOX would recuperate the fees charged by each PoP contractor for the use of the facility by a BOX Participant. The amount to be paid by each BOX Participant is variable based

[14] 15 U.S.C. 78s.

[15] Consistent with the plan governing the operation of the Linkage, no fees will be charged to the parties sending the Satisfaction request to BOX. Rather, the fee will be charged to the BOX Options Participant that was responsible for the trade-through that caused the Satisfaction request to be sent.

[16] *See* section 4 of the proposed BOX Fee Schedule.

[17] *See* section 6 of the proposed BOX Fee Schedule.

on his particular configuration, the determining factors being the number of physical connections a BOX Participant has and the bandwidth associated with each.[18]

Additionally, there would be certain installation and hosting costs which are related to the physical installation of equipment (generally routers, though possibly other hardware) at the PoP site. BOX Participants would be required to pay this fee only if they have physical installations at the BOX PoP and for which BOX incurs fees from its own service suppliers.

Finally, there is also a ''Cross Connect'' fee per physical connection which varies by size from the smallest (T–1) to the largest (CAT 5).[19]

There also would be fees for optional services such as:

CMS Order Routing Service Fee. This service is optional for BOX Participants and is offered as an alternative to the FIX and proprietary gateways to the BOX Trading Host. The CMS Gateway is a service provided by BOX to those BOX Participants who use the CMS protocol for routing orders. CMS may only be used for agency activities (and not proprietary orders and market maker activities). BOX has subcontracted with a software bureau for the operation of this gateway; the per firm, per month fee is to recuperate some of the costs BOX incurs in paying the software supplier to provide this service.[20] *Back Office Trade Management Software (''TMS'') Fee.* TMS is optional software which BOX Participants may subscribe to in order to manage their BOX trades prior to their transmission by BOX to OCC. It is useful only to BOX Participants acting as agent for public customers or other broker-dealer accounts. If a firm is able to include all relevant clearing data on an order prior to sending it to BOX, this software is not required since the order entry formats of BOX messages allow the BOX Participant to achieve straight through processing.[21] .

Testing and Support for Third Party Providers Fee. Third Party Service Providers, generally either Independent Software Vendors (''ISVs'') who provide ''front end'' trading software systems or service bureaus which provide and operate order routing systems for broker dealers, may connect to the BOX Trading Host test platform. This is necessary both to establish initial compatibility of their software as well as to maintain this connectivity as the BOX Trading Host implements upgrades and evolutions. This fee is charged directly to the Third Party Service Provider, not the Options Participant, and is not charged to BOX Participants who connect their proprietary software systems to the BOX Trading Host.[22]

None of the technology related fees would be billed prior to the launch of trading on BOX.

In all instances, the Exchange has strived to structure its fees to eliminate complexity and hidden charges in its BOX fee schedule, and, to that end, is proposing a minimal number of fees at very competitive rates.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements under section 6(b) of the Act,[23] in general, and furthers the objective of section 6(b)(4) of the Act,[24] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2003–17 and should be submitted by December 11, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–29095 Filed 11–18–03; 9:31 am]

BILLING CODE 8010–01–P

[18] *See* section 5(a) of the proposed BOX Fee Schedule.

[19] *See* section 5(a) of the proposed BOX Fee Schedule.

[20] *See* section 5(b) of the proposed BOX Fee Schedule.

[21] *See* section 5(c) of the proposed BOX Fee Schedule.

[22] *See* section 5(d) of the proposed BOX Fee Schedule.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(4).

[25] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4541]

Culturally Significant Objects Imported for Exhibition Determinations: ''Gilbert Stuart''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended by Delegation of Authority No. 236–3 of August 28, 2000 [65 FR 53795], and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibit, ''Gilbert Stuart'', imported from abroad for the

temporary exhibition without profit within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with foreign lenders. I also determine that the temporary exhibition or display of the objects at the Metropolitan Museum of Art, New York, New York, from on or about October 18, 2004, to on or about February 27, 2005, the National Gallery of Art, Washington, DC, from on or about April 10, 2005, to on or about July 31, 2005, and possible additional venues yet to be determined is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: November 6, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–29013 Filed 11–19–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4540]

Bureau of Educational and Cultural Affairs Request for Grant Proposal: Elementary School Curriculum Development and Teacher Education Project for Azerbaijan

Summary: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs in the Department of State announces an open competition for an assistance award to support planning, implementing and evaluating a project to improve elementary education in Azerbaijan through subject-related curriculum development and teacher training. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 U.S.C. 501(c)(3) may submit proposals to cooperate with the Bureau in the administration of a three-year project to develop elementary school curricula in a limited range of subjects together with a related teaching methodology manual for elementary school teachers, and to pilot-test and disseminate the subject-related curricula and the teachers' manual in schools and at teacher training sites in Azerbaijan.

Important Note: This Request for Grant Proposals contains language in the ''Shipment and Deadline for Proposals'' that is significantly different from that used in the past. Please pay special attention to procedural changes as outlined.

Project Overview

The project is intended to assist Azerbaijan educators to improve elementary education in their country. The project will train a team of educators from Azerbaijan to develop curriculum in a limited range of elementary subjects. The same team will develop a handbook on teaching methodology for elementary school teachers that will relate to the subject-specific curricular materials. The materials and the teachers' handbook will be tested and disseminated in classrooms and at teacher training sites in Azerbaijan.

The rationale for this project is that by introducing more interactive, student-centered teaching practices tied to relevant elementary-level studies in Azerbaijan, educators in that country will be better equipped to prepare students to participate as citizens in a democratic society. As part of the effort to promote cooperative relationships within a democratic society, the project will also prepare teachers to relate effectively with other members of the educational community including administrators, parents, students, and officials responsible for educational oversight.

Project Design

The process for developing, testing, publishing, and disseminating the materials and the handbook should include a carefully designed series of exchange visits and related activities within a three-year period. Proposals should describe a strategy for administering the project effectively and for evaluating the results of project implementation. Proposals should also demonstrate that the project's objectives are feasible within the budget proposed and take into account local conditions that may affect recruitment, implementation, teacher training or pilot testing activities in Azerbaijan.

The project design should be outlined within the general framework of three project phases. (Full details for each project phase are contained in the POGI).

Phase One: Recruitment of Participants, Selection of Subjects, and Arrangement of Administrative Details

Although some of the activities in Phase I may be initiated and implemented through correspondence or other kinds of distance communication, the U.S. grantee organization should include within Phase I a planning trip of approximately two to four weeks to Baku.

(1) Recruitment of participants: Within the first six months of the project, the U.S. grantee organization will communicate with the Public Affairs Section of the U.S. Embassy in Baku and with representatives of a local NGO active in the education sector or with other local educators to coordinate the recruitment and selection of approximately six Azerbaijan participants for the curriculum development team. The U.S. applicant should identify in the proposal an NGO or a network of elementary educators in Azerbaijan with which they propose to work in the recruitment effort. The curriculum development team should include participants with previous training and professional experience with elementary education, curriculum development and in-service teacher training.

(2) After the curriculum development team has been selected, the grantee organization should consult with the team members and with other elementary educators in Azerbaijan to assess the elementary educational curricula and related teaching materials that are currently in use in that country, as well as the U.S. materials that may be relevant to the needs of elementary teachers in Azerbaijan. Based on that analysis, the curriculum development team will select the elementary subjects in which the curricular materials will be developed and the methodologies which the teachers' manual will target.

(3) The grantee organization should consult with the Azerbaijan Ministry of Education regarding the following key features of the project (See POGI for contact information): (a) Approval of paid leave for the Azerbaijan participants during their stays in the U.S. and during subsequent periods of training in Azerbaijan; (b) facilitation of the logistics for the training sessions to be conducted in Azerbaijan through signed agreements with the Ministry of Education or other education authorities; (c) if the project includes activities that will ultimately require government approval, the proposal will include a plan for securing the approval of the Ministry or other relevant educational authorities.

Phase Two: U.S. Workshop

In Phase II of this project, members of the curriculum development team from Azerbaijan will spend approximately 12 weeks in the U.S. attending an intensive curriculum development workshop. The

U.S. grantee organization will conduct the workshop at which the team will draft the curricular materials and the teachers' manual in consultation with U.S. specialists with expertise on the targeted subjects and methodologies. The U.S. workshop should include opportunities for the direct observation of U.S. classroom teaching, school administration, and community involvement as appropriate. Consultations with U.S. teachers and professional counterparts, including mentored attendance at professional meetings, may also be appropriate. Proposals should incorporate sufficient time for writing the curricular materials and teachers' manual so that working drafts will have been completed by the time the curriculum development team returns to Azerbaijan.

Phase Three: Pilot-Testing, Teacher Training, Publication, and Dissemination

In Phase III of the project, the grantee organization will implement a program for testing, revising and publishing the curricular materials and teachers' manual drafted in Phase II. Proposals should describe a strategy for collaborating with local elementary schools, other appropriate educational organizations and teacher training networks in Azerbaijan, including pedagogical institutes, to facilitate pilot testing of the curricular materials and the teachers' manual as well as training teachers to use the materials and the manual. (For a list of in-service teacher training centers and contact information, please see the POGI.) Targeted elementary schools should include those involved with the Azerbaijan ''Connectivity Project'' sponsored by the Bureau of Educational and Cultural Affairs. (Information on the Azerbaijan Connectivity Project can be found at *http://www.projectharmony.az/*.)

Proposals should demonstrate an ability to coordinate and to monitor Phase III activities. Proposals should describe the composition and size of the teacher and student populations that will benefit from the innovations to be introduced through the curriculum development and teacher training effort. In addition, proposals should describe (or outline a strategy for ascertaining) feasible options for publishing the materials and the manual for dissemination.

Project Duration

Pending the availability of funds, grant activities should begin on or around February 1, 2004 and should last for a three-year period. Grant activities are expected to be completed within the three-year timeframe.

Project Evaluation

Proposals should describe and budget for project evaluation. Organizations that are awarded Bureau grants must formally submit periodic reports to the Bureau on the project's activities in relation to its objectives. The formal evaluation reports should include an assessment of the status of elementary education at the time of program inception with specific reference to project objectives; formative evaluation to allow for mid-course revisions in the implementation strategy; and, at the conclusion of the project, summative evaluation of the degree to which the project's objectives have been achieved. The proposal should discuss how the issues raised throughout the formative evaluation process will be assessed and addressed. The summative evaluation should describe the project's influence on the participating institutions and participants, as well as the educational community in Azerbaijan. The summative evaluation should also include recommendations about how to build upon project achievements without additional Bureau support. The use of external consultants with appropriate subject, cultural, and regional expertise is encouraged. Copies of evaluation reports must be provided to the Department of State.

The grantee organization will be expected to submit intermediate program and financial reports after each project component is concluded. In addition to the formally scheduled reports, the evaluation strategy should include a mechanism for promptly providing the Bureau with information that will equip the Department of State to summarize and illustrate project activities and achievements as they occur.

Project Administration

Proposals should explain how project activities will be administered both in the U.S. and overseas in ways that will ensure that the project maintains a focus on its objectives while adjusting to changing conditions, assessments, and opportunities.

Budget Guidelines

The Bureau anticipates awarding one grant not to exceed $245,000 to support program and administrative costs required to conduct this project. The Bureau encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of its programs. These contributions may include estimated in-kind contributions. Bureau guidelines require that grants to organizations with less than four years of experience in conducting international exchanges be limited to $60,000. Therefore, organizations with less than four years' experience in conducting international exchanges are ineligible to apply under this competition.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. The summary and the detailed project and administrative budget should be accompanied by a narrative which explains and justifies the amounts requested.

Allowable costs for the program include the following:

(1) Administrative costs, including salaries and benefits.

(2) Program costs, including general program costs and program costs for individual participants in project activities. Please refer to the POGI for complete budget and formatting guidelines.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/S/U–04–05.*

FOR FURTHER INFORMATION CONTACT: The Humphrey Fellowships and Institutional Linkages Branch, Office of Global Educational Programs, U.S. Department of State, 301 4th Street, SW, Washington, DC 20547, telephone: 202–619–5289; Fax: 202–401–1433; or *jcebra@pd.state.gov,* to request a solicitation package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Jonathan Cebra on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

New OMB Requirement

AN OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf.* Please also visit the ECA Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

Shipment and Deadline for Proposals

IMPORTANT NOTE: The deadline for this competition is Friday, January 16, 2004. In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery via the Internet. Faxed documents will not be accepted at any time.

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent to:

U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs,

Ref.: ECA/A/S/U–04–05,

Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW, Washington, DC 20547.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5'' diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Grantee will be responsible for issuing DS–2019 forms to participants in this program. A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW, Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office, as well as the Public Affairs Section overseas, where appropriate will review all eligible proposals. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission and responsiveness to the objectives and guidelines stated in this solicitation. Proposals should demonstrate substantive expertise in curriculum development, elementary education and teacher training.

2. *Creativity and feasibility of program plan:* A detailed agenda and a relevant work plan should demonstrate substantive undertaking, logistical capacity, and a creative utilization of resources and of relevant professional development opportunities. The agenda and work plan should be consistent with the program overview and project design that are outlined in this solicitation.

3. *Ability to achieve project objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan. Proposals should demonstrate an understanding of educational issues in Azerbaijan.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity are included in program design and implementation. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and

program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). The proposal should demonstrate an understanding of the specific diversity needs in Azerbaijan and strategies for addressing these needs in terms of the project goals.

5. *Institutional capacity and record:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the goals of the project. Proposals should demonstrate an institutional record of successful exchange activities, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the Bureau's grants staff. The Bureau will consider the past performance of prior grant recipients as well as the demonstrated potential of new applicants.

6. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other evaluation technique should be included together with the description of how project outcomes will be compared with project objectives.

7. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) that ensures that the project activities are not isolated events but are part of a coherent and on-going plan to improve education in Azerbaijan.

8. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be reasonable and appropriate and should reflect a commitment to pursuing project objectives. The Bureau views cost sharing as a reflection of institutional commitment to the project. Contributions should not be limited to indirect costs.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1993 (FREEDOM Support Act). Programs and projects must conform to Bureau requirements and guidelines outlined in the Solicitation Package. Bureau projects and programs are subject to the availability of funds.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: November 10, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–29014 Filed 11–19–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Delegation of Authority No. 265]

Delegation of Authority to the U.S. Agency for International Development Administrator

By virtue of the authority vested in me as Under Secretary of State for Management, including the authority delegated to me by the Secretary of State in Delegation of Authority No. 148–1, dated September 9, 1981, and Delegation of Authority No. 198, dated September 16, 1992, I hereby delegate to the Administrator of the United States Agency for International Development (''Administrator'') the function conferred upon the Secretary of State in section 824(g) of the Foreign Service Act of 1980 (22 U.S.C. 4064(g)) with respect to the waiver of salary/annuity limitations for Foreign Service annuitants reemployed, on a temporary basis, by the United States Agency for International Development in support of operations in Iraq and Afghanistan.

This authority may be re-delegated by the Administrator to the Director of Personnel for the United States Agency for International Development.

Notwithstanding any provisions of this Delegation of Authority, the Secretary of State, the Deputy Secretary of State, the Under Secretary of State for Management, and the Director General of the Foreign Service and Director of Human Resources may at any time exercise the functions herein delegated.

Any reference in this Delegation of Authority to any statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time.

This Delegation of Authority shall be published in the **Federal Register**.

Dated: November 6, 2003.

Grant S. Green,

Under Secretary of State for Management, Department of State.

[FR Doc. 03–29012 Filed 11–19–03; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending November 7, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–16479.

Date Filed: November 5, 2003.

Parties: Members of the International Air Transport Association.

Subject:

Mail Vote 340,

PTC COMP 1104 dated 7 November 2003,

Resolution 010c—Special Amending Resolution r1–r4,

Intended effective date: 15 November 2003.

Docket Number: OST–2003–16483.

Date Filed: November 6, 2003.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 341, PTC COMP 1105 Resolution 010d—Special Passenger, Amending Resolution r1–r12,

Intended effective date: 1 December 2003.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 03–29031 Filed 11–19–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 10, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–2003–16115] by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer (202) 267–5174, Tim Adams (202) 267–8033, or Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on November 17, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No.: FAA–2003–16115.

Petitioner: Raytheon Aircraft Charter & Management.

Section of 14 CFR Affected: 14 CFR 119.71(e).

Description of Relief Sought: To permit Raytheon Aircraft Charter & Management to appoint a Director of Maintenance who does not meet the qualification criteria outlined in 14 CFR 119.71(e). Specifically, the exemption would permit Mr. Tim Bowman, an individual who does not possess a powerplant rating on his mechanic certificate, to serve as Director of Maintenance for Raytheon Aircraft and Charter Management.

[FR Doc. 03–29024 Filed 11–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–64]

Petitions for Exemption; Summary of Petitions Received; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received; correction.

SUMMARY: This document makes a correction to the summary of petitions received published in the **Federal Register** on November 12, 2003 (68 FR 64186). That notice contained a summary of certain petitions seeking relief from specified requirements of 14 CFR.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

Correction

In notice of petitions for exemption FR Doc. 03–28256, published on November 12, 2003 (68 FR 64186), make the following correction:

1. On page 64187, in column 2, beginning on line four, correct ''Docket No.: FAA–2003–16195'' to read ''Docket No.: FAA–2003–16138''.

Issued in Washington, DC, on November 17, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 03–29023 Filed 11–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–06–C–00–DBQ To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Dubuque Regional Airport, Dubuque, IA

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dubuque Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 22, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Andrew D. Perry, A.A.E., Airport Manager, Dubuque Regional Airport, at the following address: 11000 Airport Road, Dubuque, IA 52003.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Dubuque Airport Commission, Dubuque Regional

Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 901 Locust, Kansas City, MO 64106, (816) 329–2641. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Dubuque Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 7, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Dubuque Airport Commission, Dubuque, Iowa, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 25, 2004.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June, 2004.

Proposed charge expiration date: November, 2005.

Total estimated PFC revenue: $253,795.

Brief description of proposed project(s): Environmental assessment and benefit cost analysis, rehabilitation of Taxiway Charlie and lighting of Taxiways Charlie and Delta, snow removal equipment, airport master plan, replace southeast section of Taxiway Alpha lighting, and acquire a ground level boarding bridge.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Dubuque Regional Airport.

Issued in Kansas City, Missouri, on November 10, 2003.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 03–29028 Filed 11–19–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16528]

Notice of Receipt of Petition for Decision That Nonconforming 2004 Harley Davidson FX, FL, XL, and VRSCA Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2004 Harley Davidson FX, FL, XL, and VRSCA motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2004 Harley Davidson FX, FL, XL, and VRSCA motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 22, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590 (docket hours are from 9 a.m. to 5 p.m.). Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Milwaukee Motorcycle Imports, Inc. of Milwaukee, Wisconsin (''MMI'')(Registered Importer 99–192) has petitioned NHTSA to decide whether non-U.S. certified 2004 Harley Davidson FX, FL, XL, and VRSCA motorcycles are eligible for importation into the United States. The vehicles that MMI believes are substantially similar are 2004 Harley Davidson FX, FL, XL, and VRSCA motorcycles that were manufactured for sale in the United States and certified by their manufacturer, Harley Davidson Motor Company, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2004 Harley Davidson FX, FL, XL, and VRSCA motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

MMI submitted information with its petition intended to demonstrate that non-U.S. certified 2004 Harley Davidson FX, FL, XL, and VRSCA motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2004 Harley Davidson FX, FL, XL, and VRSCA motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,*

119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* 122 *Motorcycle Brake Systems,* and 205 *Glazing Materials.*

The petitioner also states that the vehicles' original manufacturer has stamped into the headstock a 17-digit vehicle identification number (VIN) and affixed a label to the vehicles with the same VIN, as required by 49 CFR part 565.

The petitioner further contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated below:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies, which incorporate DOT certified headlamps; (b) replacement of all stop lamp and directional bulbs with ones that are certified to DOT requirements; (c) replacement of all lenses and housings (if needed) with ones that are certified to DOT requirements.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Installation of a tire information placard.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S.-model speedometer reading in miles per hour and a U.S.-model odometer reading in miles.

The petitioner also states that a certification label must be affixed to the front of the motorcycle frame at the time modifications are completed to comply with the requirements of 49 CFR part 567.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 17, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–29032 Filed 11–19–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

[STB Finance Docket No. 34432]

Golden Isles Terminal Railroad, Inc.—Trackage Rights Exemption—CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT), pursuant to a written trackage rights agreement entered into between CSXT and Golden Isles Terminal Railroad, Inc. (GIT), has agreed to grant certain trackage rights to GIT over CSXT's rail line between milepost A489 near Georgia Ports Authority's Garden City Terminal and milepost S500 at or about the entrance to CSXT's Savannah Yard, plus sufficient tail room from the north entrance to Old Savannah Yard, through Loricks Lead, out on Number One Main to milepost A492, and from the south entrance of Old Savannah Yard, through the Blossom signal, out on Mainline to milepost S504 in Chatham County, GA.

The transaction was scheduled to be consummated after November 7, 2003, the effective date of the exemption (7 days after the notice was filed).

The purpose of the trackage is to allow GIT access to the Savannah Yard which it is simultaneously leasing from CSXT, and to provide terminal switching and other services for customers in the Georgia Ports Authority's Garden City Terminal Area.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34432, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Gollatz, Griffin & Ewing, P.C, Four Penn Center Plaza, 1600 John F. Kennedy Blvd., Suite 200, Philadelphia, PA 19103–2808.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: November, 12, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–28886 Filed 11–19–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34423]

M & B Railroad, L.L.C.—Acquisition and Operation Exemption—CSX Transportation, Inc.

M & B Railroad, L.L.C. (MNBR), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from CSX Transportation, Inc. (CSXT), and operate two segments of rail line. The first segment extends 30.22 miles from milepost XXB 189.00 (some mileposts on this segment are not a full mile apart) near Burkeville, AL (also known as Burkville), to milepost XXB 222.00 at the Western Junction station in Dallas County, AL. The second segment extends approximately 63.46 miles from milepost OOR 716.25 at the Western Junction station in Dallas County, AL, to milepost ORS 779.71 near Myrtlewood, AL. The segments being acquired also include CSXT's Selma Yard, at Selma, AL, and the following stations (all in Alabama): Myrtlewood (milepost ORS 781), Linden (milepost ORS 771), Hugo, Thomaston (milepost ORS 760), Central Mills, Orville (milepost ORS 736), Selma (milepost ORS 720), Western Junction (mileposts ORS 717/XXB 222), Alamet (milepost XXB 219), Tyler (milepost XXB 213), Benton (milepost XXB 207), Laneville (milepost XXB 204), Whitehall (milepost XXB 200), Latham Spur (milepost XXB 198), Lowndesboro (milepost XXB 194), Robinsons (milepost XXB 190), and Burkeville (milepost XXB 189). The acquisition also includes acquisition by MNBR of l4 miles of incidental overhead trackage rights extending from Burkeville to Montgomery Yard in Montgomery, AL. The trackage rights will allow MNBR to interchange traffic with CSXT at CSXT's Montgomery Yard.

Because MNBR's projected annual revenues will exceed $5 million, MNBR certified to the Board on October 21, 2003,[1] that it had posted the required

[1] Due to the timing of MNBR's certification to the Board, consummation under these circumstances would have had to be delayed until December 20, 2003 (60 days after MNBR's certification to the Board that it had complied with the requirements of 49 CFR 1150.42(e)). In a decision in this

notice of intent to undertake the proposed transaction at the workplace of the employees on the affected line and had served a copy of the notice of intent on the national offices of all labor unions with employees on the rail line. *See* 49 CFR 1150.42(e). MNBR stated in its verified notice that the transaction was scheduled to be consummated on November 16, 2003.[2]

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34423, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Donald G. Avery, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036–3003.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: November 14, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–29034 Filed 11–19–03; 8:45 am]

BILLING CODE 4915–00–P

proceeding served on November 3, 2003, however, the Board granted the request by MNBR for waiver of the remainder of the 60-day notice period to allow consummation to occur as early as November 14, 2003.

[2] It appears on this record that the parties intended to effect the operational changes on November 16, 2003, but that they proposed to ''close'' on November 14, 2003.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 12, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 22, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1558.

Revenue Procedure Number: Revenue Procedure 97–43.

Revenue Ruling Number: Revenue Ruling 97–39.

Type of Review: Extension.

Title: Revenue Procedure 97–43: Procedures for Electing Out of Exemptions under Section 1.475(c)–1; and Revenue Ruling 97–39: Mark-to-Market Accounting Method for Dealers in Securities.

Description: Revenue Procedure 97–43 provides taxpayers automatic consent to change to mark-to-market accounting for securities after the taxpayer elects under section 1.475(c)–1, subject to specified terms and conditions. Revenue Ruling 97–39 provides taxpayers additional mark-to-market guidance in a question and answer format.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Respondent: 5 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,000 hours.

OMB Number: 1545–1573.

Regulation Project Number: REG–130477–00 and REG–130481–00 Final.

Type of Review: Extension.

Title: Required Distributions from Retirement Plans.

Description: The regulation permits a taxpayer to name a trust as the beneficiary of the employee's benefit under a retirement plan and use the life expectancies of the beneficiaries of the trust to determine the required minimum distribution, if certain conditions are satisfied.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 333 hours.

OMB Number: 1545–1697.

Revenue Procedure Number: Revenue Procedure 2000–35.

Type of Review: Extension.

Title: Section 1445 Withholding Certificates.

Description: Revenue Procedure 2000–35 provides guidance concerning applications for withholding certificates under Code section 1445.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 6,000.

Estimated Burden Hours Respondent/Recordkeeper: 10 hours.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 60,000 hours.

OMB Number: 1545–1701.

Revenue Procedure Number: Revenue Procedure 2000–37.

Type of Review: Extension.

Title: Reverse Like-Kind Exchanges.

Description: The revenue procedure provides a safe harbor for reverse like-kind exchanges under which a transaction using a ''qualified exchange accommodation arrangement'' will qualify for non-recognition treatment under § 1031 of the Internal Revenue Code.

Respondents: Business or other for-profit, Individuals or households, Farm.

Estimated Number of Respondents/Recordkeepers: 1,600.

Estimated Burden Hours Respondent/Recordkeeper: 2 hours.

Frequency of Response: Other (one-time per transaction).

Estimated Total Reporting/Recordkeeping Burden: 3,200 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–28992 Filed 11–19–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, December 17, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, December 17, 2003 from 2 p.m. to 3 p.m. EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel.

The agenda will include various IRS issues.

Dated: November 17, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–29044 Filed 11–19–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, December 17, 2003 from 12 noon EST to 1 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, December 17, 2003, from 12 noon EST to 1 p.m. EST via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include various IRS issues.

Dated: November 17, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–29045 Filed 11–19–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, December 17, 2003, at 8 a.m., Central standard time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 4 Taxpayer Advocacy Panel will be held Wednesday, December 17, 2003, at 8 a.m., Central standard time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: November 17, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–29046 Filed 11–19–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, December 19, 2003 from 1 p.m. EST to 2 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, December 19, 2003 from 1 p.m. EST to 2 p.m. EST via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Dated: November 17, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–29047 Filed 11–19–03; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
November 20, 2003

Part II

Department of Transportation

Federal Highway Administration

23 CFR Part 655

National Standards for Traffic Control Devices: Manual on Uniform Traffic Control Devices for Streets and Highways; Revision; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–2001–11159]

RIN 2125–AE93

National Standards for Traffic Control Devices: Manual on Uniform Traffic Control Devices for Streets and Highways; Revision

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The Manual on Uniform Traffic Control Devices (MUTCD) is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administration, and recognized as the national standard for traffic control devices used on all public roads. The purpose of this final rule is to revise standards, guidance, options, and supporting information relating to the traffic control devices in all parts of the MUTCD, to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application. The MUTCD, with these changes incorporated, is being designated as the 2003 edition of the MUTCD.

EFFECTIVE DATE: This final rule is effective December 22, 2003. The incorporation by reference of the publication listed in this regulation is approved by the Director of the Office of the Federal Register as of December 22, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Huckaby, Office of Transportation Operations, Room 3408, (202) 366–9064, or Mr. Raymond Cuprill, Office of the Chief Counsel, Room 4230, (202) 366–0791, U.S. Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

This document, the notice of proposed amendments (NPA), and all comments received may be viewed online through the Document Management System (DMS) at *http://dms.dot.gov.* The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web page at: *http://www.gpo.gov.*

Background

On May 21, 2002, at 67 FR 35850, the FHWA published a notice of proposed amendments (NPA) proposing revisions to the Manual on Uniform Traffic Control Devices (MUTCD). Those changes were proposed to be designated as Revision No. 2 of the Millennium (2000) edition of the MUTCD. Interested persons were invited to submit comments to FHWA Docket No. FHWA–2001–11159. Based on the comments received and its own experience, the FHWA is issuing a final rule and is designating the MUTCD, with these changes incorporated, as the 2003 Edition of the MUTCD. The FHWA believes that the title ''2003 Edition'' would be easier for readers to follow rather than the title ''Revision No. 2 of the Millennium (2000) edition.''

A list of all of the items in this final rule and the text of the 2003 edition of the MUTCD, with these final rule changes incorporated, are available for inspection and copying, as prescribed in 49 CFR part 7, at the FHWA Office of Transportation Operations, Room 3408, 400 Seventh Street, SW., Washington, DC 20590. Furthermore, the list of all items in this final rule and the text of the 2003 edition of the MUTCD, with these final rule changes incorporated, are available on the FHWA's MUTCD Internet site *http://mutcd.fhwa.dot.gov.* The previous version of the MUTCD, the 2000 MUTCD with Revision 1 text incorporated is also available on this Internet site. The 2003 edition supersedes all previous editions and revisions of the MUTCD.

Summary of Comments

The FHWA received 293 letters submitted to the docket, containing over 5,000 individual comments on the MUTCD in general or on one or more parts, chapters, sections, or paragraphs contained in the MUTCD. Comments were received from the National Committee on Uniform Traffic Control Devices (NCUTCD), State Departments of Transportation (DOTs), city and county government agencies, Federal government agencies, consulting firms, private industry, associations, other organizations, and individual private citizens. The FHWA has reviewed and analyzed all the comments received. The significant comments and summaries of the FHWA's analyses and determinations are discussed below. General comments and significant global changes throughout the MUTCD are discussed first, followed by discussion of significant comments and adopted changes in each of the individual Parts of the MUTCD.

Discussion of Adopted General and Global Changes Throughout the MUTCD

In the NPA, the FHWA proposed designating the changes to the MUTCD as Revision No. 2 of the Millennium (2000) edition of the MUTCD. Comments were received from the American Association of State Highway Transportation Officials (AASHTO), the American Traffic Safety Services Association (ATSSA) and the Institute of Transportation Engineers (ITE) (the three associations who publish the MUTCD in hard-copy book format) and from other individuals opposing this proposed designation as Revision No. 2. The commenters expressed the opinion that the number and extent of changes are too great in scope to be considered a mere revision of the 2000 edition and that the MUTCD, with the changes incorporated, should be designated as a complete new edition of the MUTCD, to minimize user confusion. The commenters also stated that a new graphical design for the cover and title pages of each part of the MUTCD are needed to make the new edition clearly distinguishable by users from earlier editions. The FHWA agrees with these comments and designates the MUTCD, with the adopted final rule changes incorporated, as the 2003 Edition of the MUTCD and also adopts new graphical designs for the cover and title pages of each part of the 2003 MUTCD. The FHWA revises Table I–1 and all page headers to reflect this designation.

Additionally, the FHWA received comments from ITE, ATSSA, traffic engineering consultants and private citizens that the proposed continuation of the 2000 MUTCD's page layout format and graphics formats is inappropriate and that these elements need improvement to adequately serve users. Suggestions included reducing the amount of ''white space'' on text pages to reduce the total number of pages in the MUTCD, using accurate fonts and letter spacing on illustrations of signs, using more accurate proportioning of lanes and pavement markings on figures, and various other adjustments to graphics to aid in user understanding and to make the figures more accurately reflect the standards,

guidance, and options contained in the text of the MUTCD. The FHWA agrees that the page layout and graphics formatting of the 2000 MUTCD needs to be improved in the 2003 edition to make the document more usable by the public. Accordingly, in this final rule the FHWA revises the text page layouts to reduce white space and thereby reduce the number of text pages by about one-third, while still maintaining good layout for readability both online and in printed book format. The FHWA also revises many of the figures in the MUTCD to make sign illustrations pattern-accurate and illustrations of pavement markings and other devices more understandable and to accurately reflect provisions in the MUTCD text.

The FHWA also received many comments about the lack of consistency between some of the signs and pavement markings illustrated in various figures in the MUTCD and the illustrations in the ''Standard Highway Signs'' (SHS) book.[1] The FHWA agrees that these inconsistencies cause inordinate confusion to users, and in this final rule the FHWA revises many of the MUTCD figures to illustrate or refer to all SHS signs that are consistent with this 2003 MUTCD. This will better serve users by greatly improving the consistency of the MUTCD with the SHS.

Additionally, in the NPA, the FHWA proposed minor grammatical or style changes to the MUTCD text to improve consistency with related text or figures, to improve clarity, or to correct minor errors. Where the FHWA proposed to add new sections within a chapter of the MUTCD, the FHWA proposed to renumber the sections that followed accordingly. The FHWA proposed to revise all Tables of Contents, Lists of Figures, Lists of Tables, and page headers and footers as appropriate to reflect the proposed changes. The FHWA received many comments, both in general and on many specific sections throughout the MUTCD, agreeing with these minor editorial changes. Some commenters opposed the proposed use of some specific words or phrases and recommended substitute words or phrases and/or additional minor editorial revisions to correct errors, improve grammar, clarity, consistency, and accuracy. Where appropriate, the FHWA incorporates minor editorial revisions and corrections in this final rule.

The FHWA also received comments on the fact that many of the new sections proposed in the NPA were to be added at the end of the chapter in various parts of the MUTCD. Several commenters, particularly State DOTs, suggested that the new material would be more logically located near other similar subjects within the chapter rather than at the end. The FHWA agrees with many of the comments of this nature and makes editorial changes in the text and figures as appropriate in this final rule. The FHWA also relocates and renumbers some of the new sections to appropriate locations within the chapters to enhance user understanding, and renumbers subsequent sections accordingly.

In the discussions below, the section numbers and titles refer to those in this final rule, with parenthetical reference to the section numbers and titles in the NPA and/or the 2000 Edition if different, as appropriate.

The FHWA also received comments from traffic engineering consultants and others about inconsistency and errors in the 2000 MUTCD and in the NPA regarding conversions of English units to metric units. Accordingly, the FHWA made a comprehensive review of all dimensions and units of measure in the MUTCD and identified a variety of errors in conversions of English units to metric units that had occurred during the process of preparing the 2000 edition of the MUTCD and that had been perpetuated or inaccurately corrected in the NPA. The FHWA corrects these metric conversions in this final rule.

In the NPA, to facilitate easy reference, the FHWA also proposed giving figure numbers and titles to all pages that did not have a figure number for images of traffic control devices in the 2000 MUTCD. The FHWA also proposed changing the titles of a number of figures to clarify a figure as either ''typical'' or ''example(s) of.'' In general, the FHWA proposed using the word ''typical'' in the title if the figure portrays preferred or recommended practice, and the words ''example(s) of'' in the title if the figure portrays one or several of a variety of things that would be acceptable practice with no recommended preference. Also, the FHWA proposed modifying figures, where appropriate, to reflect proposed changes in the text. Most of the commenters agreed with these proposed changes. In a few cases, the FHWA received comments opposing a proposed change of a specific figure's title from ''example(s) of'' to ''typical,'' citing reasons why the figure or figures in question were inaccurately named based on the FHWA's stated criteria. The FHWA adopts the proposed addition of or changes to figure numbers and titles with revisions to address comments as appropriate.

The FHWA also received several comments from the U.S. Access Board and from organizations representing the blind, visually impaired, and people with other disabilities, requesting that the MUTCD be changed throughout to make it fully consistent with the Draft Guidelines for Accessible Public Rights-of-Way that were published by the Access Board on June 17, 2002, on its Web site (*http://www.access-board.gov*). The FHWA disagrees because the draft guidelines published by the Access Board are only a preliminary draft for initial public comments, and they have not been finalized. The Access Board is currently reviewing the large number of initial public comments received on the draft and plans to issue a notice of proposed rulemaking (NPRM) with a revised proposal for Guidelines for Accessible Public Rights-of-Way in 2004. After the Access Board completes its rulemaking on this matter and issues a final rule, the FHWA plans to propose changes to the MUTCD to make it consistent with the Access Board's guidelines. However, in recognition of and support for the importance of accessibility issues related to traffic control devices, in the NPA the FHWA proposed a variety of changes to the MUTCD to assure consistency with existing requirements of the Americans With Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, and other regulatory requirements concerning accessibility as they pertain to traffic control devices. In this final rule, the FHWA adopts most of those proposed changes. Further discussion of accessibility issues may be found elsewhere in this preamble to this final rule, especially under the discussion of adopted revisions to Part 6 of the MUTCD, Temporary Traffic Controls.

The FHWA is aware that section 508 of the Rehabilitation Act, 29 U.S.C. 794 (2001), requires that certain electronic and information technology (EIT) be accessible to individuals with disabilities. By regulation, 36 CFR 1194.4 (2001), EIT includes information contained on world wide Web sites. Because the FHWA distributes the MUTCD via the Internet site (*http://mutcd.fhwa.dot.gov*), it is aware that it must comply with section 508, and it has done so by providing, in addition to the PDF file format, an alternative

[1] ''Standard Highway Signs,'' FHWA, 2002 Edition is available for purchase from the U.S. Government Printing Office Bookstore, Superintendent of Documents, Room 118, Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222. Internet Web site at *http://bookstore.gpo.gov*. It is also available on the FHWA's Web site at *http://mutcd.fhwa.dot.gov* and is available for inspection and copying at the FHWA Washington Headquarters and all FHWA Division Offices prescribed at 49 CFR part 7.

format (hypertext markup language—HTML), that is accessible to individuals with disabilities. Included within those HTML files are accessible narrative descriptions of all of the illustrations (figures) that are contained in the MUTCD. The FHWA notes that, while every effort has been made to assure complete consistency between the PDF and HTML file formats, the PDF version is the official version of the MUTCD and takes precedence over any potentially conflicting text in that may occur in the HTML version.

A summary of the significant changes for each of the parts of the MUTCD is included in the following discussion.

Discussion of Adopted Amendments to the Introduction

1. On Page i the FHWA adds addresses for four additional organizations whose publications are referenced in the various parts of the MUTCD. There were no comments on these additions and the FHWA adopts the changes as proposed in the NPA, with further revisions to add Web site addresses for each of the organizations listed, to assist users of the MUTCD with contacting each of the organizations.

2. In the Introduction, the FHWA revises the second paragraph of the first STANDARD statement to correct an incorrect reference in the 2000 MUTCD and to accurately reflect the referenced text of the Code of Federal Regulations and with Section 1A.07 Responsibility for Traffic Control Devices. There were no comments on these changes. The FHWA adopts the changes.

In the second SUPPORT statement, the FHWA makes a minor editorial change to correct the section reference to the Uniform Vehicle Code [2] in the fourth sentence of the first paragraph to Section 15–116 of the UVC. The 2000 MUTCD and the NPA incorrectly referenced Section 15–117 of the UVC regarding traffic control devices on private property used by the public.

The FHWA also adds a second paragraph to the GUIDANCE statement to clarify that, except when a specific numeral is required by the MUTCD text, numerals shown in sign images in the figures that specify times, distances, speed limits, and weights should be regarded as examples only, and that the numerals installed on actual signs should be appropriately altered to fit the specific signing situation. This clarification is necessary to address comments about some of the sign images throughout the MUTCD in the NPA.

The FHWA also adds a fourth SUPPORT statement to clarify the organization of the MUTCD and explain how one could reference portions of the MUTCD. There were no comments on this SUPPORT statement and the FHWA adopts it as proposed in the NPA.

The FHWA also adds a new STANDARD that lists special phase-in target compliance dates for various portions of the MUTCD. The purpose of this list is to provide a convenient reference guide to the user of phase-in target compliance dates for various portions of the MUTCD. The FHWA received comments from the City of Plano, Texas, and the Association of Pedestrian and Bicycle Professionals supporting the presence of this new text. Some commenters also questioned the use of the word ''issuance'' in the STANDARD stating that States or other Federal agencies shall adopt changes to the MUTCD within two years of issuance. ''Issuance'' in this usage refers to the date that the FHWA Administrator signs the final rule, which occurs prior to the publication date and effective date of the final rule. This language is as proposed in 23 CFR 655.603(b)(1) and cannot be changed in the MUTCD Introduction until the Code of Federal Regulations is changed. Such a change may be considered in a future rulemaking.

The National Committee on Uniform Traffic Control Devices (NCUTCD), including members of the Railroad-Light Rail Transit Technical Committee of the NCUTCD opposed the wording in the first paragraph of the proposed new STANDARD that would require replacement of damaged devices upon adoption of the MUTCD by the State or other Federal agency. The commenters stated that replacement of damaged devices is normal maintenance that should not be covered by this STANDARD. While it is usually desirable to replace damaged devices with ones that conform to the current MUTCD, there are times that doing so may not be practical, or may cause the replacement device to be inconsistent with other portions of the Manual or other devices in a series, and thereby cause a potential safety issue for road users. The FHWA agrees and revises the statement by deleting replacement of damaged devices from the STANDARD statement and, in conjunction with this, at the end of the MUTCD Introduction the FHWA adds new OPTION and SUPPORT statements regarding the replacement of damaged, non-compliant devices as part of maintenance activities following a crash or other event. The FHWA also modifies the new STANDARD statement to accurately reflect existing provisions of the Code of Federal Regulations in regard to different requirements that apply on Federal-aid projects, and to clarify the FHWA's authority to establish phase-in target compliance dates for particular changes to the MUTCD.

The NCUTCD, State and local DOTs, and private citizens suggested changes to some specific proposed special phase-in target compliance dates. The FHWA deletes the word ''proposed'' from each of the phase-in target compliance dates which appeared in the NPA, and changes the phase-in target compliance dates (from what was proposed in the NPA) for the following: Section 2B.28 Preferential Only Lane Sign Placement and Application (numbered 2B.50 in the NPA), Section 2B.52 Hazardous Material Signs (R14–2, R14–3) (numbered 2B.46 in the NPA), Section 2C.30 Speed Reduction Signs (W3–5, W3–5a) (numbered 2C.51 in the NPA), Section 2D.38 Street Name Sign (D3–1), Section 2D.39 Advance Street Name Signs (D3–2), Section 2E.28 Interchange Exit Numbering, Section 2I.03 EVACUATION ROUTE Sign (EM–1), Section 4D.12 Flashing Operation of Traffic Control Signals, Section 4E.07 Countdown Pedestrian Signals, Section 6D.03 Worker Safety Considerations (numbered 6D.02 in the NPA), Section 6E.02 High-Visibility Safety Apparel, Section 6F.58 Channelizing Devices (numbered 6F.55 in the NPA), Section 6F.63 Type I, II, or III Barricades (numbered 6F.60 in the NPA), and Part 10 (Traffic Controls for Highway-Light Rail Transit Grade Crossings).

The FHWA also adds phase-in target compliance dates for the following: Section 2A.19 Lateral Offset, Section 2B.06 STOP Sign Placement, Section 2B.09 YIELD Sign Applications, Section 2B.10 YIELD Sign Placement, Section 2B.13 Speed Limit Sign (numbered 2B.11 in the NPA), Section 2C.16 NARROW BRIDGE Sign (W5–2) (numbered 2C.14 in the NPA), Section 2B.26 Preferential Only Lane Signs (R3–10 through R3–15) (numbered 2B.48 in the NPA), Section 2C.34 Two-Way Traffic Sign (W6–3) (numbered 2C.31 in the NPA), Section 2E.54 Reference Location Signs, Section 2E.59 Preferential Only Lane Signs, Section 3B.03 Other Yellow Longitudinal Pavement Markings, Section 3B.17 Crosswalk Markings, Section 3B.19 Pavement Word and Symbol Markings, Section 5C.05 NARROW BRIDGE Sign,

[2] The ''Uniform Vehicle Code and Model Traffic Ordinance,'' 2000 edition, is published by the National Committee on Uniform Traffic Laws and Ordinances, 107 S. West Street, #110, Alexandria, Virginia 22314. It is available for inspection as prescribed at 49 CFR part 7. Purchase information is available on the Web site for the National Committee at *http://www.ncutlo.org.*

Section 6D.02 Accessibility Considerations, Section 6F.03 Sign Placement, 6F.66 Longitudinal Channelizing Barricades (numbered 6F.53 in the NPA), Section 6F.82 Crash Cushions (numbered 6F.78 in the NPA), and Section 7B.12 Reduced Speed School Zone Ahead Sign (S4–5, S4–5a).

The FHWA is not including in this final rule the following phase-in target compliance dates that had been proposed in the NPA: Section 3B.14 Raised Pavement Markers Substituting for Pavement Markings, Section 4E.04 Size, Design, and Illumination of Pedestrian Signal Head Indications, Sections 4F.04 and 4L.03 (these sections are removed from this final rule), Section 6F.69 Temporary Raised Islands (numbered 6F.63 in the NPA), and for Section 8B.02 Highway-Rail Grade Crossing (Crossbuck) Sign (R15–1) and Number of Tracks Sign (R15–2). Discussion of these changes, additions, and removals of phase-in target compliance dates may be found under the discussions of the individual sections.

Discussion of Adopted Amendments to the Table of Contents

3. The FHWA condenses the Table of Contents to include only the list of Parts and Chapters. Each Part continues to begin with a ''table of contents'' that contains the page number of every section, figure, and table. This change simplifies the search for an item by those with visual disabilities by enabling them to advance to the appropriate Part and then page more quickly and easily. There were no comments on the Table of Contents and the FHWA adopts the changes.

Discussion of Adopted Amendments to Part 1—General

4. In Section 1A.05 Maintenance of Traffic Control Devices, in the second paragraph of the GUIDANCE statement, the FHWA revises the text to eliminate redundancy. The FHWA received one editorial comment from a traffic engineering consultant, and adopts the suggested editorial changes with minor revision.

5. In Section 1A.07 Responsibility for Traffic Control Devices, the FHWA makes a minor editorial change to correct the section reference to the Uniform Vehicle Code (UVC) in the first sentence of the second paragraph of the SUPPORT statement to Section 15–116 of the UVC. The 2000 MUTCD and the NPA incorrectly referenced Section 15–117 of the UVC regarding traffic control devices on private property used by the public.

6. In Section 1A.10 Interpretations, Experimentations, Changes and Interim Approvals, titled ''Interpretations, Experimentations, and Changes'' in the NPA, the FHWA changes the first GUIDANCE statement to a STANDARD statement to require that requests for interpretations, permission to experiment, interim approval, or changes to the MUTCD must be submitted to the FHWA's Office of Transportation Operations. There were no comments on this change.

The FHWA received three comments from the NCUTCD and the Minnesota and Ohio DOTS regarding item E of the second GUIDANCE statement and item D of the fourth GUIDANCE statement, both of which pertain to patented or copyrighted traffic control devices. The commenters suggested that certifying that a ''concept'' for a traffic control device is not protected by a patent or copyright is vague and difficult to interpret. The FHWA agrees and inserts an example of a traffic control device concept in both items to clarify the intent.

Additionally, following the fourth GUIDANCE statement the FHWA adds SUPPORT, GUIDANCE, OPTION, and STANDARD statements describing the ''interim approval'' process for the FHWA to approve or allow the use of new traffic control devices. Seven commenters representing industry and local governments were all in general support of the new interim approval process.

The NPA included an additional new STANDARD statement between the new SUPPORT and GUIDANCE statements. In response to comments from the NCUTCD and the California Department of Transportation (Caltrans), the FHWA removes as incorrect the proposed STANDARD statement to the effect that interim approvals will be considered only when submitted by the public agency or private toll facility responsible for the operations of the road or street. It is not FHWA's intent to limit requests for interim approvals to only public agencies or private toll road authorities. Requests for interim approvals, interpretations, and changes can be made by anyone. However, requests for experimentation approvals will continue to be accepted only from public agencies or private toll road authorities.

The FHWA also modifies Figure 1A–2 to reflect the ''interim approval'' process and to make the figure more accurately reflect the text of the MUTCD.

7. In Section 1A.11 Relation to Other Publications, the FHWA modifies the STANDARD statement to update the documents listed to the latest editions. The FHWA also adds additional sources of information in the SUPPORT statement and revises the order of the sources of information, alphabetizing first by source, then by the title of the document. There were several editorial comments suggesting revisions to reflect current editions of documents that the FHWA incorporates in this final rule.

8. In Section 1A.12 Color Code, the FHWA adds to the STANDARD statement the assignment of the color fluorescent pink to incident management to make it easier for road users to follow directions relating to traffic incidents. This color was referred to as fluorescent coral in the NPA. The FHWA received several comments from the NCUTCD, ATSSA, the Ohio, California, Virginia and Missouri DOTs, and traffic control device manufacturers, regarding this color. ATSSA, the Virginia DOT, and several traffic control device manufacturers felt that the color should be called fluorescent pink, other traffic control device manufacturers agreed with the color coral, and Minnesota DOT wanted more studies regarding effectiveness of the color. The FHWA believes that the study [3] that found this color to be effective is sufficient and that further study is not needed. The coordinates of the color box are most appropriately titled ''fluorescent pink,'' and the FHWA intends for the color to appear pinker in nature, similar to the sample signs that were studied and found effective, rather than coral. The FHWA reorders the items in the STANDARD statement so that the colors appear in alphabetical order, adds the color ''fluorescent pink,'' and restores the color ''coral'' as unassigned. The color coordinates for the color fluorescent pink are indicated below.

[3] ''Improvement of Conspicuity of Trailblazing Signs: Phase III—Evaluation of Fluorescent Colors'', Virginia Transportation Research Council (VTRC) Report No. FHWA/VTRC 01–CR4, February 2001, by Neale, Anders, Schreiner, and Brich, may be ordered from VTRC at the following URL: *http://www.virginiadot.org/vtrc/main/index_main.htm*. The color tested and recommended in this report is referred to as fluorescent coral, however the characteristics (color box coordinates, etc.) of the color tested are more accurately described as fluorescent pink.

The Commission Internationale de l'Eclairage (CIE) (English: International Commission on Illumination) chromaticity coordinates (x,y), defining the corners of the Fluorescent Pink daytime color region are as follows:

x	y
0.450	0.270
0.590	0.350
0.644	0.290
0.536	0.230

	Luminance factor limits (Y)				
	D_{65}			D_{150}	
	Min	Max	Y_F	Min	Max
Fluorescent Pink	25	none	15	25	none

Fluorescent materials differ from non-fluorescent materials in that the total luminance is the sum of the luminances due to reflection and fluorescence. The luminance factor Y of such materials is the sum of the luminance due to reflection (Y_R) and the luminance due to fluorescence (Y_F). Therefore, $Y=Y_R+Y_F$. If the value Y_F is greater than zero, the material is fluorescent; if Y_F equals zero, then the luminance factor Y is equal to Y_R.

These four pairs of chromaticity coordinates determine the acceptable color in terms of CIE 1931 Standard Colorimetric System (2 degree standard observer) measured with CIE Standard Illuminant D65 in accordance with the American Society for Testing Materials (ASTM) standard E991. In addition, the color shall be fluorescent, as determined by ASTM E1247.[4] The FHWA amends title 23, Code of Federal Regulations, part 655, appendix to subpart F, to add chromaticity coordinates and luminance factor limits for the color of fluorescent pink retroreflective sign materials.

Additionally, to be consistent with Section 2C.42 Playground Sign (W15–1), the FHWA adds ''playground warning'' to the list of signs assigned the fluorescent yellow-green color.

9. In Section 1A.13 Definitions of Words and Phrases in This Manual, the FHWA revises definitions in the STANDARD statement for: ''Active Grade Crossing Warning System,'' ''Average Day,'' ''Beacon,'' ''Crosswalk,'' ''Highway Traffic Signal,'' ''Raised Pavement Marker'', ''Road User,'' ''Shared-Use Path,'' ''Sidewalk,'' ''Sign Illumination'' and ''Traffic Control Device'' to better reflect accepted practice and terminologies and to provide consistency between the definitions shown here and in other parts of the Manual. Additionally, the FHWA adds definitions for ''Crashworthy,'' ''Detectable,'' ''Inherently Low Emission Vehicle (ILEV),'' ''Pedestrian Facilities,'' and ''Roundabout Intersection'' because they are used in the MUTCD. There were a few editorial comments regarding some of these definitions that the FHWA incorporates in this final rule as appropriate. Also, the FHWA revises the definition of ''Inherently Low Emission Vehicle (ILEV)'' to clarify that only the U.S. Environmental Protection Agency has the authority to certify ILEVs.

Additionally, the FHWA removes the definition for ''Preferential Lane Marking'' because it is no longer used in the MUTCD. There were no comments regarding this change.

10. In Section 1A.14 Abbreviations Used on Traffic Control Devices, the FHWA revises the text in the first STANDARD statement to clarify that the abbreviations for the word messages shown in Table 1A–1 are the only abbreviations to be used for those word messages. The FHWA also adds a GUIDANCE statement at the end of this section to give guidance regarding the consistency of abbreviations within a single jurisdiction. Additionally, the FHWA revises Tables 1A–1 and 1A–2 to include additional abbreviations, delete some abbreviations, and modify some abbreviations, based on Texas research on driver understanding of abbreviations. The Illinois DOT was opposed to the abbreviations for northbound, eastbound, and the like, suggesting that the use of ''NB'', etc. should be allowed. The 2000 Texas Transportation Institute (TTI) study (by Durkop and Dudek)[5] on which many of the abbreviation requirements were based found very low driver comprehension rates in Texas for NB, EB, SB, and WB when used as ''NB Traffic'' or ''US 75 NB.'' The Texas study suggested that a better alternative would be just the initial letter N, S, E, or W. The FHWA reviewed that study and has determined that abbreviations such as ''N–BND'' would further enhance understanding. Accordingly, the FHWA adopts the changes to this section as proposed in the NPA, with minor editorial clarifications.

Discussion of Adopted Amendments to Part 2—Signs

11. In Section 2A.06 Design of Signs, the FHWA adds to the SUPPORT statement that the ''general appearance'' of the sign legends, colors and sizes are shown in the illustrations, because the illustrations may not exactly correspond to the letter brush stroke widths of the ''Standard Highway Signs'' book and the FHWA central values and tolerance limits of colors, due to variations in computer display monitors and printing processes.

In the NPA, the FHWA proposed adding to the STANDARD statement that, unless otherwise stated in the MUTCD for a specific sign, phone numbers or Internet addresses shall not be shown on any sign, to reduce the possibility of driver distraction. While there was one comment from the NCUTCD in support of this change, there were five comments from the Arizona, Washington, Virginia, and Illinois DOTs and the City of Plano, Texas, specifically opposing the language in the NPA prohibiting phone numbers on signs because these may provide important phone numbers that are used for services provided to the public by a government agency. The FHWA agrees that telephone numbers can be useful, but is concerned about driver distraction and the effect on highway safety. To address the

[4] A list of the American Society for Testing Materials (ASTM) standards is available on the Internet at the following URL: *http://www.astm.org.* The ASTM International is a global forum for the development of consensus standards. Standard ASTM E991–98 is titled ''Standard Practice for Color Measurement of Fluorescent Specimens.'' Standard ASTM E1247–03 is titled ''Standard Practice for Detecting Fluorescence in Object-Color Specimens by Spectrophotometry.''

[5] ''Texas Driver Understanding of Abbreviations for Dynamic Message Signs'', February 2000, by Durkop and Dudek, Texas Transportation Institute Report number FHWA/TX–00–1882–1, can be obtained from the Texas Transportation Institute, phone (979) 845–4853. A summary of the results was also published in Transportation Research Record 1748, available for purchase from the Transportation Research Board at the following URL: *http://www4.trb.org/trb/onlinepubs.nsf/web/homepage?OpenDocument.*

comments, the FHWA revises the STANDARD statement and adds GUIDANCE and OPTION statements to allow phone numbers and Internet addresses on signs in certain limited circumstances, minimizing the potential effects on safety. The language in this final rule permits abbreviated telephone numbers (four characters or less) on signs. Signs with telephone numbers of more than four characters and Internet addresses may be provided in parking and pedestrian areas, or on low-speed roadways where engineering judgment indicates that vehicles can safely stop out of the traffic flow to read the sign.

12. In Section 2A.07 Changeable Message Signs, the FHWA revises the GUIDANCE statement to include safety messages as one of the types of allowable displays for changeable message signs. There were two comments from the NCUTCD and the City of Tucson, Arizona, in support of this change, while two commenters representing the Kansas DOT opposed it. The Kansas DOT stated that to encourage the display of safety messages on changeable message signs could desensitize the traveling public towards regulatory, warning, and guidance information that is displayed at other times. The FHWA adopts the proposed change because it is included in a GUIDANCE statement, which gives the individual States the flexibility to permit or not permit safety messages on changeable message signs.

Additionally, the FHWA adds at the end of the section OPTION, SUPPORT, GUIDANCE, and STANDARD statements regarding the use, design, and format of safety and other messages so that they do not adversely affect the usefulness of the sign. There were two comments from the Kansas DOT opposed to the new OPTION statement, stating that changeable message signs should be used only when there is a need. Because this is an OPTION statement, the FHWA believes that it gives any individual State the flexibility to use this option if it so chooses. To explicitly reinforce this, the FHWA adds a sentence to the OPTION statement that State and local agencies may develop and establish a policy regarding safety and transportation-related message signs, for both permanent and changeable message signs, which specifies allowable messages and applications. To mirror and reinforce the information contained in Table 2A–4, the FHWA also adds to the OPTION statement that changeable message signs (including portable changeable message signs) that display a regulatory or warning message may use a black background with a white, yellow, orange, red, or fluorescent yellow-green legend as appropriate.

13. In Section 2A.08 Retroreflectivity and Illumination, the FHWA revises Table 2A–1 by replacing ''Patterns of incandescent light bulbs'' with ''Incandescent light bulbs'' and by adding ''Light Emitting Diodes (LEDs)'' to the listed Means of Illumination to reflect current technology. There were nine comments from the NCUTCD, the City of Tucson, Arizona, traffic control device manufacturers, and private citizens supporting this change, particularly the addition of light emitting diodes (LEDs). To provide additional clarification to the table, the FHWA creates a separate row in the table for light emitting diodes under the Means of Illumination and includes symbols or word messages and portions of the sign border as sign elements to be illuminated. In addition, based on comments from the NCUTCD, the FHWA adds to the OPTION statement additional information regarding the use of LEDs within the face of a sign and in the border of a sign and adds a new STANDARD statement following this OPTION to specify the color and flash rate for LEDs used on a sign.

Additionally, the FHWA adds a new SUPPORT statement at the end of the section referencing information contained in Section 2A.21 Posts and Mountings on the use of retroreflective material on the sign support. There was one comment from the NCUTCD in support of this change. The FHWA adopts this change.

14. In Section 2A.10 Shapes, the FHWA revises Table 2A–3 by removing the Emergency Evacuation Route Sign from the listed signs for the circle shape because the FHWA changes the design of this sign to be a rectangular plate in accordance with other guide signs, as indicated in Section 2I.03 EVACUATION ROUTE Sign (EM–1). The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, in support of this change, and one comment from the Florida DOT opposed to it. The Florida DOT opposed because it currently uses the circle shape for the Emergency Evacuation Route Sign and believes that the proposed change would have a large statewide impact to its evacuation program. The FHWA notes that the Emergency Evacuation Route Sign has not been changed; it has just been put onto a white rectangular background so that the circular shape can be reserved for another use. The FHWA adopts the change, but to address the Florida DOT's comment, adds a phase-in target compliance date of 15 years from the date this final rule is effective for the change in shape, for signs in good condition.

Additionally, the FHWA revises Table 2A–3 to list the Trapezoid shape for use as ''Recreational and Cultural Interest Area Series'' and ''National Forest Route'' signs. The FHWA received two comments from the City of Tucson, Arizona, and the NCUTCD in support of this change, and adopts this change.

15. In Section 2A.11 Sign Colors, the FHWA modifies the STANDARD statement to read ''The colors to be used on standard signs and their specific use on these signs shall be as indicated in the applicable sections of this Manual. The color coordinates and values shall be as described in 23 CFR, Part 655, Subpart F, Appendix.'' This modification clarifies that the color requirements apply to all signs in the MUTCD, not just those in Part 2, and refers to the correct location of the color coordinates and values. There were no comments on this change.

In the NPA, the FHWA proposed using the color coral for incident management uses, however in response to comments from traffic control device manufacturers about this section and Part 6, the FHWA changes this color assignment to fluorescent pink because this name more clearly describes the color in the color tints. See also the discussion under Section 1A.12 Color Code, which also applies to this section. As a result, the FHWA withdraws this proposal to modify the SUPPORT statement to delete the color coral from the reserved colors, and retains the text as shown in the 2000 MUTCD which includes the color coral as a reserved color for a use that will be determined in the future. Additionally, the FHWA adds to the SUPPORT statement that information regarding color coding of destinations on guide signs is contained in Section 2D.03 Color, Retroreflection, and Illumination.

The FHWA also modifies Table 2A–4 by adding a new column on the right hand side for the color fluorescent pink, by adding a new row ''Incident Management'' to the bottom, by adding a second new row ''Changeable Message Signs'' at the bottom, following Incident Management, and by adding or revising color designations and notes to reflect proposed changes in other parts of the MUTCD. The FHWA makes additional editorial changes to the table, and moves Reference Location, Street Name, and Destination signs to be listed as Guide signs, and the Evacuation Route sign to be listed under Information signs, in response to a comment from Caltrans and to maintain consistency within the MUTCD.

16. In Section 2A.12 Dimensions, the FHWA adds a second paragraph to the SUPPORT statement describing and clarifying the different sizes of signs, as detailed in the ''Standard Highway Signs'' book. While the City of Tucson, Arizona, supported the change, there were two comments from the NCUTCD and the Illinois DOT opposed to this new paragraph. The NCUTCD stated that this new paragraph introduced redundancy because this information is included in Sections 2B.03 Size of Regulatory Signs and 2C.04 Size of Warning Signs, and the Illinois DOT suggested that this paragraph was unnecessary. The FHWA agrees that this information needs to be included in only one place in the Manual, and adopts the text in this section and deletes this information from Sections 2B.03 and 2C.04. The FHWA revises the last sentence of this paragraph to clarify that intermediate sized signs are designed to be used on other highway types.

17. In Section 2A.14 Word Messages, the FHWA modifies the first GUIDANCE statement to clarify that the specific ratio of 25 mm (1 in) of letter height per 12 m (40 ft) of legibility distance should be a minimum. The FHWA received one comment from the NCUTCD supporting this change and adopts this change.

Additionally, the FHWA adds a new SUPPORT statement after the first paragraph of GUIDANCE to provide additional information that some research on sign legibility of older drivers [6] indicates that a ratio of 25 mm (1 in) of letter height per 10 m (33 ft) of legibility distance could be beneficial for addressing the needs of older drivers. Three commenters from the NCUTCD, ATSSA, and the sign manufacturing industry supported this new SUPPORT statement, and the City of Tucson, Arizona, and a traffic engineering consultant opposed it. Both opposing commenters expressed concern that this additional language would add confusion as to what ratio should be used in designing signs. The FHWA disagrees with the opposing commenters because SUPPORT statements are purely informational and have no legal basis for a mandatory or recommended practice.

[6] Information about this research is summarized on pages 185 and 186 of the ''Highway Design Handbook for Older Drivers and Pedestrians,'' Report number FHWA–RD–01–103, published by the FHWA Office of Safety Research and Development, 2001. It is available for purchase from The National Technical Information Service, Springfield, Virginia 22161, (703) 605–6000. Internet Web site address at *http://www.ntis.gov*.

The FHWA adds a new GUIDANCE heading for guidance on abbreviations after the new SUPPORT statement.

18. In Section 2A.15 Sign Borders, the FHWA modifies the STANDARD statement to require that the corners of all sign borders, except for STOP signs, shall be rounded. The FHWA received several comments from ATSSA and representatives of the blind community regarding this change. The commenters misunderstood this statement both in the NPA and in the 2000 MUTCD, thinking that it pertained to the corners of the sign itself, rather than the sign border, which is included within the sign. As noted in the next paragraph, the sign itself does not always have to have rounded corners, but the border (typically black on white) does. The NPA merely replaced the phrase ''corners of the sign'' with ''corners of all sign borders'' to provide consistency with the section title, Sign Borders. The FHWA adopts the change, as proposed in the NPA, in this final rule.

The NPA also included a proposal to modify the GUIDANCE statement to clarify that, where practical, the corners of the sign should be rounded to fit the border, except for STOP signs. The FHWA received several comments from ATSSA and representatives of the blind community supporting the rounding of sign corners. The FHWA received one comment from a traffic engineering consultant opposing the statement, suggesting that the phrase ''where practical'' was too vague. The FHWA agrees and revises this statement to include a reference Section 2E.15 Sign Borders for specific exemptions regarding the rounding of corners of sign.

19. In Section 2A.16 Standardization of Location, the FHWA relocates Figures 2A–3, 2A–4, 2A–5, and 2A–6 to Section 2B.37 ONE WAY Signs (R6–1, R6–2) and removes Figure 2A–7 (figure numbering cited here reflects 2000 MUTCD). These relocated figures are more appropriate in Chapter 2B Regulatory Signs. The FHWA revises the first SUPPORT statement to reflect these changes. There were no comments regarding this change, and the FHWA adopts this change.

The FHWA received several comments from Caltrans, the Ohio DOT, the City of Tucson, Arizona, and a traffic engineering consultant regarding Figures 2A–1 and 2A–2 in the NPA. In response to the comments regarding the use of the words ''typical'' and ''examples'', the FHWA changes the figure titles to: ''Figure 2A–1 Examples of Heights and Lateral Locations of Signs for Typical Installations'' and ''Figure 2A–2 Examples of Locations for Some Typical Signs at Intersections.'' The FHWA also incorporates editorial comments and notes to the figures in this final rule.

The FHWA also revises the second paragraph of the first GUIDANCE statement to state the exceptions to placing signs on separate posts in list form rather than narrative form, and to clarify that certain groupings of regulatory signs are also excepted from the recommended mounting on separate posts. These minor editorial clarifications respond to a comment from a traffic engineering consultant and reflect common practice.

20. In Section 2A.17 Overhead Sign Installations, the FHWA modifies the GUIDANCE statement to clarify that overhead guide signs should be used on freeways as well as expressways, under certain conditions. The FHWA received two comments from ATSSA and the City of Tucson, Arizona, in support of this change and adopts this change.

The FHWA received one comment from a traffic engineering consultant suggesting that the last paragraph of the OPTION statement pertaining to the placement of signs on bridges of freeways and expressways in order to enhance safety and economy is duplicative and unnecessary. The FHWA agrees with the comment and makes this minor and editorial revision to remove this text from this final rule.

21. In Section 2A.18 Mounting Height, the FHWA relocates the first OPTION and SUPPORT statements so that they appear before the last paragraph of the first STANDARD statement. This change improves the clarity of the section. The FHWA received one comment from the City of Tucson, Arizona, supporting this change, and adopts this change. The FHWA received one comment from a private citizen suggesting that in-street crosswalk signs are typically mounted much lower than the heights included in the first STANDARD statement, and that if they are to be excluded from these criteria, appropriate language should be included in the final rule. The FHWA agrees that additional language is needed and adds a new SUPPORT statement at the beginning of the Section that indicates that the provisions of this section apply unless specifically stated otherwise for a particular sign elsewhere in the MUTCD.

Additionally, the FHWA adds a paragraph to the last OPTION statement indicating that if the vertical clearance of other structures is less than 4.9 m (16 ft), the vertical clearance to overhead sign structures or supports may be as low as 0.3 m (1 ft) higher than the

vertical clearance of the other structures. These lower clearances for the sign structures are sometimes needed to maximize the visibility of the signs when low bridge structure or tunnel clearances limit the sign visibility. There was one editorial comment from the NCUTCD regarding this change, which the FHWA incorporates in this final rule.

22. In Section 2A.19 Lateral Offset, the FHWA divides the first STANDARD statement into a STANDARD and a GUIDANCE statement. The STANDARD statement refers to the lateral offset of overhead sign supports, and the GUIDANCE statement refers to the lateral offset of signs mounted at the roadside. Changing the lateral offset of roadside-mounted signs to a GUIDANCE provides additional flexibility to jurisdictions for signs mounted at the roadside. There was one comment from the NCUTCD in support of this change, the Kansas DOT opposed it, and Caltrans requested additional clarification. The Kansas DOT opposed the conversion of the minimum lateral offset for signs mounted at the roadside to a GUIDANCE, and suggested that it should remain a STANDARD in order to minimize the chance of allowing signs to be placed immediately adjacent to the shoulder or the roadway edge. The FHWA disagrees because it is more appropriate for this item to be a GUIDANCE, especially given the exemptions in the last OPTION statement. The FHWA encourages the 12-foot offset, but provides flexibility to jurisdictions for the placement of signs mounted at the roadside in places where the 12-foot offsets would not be desirable or practical. A State may choose to impose a more stringent requirement if it desires. The FHWA adopts this change, as specified in the NPA, in this final rule.

Additionally, in the 2000 edition of the MUTCD a new requirement was established in this section that, if located within the clear zone, ground-mounted sign supports shall be breakaway, yielding, or shielded with a barrier or crash cushion and that supports for overhead-mounted signs shall be shielded with a barrier or crash cushion, but no special phase-in target compliance date was established at that time. In response to comments that agencies are encountering difficulties and economic impacts given the extensive testing of devices that has to occur in accordance with NCHRP Report 350 [7] in order to determine and certify crashworthiness, the FHWA determines that a special target compliance date is required for the crashworthiness provisions in this section. In this final rule, the FHWA establishes a phase-in target compliance date of January 17, 2013 for crashworthiness of sign supports within the clear zone for roads with posted speed limits of 80 km/h (50 mph) or above. This is consistent with guidance previously communicated informally to jurisdictions in a variety of training and presentations by the FHWA Office of Safety regarding roadside safety and countermeasures for run-off-the-road crashes, and is a reasonable target date for achieving compliance on high-speed roads.

23. In the NPA, the FHWA proposed revisions to Section 2A.20 Position of Signs, to remove the second sentence under the SUPPORT statement as the references to the figures duplicates other references elsewhere. Upon further consideration, the FHWA believes that this section is not necessary and deletes this section from the MUTCD in its entirety in this final rule. This section does not include any information that is not already contained elsewhere in the Manual. The FHWA revises the subsequent section numbers accordingly.

24. In Section 2A.21 Posts and Mountings (numbered Section 2A.22 in the NPA), the FHWA adds an OPTION statement after the SUPPORT statement, indicating that a strip of retroreflective material may be used on the supports of regulatory and warning signs to draw attention to the sign during nighttime conditions. One consultant and three State DOTs opposed this new OPTION, but the NCUTCD and several other agencies supported it. Those opposed stated several reasons, such as difficulty in deciding which signs should receive a reflective strip, lack of research support, and consistency. The FHWA agrees that additional instruction is needed regarding the use of the reflective strip, and adds the phrase ''Where engineering judgment indicates a need to draw attention to the sign during nighttime conditions''. Because this is an OPTION, States that oppose it can choose to not allow this use.

Additionally, the FHWA adds a second STANDARD statement after the OPTION statement specifying the size, location, and color of the strip of retroreflective material if it is used. This provides for uniformity of application. Based on comments received from a traffic engineering consultant for this section as well as other comments in Section 8B.03 Highway-rail Grade Crossing (Crossbuck) Sign (R15–1) and Number of Tracks Sign (R15–2) regarding the placement of the strip in relation to the ground, the FHWA revises this statement to indicate that the bottom of the strip be within 0.6 m (2 ft) above the edge of the roadway. The FHWA adopts this change, along with editorial modifications, in this final rule.

25. In Section 2A.23 Median Opening Treatments for Divided Highways with Wide Medians (numbered Section 2A.24 in the NPA and title changed from 2000 MUTCD), the FHWA removes the GUIDANCE statement that appeared in the 2000 MUTCD and changes the STANDARD statement to a GUIDANCE statement. The FHWA received three comments from the NCUTCD, Caltrans, and the City of Tucson, Arizona, in support of these changes, and two comments from ATSSA and the Minnesota DOT opposing the change from STANDARD to GUIDANCE. This change makes it recommended rather than mandatory that intersections on divided highways where the median width at the median opening is 9 m (30 ft) or more, be signed as two separate intersections. The commenters suggested that the use of the mandatory word ''shall'' would provide for greater consistency between jurisdictions and should be maintained to assist tourists and older drivers. The FHWA believes that it is important to provide additional signing flexibility to jurisdictions regarding median openings. A GUIDANCE statement strongly encourages the practice without mandating it, and allows for engineering judgment to be used to determine if some intersections on roadways with medians wider than 9 m (30 ft) might function better without being signed as two separate intersections. Therefore, the FHWA adopts the change as specified in the NPA.

26. In Section 2B.02 Design of Regulatory Signs, the NPA included a proposal to add OPTION and GUIDANCE statements at the end of the section regarding the use of Changeable Message Signs to provide for the display of regulatory signs. The NCUTCD, the City of Tucson, Arizona, and a traffic control device manufacturer supported the new OPTION statement. Caltrans questioned whether the information also applied to portable changeable message signs. The FHWA agrees that the OPTION statement applies to more than just regulatory signs, and removes this OPTION statement from this section and places it in Section 2A.07 Changeable

[7] NCHRP Report 350, ''Recommended Procedures for the Safety Performance Evaluation of Highway Features,'' 1993, is available for downloading from the Transportation Research Board at the following URL: *http://gulliver.trb.org/publications/nchrp/nchrp_rpt_350-a.pdf.*

Message Signs, with additional changes to the text. The NCUTCD and a traffic control device manufacturer supported the new GUIDANCE statement, however ATSSA and the Wisconsin DOT opposed it. The Wisconsin DOT stated that regulatory messages on changeable message signs should only be used to supplement standard ground mounted signs, rather than as the sole sign, because they cannot be enforced. ATSSA stated that there are previously identified problems regarding the contrast in colors of the red prohibition circle on changeable message signs. The FHWA disagrees with both of these comments and adopts the GUIDANCE statement in this final rule. Regulatory messages on changeable message signs can be enforced as long as the jurisdiction has the authority to enact temporary regulations and as long as the messages conform to MUTCD requirements. The red prohibitory circle and slash on a black background, as used on changeable message signs, generally have better contrast than those used on static signs. The FHWA adopts the changes to this section with revisions as described above.

27. In Section 2B.03 Size of Regulatory Signs, the FHWA removes the SUPPORT statement referencing the ''Standard Highway Signs'' book because this statement is general and applies to regulatory, warning, and guide signs, and a similar statement is included in Section 2A.12 Dimensions.

The FHWA modifies Table 2B–1 by adding, removing, and renaming signs, and by adding additional sign sizes. These changes and new sign sizes reflect changes in Part 2, are values from the ''Standard Highway Signs'' book, and reflect regular use by highway agencies. The FHWA received several editorial comments from the NCUTCD and Caltrans regarding these changes and incorporates those changes as appropriate.

Additionally, the FHWA increases the sizes of the ONE WAY (R6–2) sign and the DIVIDED HIGHWAY CROSSING (R6–3, R6–3a) signs for all roads based on the research [8] addressing the needs of older road users. The FHWA adds sign sizes in the ''Expressways'' and ''Freeways'' columns for these signs and the R6–1 ONE WAY sign because these are the main signs to alert road users of the divided highway. The FHWA received one comment from ATSSA supporting these changes. The City of Tucson, Arizona, opposed the increase in sign size, stating that the current sign sizes are adequate for urban/city street systems. The FHWA adopts the sizes as proposed in the NPA because the research indicates these sizes are needed in most cases for older drivers. However, to address the comment from the City of Tucson, the FHWA is currently reviewing ways to better incorporate the needs of urban areas into the MUTCD and plans to address those needs in a future rulemaking.

The FHWA establishes a phase-in target compliance date of 10 years from the date of this final rule for these sign sizes, for existing signs in good condition to minimize any impact on State or local governments.

Additionally, the FHWA adds to the OPTION statement that signs larger than those shown in Table 2B–1 may be used. Sometimes there are special conditions that warrant much larger signs and this flexibility is needed. There were no comments regarding this change, and the FHWA adopts this change.

28. In Section 2B.04 STOP Sign (R1–1), the FHWA received three comments, one from a traffic engineering consultant and two from private citizens regarding the use of supplemental plaques with multi-way STOP signs. The FHWA did not propose any change to this section in the NPA, and these comments are outside the scope of this final rule.

29. In Section 2B.06 STOP Sign Placement, the FHWA corrects an error in the STANDARD statement (as published in the 2000 MUTCD) by changing the word ''correct'' to ''right'' so that the statement reads, ''The STOP sign shall be installed on the right side of the approach to which it applies.'' There was one comment from a private citizen suggesting that the FHWA replace ''traffic lane'' with ''approach'' in order to avoid this statement being misinterpreted as requiring a separate sign to the right of each stopped lane on a multi-lane approach. The FHWA agrees and revises the text accordingly.

Additionally, the NPA included a proposal that other than a DO NOT ENTER sign, no other sign shall be mounted back-to-back with a STOP sign, to assure that the shape of the STOP sign is visible to road users on other approaches to the intersection. The proposed exception for the DO NOT ENTER sign was to allow flexibility in urban areas where there may not be enough room to install separate poles for each sign and both signs must be installed at the corner. While there was one comment from ATSSA in support of this proposed change, the NCUTCD, the Arizona, Oregon, Virginia, Wisconsin, and Illinois DOTs as well as the Cities of Plano, Texas; Beaverton, Oregon; Kennewick, Washington; and Tucson, Arizona, opposed this change, stating that it was too restrictive. The FHWA agrees with the State and local DOTs that there may be some locations where it may be appropriate to mount signs to the back of STOP signs, and changes this STANDARD to a GUIDANCE in this final rule and revises the statement to read, ''Other than a DO NOT ENTER sign, no sign should be mounted back-to-back with a STOP sign in a manner that obscures the shape of the STOP sign.'' The FHWA adds a phase-in target compliance date for this new GUIDANCE of 10 years from the effective date of this final rule for existing signs in good condition, and adds a SUPPORT statement referencing Section 2A.16 Standardization of Location for further information regarding separate and combined mounting of signs with STOP signs.

30. In Section 2B.09 YIELD Sign Applications, the FHWA clarifies the OPTION statement by adding a reference to STOP signs. The change states that instead of using a STOP sign, a YIELD sign may be used if engineering judgment indicates that one or more of the listed conditions exist. The conditions for using a YIELD sign are not being changed. The FHWA received four comments from the NCUTCD, ATSSA, the City of Tucson, Arizona, and the Association of Pedestrian and Bicycle Professionals in general support of the change. A traffic engineering consultant mistakenly thought that the change represented a major change in the method of determining if YIELD is the appropriate sign, and suggested a 10-year phase-in target compliance date. The most significant change was made in the 2000 MUTCD. The only new concept is the clarification that YIELD signs would be used ''instead of STOP signs.'' This is only an OPTION and existing STOP signs that are in place at intersections where these conditions apply would not be in violation of the MUTCD. The FHWA adopts the change with minor editorial revisions in this final rule. There is no need for a long compliance date to comply with an OPTION. The FHWA notes that the 10-year phase-in target compliance date for the change in application of YIELD signs is tied to the effective date of the 2000 MUTCD (January 11, 2011).

Additionally, the FHWA adds a STANDARD statement after the OPTION statement to require the use of a YIELD sign to assign right-of-way at

[8] Information about this research is summarized on pages 94–100 of the ''Highway Design Handbook for Older Drivers and Pedestrians,'' Report number FHWA–RD–01–03, published by the FHWA Office of Safety Research and Development, 2001. It is available for purchase from The National Technical Information Service, Springfield, Virginia 22161, (703) 605–6000. Internet website address at *http://www.ntis.gov.*

the entrance to a roundabout intersection. An essential design feature of a modern roundabout intersection is ''yield-on-entry'' therefore, a YIELD sign is necessary at all entrances to the roundabout intersection. The FHWA received one comment from ATSSA in support of this change, and one comment from the U.S. Access Board opposed to it. The U.S. Access Board suggested that the pedestrian crossing be moved away from the entry and exit points of the roundabout intersection to allow for safer interaction between pedestrians and drivers. This would create a midblock crossing, and the FHWA believes that the signing and marking of nearby midblock crosswalks should be determined on a case-by-case basis using engineering judgment. Thus, the FHWA did not make changes to this STANDARD, and adopts the new STANDARD statement as proposed in the NPA.

31. In Section 2B.10 YIELD Sign Placement, the FHWA corrects an error in the first paragraph of the STANDARD statement by changing the word ''correct'' to ''right'' so that the first sentence reads, ''The YIELD sign shall be installed on the right side of the approach to which it applies.'' Additionally, the FHWA adds a new sentence after the first sentence of the STANDARD statement to require that YIELD signs shall be placed on both the left and right sides of the approaches to roundabout intersections with more than one approach lane on the signed approach. This is in concert with best practices of modern roundabout intersection design and to assure adequate visibility of the YIELD signs. There were two comments from ATSSA and the Kansas DOT in general support of these changes, and the FHWA adopts these changes, with minor editorial revision.

Additionally, the NPA included a proposal to add a paragraph to the STANDARD statement that other than a DO NOT ENTER sign, no other sign shall be mounted back-to-back with a YIELD sign, to assure that the shape of the YIELD sign is visible to road users on other approaches to the intersection. The proposed exception for the DO NOT ENTER sign was to allow flexibility in urban areas where there may not be enough room to install separate poles for each sign and both signs must be installed at the corner. The FHWA received nine comments from State and local DOT's opposed to this change, stating that it was too restrictive (see comments and discussion in Section 2B.06 STOP Sign Placement). The FHWA agrees and changes this STANDARD to a GUIDANCE and revises the statement to read, ''Other than a DO NOT ENTER sign, no sign should be mounted back-to-back with a YIELD sign in a manner that obscures the shape of the YIELD sign.'' The FHWA adds a phase-in target compliance date for this new GUIDANCE of 10 years from the effective date of this final rule for existing signs in good condition, and also adds a SUPPORT statement referencing Section 2A.16 Standardization of Location for further information regarding separate and combined mounting of signs with YIELD signs.

Additionally, the FHWA adds a paragraph to the GUIDANCE statement stating that, at a roundabout intersection, the face of the YIELD sign should not be visible from the circulating roadway. This is recommended to prevent circulating vehicles in the roundabout intersection from yielding unnecessarily. The FHWA received no comments regarding this change, and adopts this change.

The FHWA also adds an OPTION statement at the end of the section to allow the installation of an additional YIELD sign on the left side of the road and/or the use of a YIELD line at wide-throat intersections. This provides for improved visibility of the YIELD signs where needed. The FHWA received no comments regarding this change, and adopts this change.

32. The FHWA adds a new section numbered and titled, ''Section 2B.11 Yield Here To Pedestrians Signs (R1–5, R1–5a)''. (This section was numbered Section 2B.52 in the NPA.) These new signs alert road users of the presence of an unsignalized midblock pedestrian crossing. The FHWA includes a STANDARD statement, which states that if YIELD lines are used in advance of an unsignalized marked crosswalk, the YIELD HERE TO PEDESTRIANS (R1–5 or R1–5a) signs, shall be placed 6.1 to 15 m (20 to 50 ft) in advance of the nearest crosswalk line. The purpose of the STANDARD is to provide for the uniform use and placement of these signs and improved pedestrian safety.

The FHWA received six comments from the NCUTCD, ATSSA, Cities of Tucson, Arizona, and Plano, Texas, the Association of Pedestrian and Bicycle Professionals, and a traffic engineering consultant in support of this new section. One private citizen opposed it, stating that the signs are unnecessary because they convey rules of the road, rather than site-specific regulations. The Wisconsin DOT and Pierce County, Washington, requested clarification of the placement of these signs. In response to the comments, the FHWA adds a reference to Section 3B.16 Stop and Yield Lines to provide additional clarity that the yield line is to be placed adjacent to the Yield Here to Pedestrians sign. The FHWA adopts this section in this final rule and establishes a phase-in target compliance date of 10 years from the effective date of this final rule for existing signs in good condition to minimize any impact on State or local governments.

The FHWA received two comments from the Oregon DOT and a traffic engineering consultant suggesting that this section be expanded to include STOP HERE FOR PEDESTRIAN signs and wording added to allow the signs at any marked crosswalk not controlled by a signal, stop sign, or yield sign as an option for States or other agencies with statutes that require traffic to stop for pedestrians. This goes beyond the scope of the NPA, and a future NPA would need to be issued for discussion and comment.

33. The FHWA adds a new section numbered and titled ''Section 2B.12 In-Street Pedestrian Crossing Signs (R1–6, R1–6a).'' (This section was numbered Section 2B.53 in the NPA.) These in-street signs remind road users of the laws regarding right-of-way at an unsignalized pedestrian crossing. The FHWA includes OPTION, GUIDANCE, and STANDARD statements describing the use, design and application of the In-Street Pedestrian Crossing (R1–6, R1–6a) signs. These signs are included in the MUTCD in order to provide for uniformity of these regulatory messages and for improved pedestrian safety. The FHWA received four comments from ATSSA, the City of Los Angeles, California, the Association of Pedestrian and Bicycle Professionals, and a traffic engineering consultant in agreement with the new section as proposed in the NPA. Another five commenters representing the Florida and Wisconsin DOTs, the Cities of Los Angeles, California, and Tucson, Arizona, and a traffic engineering consultant agreed with the sign in general, but suggested wording changes, including deleting the reference to State law from the sign. Another five commenters representing the NCUTCD and the Kansas, Arizona, and Minnesota DOTs opposed the sign and the inclusion of this section in the MUTCD. Those opposed listed several reasons, including waiting until the results of a related Transportation Cooperative Research Program (TCRP)[9]

[9] ''Improving Pedestrian Safety at Unsignalized Roadway Crossings'' is a reach study currently in progress. This is a joint effort between the National Cooperative Highway Research Program (NCHRP) and the Transportation Cooperative Research

Continued

study are released, that in-roadway signs should be discouraged for safety reasons, and that signs that remind drivers to obey the law are unnecessary. The FHWA disagrees with those opposed to this section because research, including an experimentation in Redmond, Washington,[10] has found that this sign is effective at communicating important information to drivers and provides for uniformity of these regulatory messages and for improved pedestrian safety. Also, the TCRP research cited by some commenters is only just beginning and its scope of work is too broad to adequately address this specific signing issue. The use of these signs is optional, and jurisdictions may decide not to allow the use of these signs. The FHWA adopts this new section and sign in this final rule, and adds a SUPPORT statement that the provisions of Section 2A.18 Mounting Height are not applicable to the mounting height of the In-Street Pedestrian Crossing Signs.

The FHWA also adds a new figure numbered and titled ''Figure 2B–2, ''Unsignalized Pedestrian Crosswalk Signs'' (numbered Figure 2B–22 in the NPA) to illustrate the design of the R1–5, R1–5a, the R1–6, and the R1–6a signs.

The FHWA renumbers the remaining sections in this chapter.

34. In Section 2B.13 Speed Limit Sign (R2–1), numbered Section 2B.11 in the NPA, the FHWA modifies the STANDARD statement to reference the speed limit signs shown in Figure 2B–1. In the NPA, the FHWA proposed a new, unique design for the metric speed limit sign. The sign had a red circle around the speed value with a ''km/h'' legend below, and the supplemental ''km/h'' plaque removed. The FHWA received eight comments from the NCUTCD, ATSSA, and private citizens in general support of the new metric speed limit design, and ten comments from the Oregon and Minnesota DOTs and private citizens opposed to the sign design. Those opposed cited concerns that the red circle is generally associated with a prohibitory regulatory message, and that a speed limit does not fall into that category of message. In response to the comments, the FHWA revises the sign in this final rule to include a black circle around the speed value, rather than red. The concept of placing a circle around the metric speed limit digits was developed to provide a clear and easily noticed distinction between metric and English speed limit signs. Because the color red suggests prohibition, and green is already used as a permissive message with hazardous materials routing signs, the FHWA requires the black colored circle to provide distinction for a metric speed limit.

Based on this new design, the FHWA removes the first SUPPORT statement (from the 2000 MUTCD), as it is no longer needed. The new design of the metric Speed Limit sign better differentiates a metric speed limit sign from an English-unit speed limit sign, and also remedies the possible situation where the ''METRIC'' plaque used in the old design is damaged or stolen and the sign appears to be an English units Speed Limit sign with a higher but erroneous value. Other than comments opposed to the change in the metric sign design, there were no comments specifically regarding this change, and the FHWA adopts this change.

In the NPA, the FHWA proposed to add a new paragraph to the first GUIDANCE statement indicating that non-statutory speed limits be reevaluated at least once every five years to determine if any adjustments would be appropriate. The FHWA received one comment from a private citizen in support of this change, and four comments from the NCUTCD, City of Kennewick, Washington; Lake County, Illinois; and Pierce County, Washington, opposed to the new paragraph. Those opposed cited concerns about the five-year frequency of review, stating that there are many roads and streets on which conditions remain stable for much longer than five years and that conducting speed limit reevaluations every five years on such roads would be a major burden on the States and local governments. The FHWA agrees with some of these concerns, and therefore the FHWA expands the paragraph to clarify that this review should take place on segments of roadways that have undergone a significant change in roadway characteristics or surrounding land use since the last review.

In the NPA, the FHWA proposed clarifications to the third paragraph of the GUIDANCE statement to differentiate the rounding of a speed limit on a sign located on a non-residential street from a sign located on a residential street. The FHWA received several comments from the NCUTCD, the Wisconsin DOT, and a traffic engineering consultant opposing this change, requesting simpler terminology and the ability for jurisdictions to round speeds up or down, regardless of street classification. A traffic engineering consultant suggested less reliance on the 85th percentile speed. Based on these comments, the FHWA simplifies the statement to read, ''When a speed limit is to be posted, it should be within 10 km/h or 5 mph of the 85th percentile speed of free-flowing traffic.''

The FHWA adds a paragraph to the end of the OPTION statement, which states that a changeable message sign that displays to approaching drivers the speed at which they are traveling may be installed in conjunction with a Speed Limit sign. The FHWA received one comment from a traffic control device manufacturer supporting this change. The FHWA adopts the change, as proposed in the NPA, in this final rule.

The FHWA also adds, following the OPTION statement, a GUIDANCE statement, which states that if a changeable message sign displaying approach speeds is installed, the legend YOUR SPEED XX KM/H (MPH) or similar legend should be shown. Changeable message signs displaying the actual speeds of approaching drivers have been widely used in many jurisdictions over the past decade or more to enhance driver compliance with speed limits. However, a variety of colors have been used for the display of the numerals of the actual speed. For consistency with Table 2A–4 and the MUTCD's general principles of sign colors, FHWA adds to this GUIDANCE statement that the color should be yellow legend on black background or the reverse of these colors. The FHWA establishes a 10-year phase-in target compliance date from the effective date of this final rule for the color of the legend of the changeable message portion of the ''YOUR SPEED'' sign, for existing signs in good condition, to minimize any impacts on State or local governments.

35. In Section 2B.15 Night Speed Limit Sign (R2–3) (numbered Section 2B.13 in the NPA), while there were no changes proposed in the NPA, the FHWA makes editorial changes in this section to be consistent with Section 2B.13 Speed Limit Sign. In addition, in response to comments received, the FHWA changes the metric version of the Night Speed Limit sign in Figure 2B–1 to show a white circle around the metric speed digits and include the ''km/h'' message all within one panel. This is necessary for consistency with the adopted concept of enclosing metric speed limit values in a circle to assure that they are easily distinguished from speed limits in English units.

36. In Section 2B.16 Minimum Speed Limit Sign (R2–4), numbered Section 2B.14 in the NPA, the FHWA received

Program (TCRP). The study is numbered NCHRP Project 3–71 and TCRP D–08. Information is available at the following URL: *http://rip.trb.org.*

[10] A copy of ''City of Redmond In-Street Pedestrian Crossing Sign Test'', FHWA Experimentation #2–507(EX), six-month report by the City of Redmond, June 30, 2003, is available on the docket.

several comments opposing the design of the metric sign in Figure 2B–3 (numbered Figure 2B–2 in the NPA). The comments were similar to those received on Section 2B.13 Speed Limit Sign (R2–1). (See also the discussion of that section above.) Because the color red suggests prohibition, and green is already used as a permissive message with hazardous materials routing signs, the FHWA requires the black colored circle to provide distinction for a metric minimum speed limit.

37. The FHWA adds a new section numbered and titled ''Section 2B.17 FINES HIGHER Plaque (R2–6).'' (In the NPA, this new section was numbered and titled ''Section 2B.15 Fines Higher Sign (R2–6)''). The FHWA agrees with comments from the NCUTCD and a traffic engineering consultant suggesting that the term ''sign'' be replaced with ''plaque''. This new section consists of OPTION, GUIDANCE, and STANDARD statements on the uses of the FINES HIGHER plaque to advise road users when increased fines are imposed for traffic violations within designated roadway segments. The FINES HIGHER plaque should be installed below an applicable regulatory or warning sign in a temporary traffic control zone, a school zone, or other applicable designated zone. The FHWA received one comment from ATSSA specifically in support of the new section, and one comment from the Wisconsin DOT opposing it. The Wisconsin DOT stated that the sign is not necessary because these laws are already State statutes and need not be signed. Because this is an OPTION, States can choose not to allow the use of this plaque. Many other States are finding that this sign enhances safety in school zones and temporary traffic control zones by reminding drivers of a law that might not always be prevalent on their minds. It also serves to alert drivers from other States about this law, which may not be the same as the laws in their home State. The FHWA adopts this new section, with minor editorial revisions, and renumbers the remaining sections.

38. The FHWA removes Section 2B.16 Reduced Speed Ahead Signs (R2–5) Series (as numbered and titled in the 2000 MUTCD) because these signs are warning signs and appear in Chapter 2C in this final rule. The intended message is more properly categorized as a warning message rather than a regulatory message.

See discussion in Section 2C.30 Speed Reduction Signs (W3–5, W3–5a) where FHWA adds the newly designated warning signs. That discussion applies to this section also. Accordingly, the FHWA adopts the removal of former Section 2B.16 as proposed in the NPA. To minimize any impacts to State and local governments, in Section 2C.30 the FHWA establishes a phase-in target compliance date of 15 years from the effective date of this final rule for existing R2–5 signs in good condition to be changed to W3–5 or W3–5a signs.

39. In Section 2B.19 Turn Prohibition Signs (R3–1 through R3–4, and R3–18) (numbered and titled ''Section 2B.17 Turn Prohibition Signs (R3–1 through R3–4)'' in the 2000 MUTCD and in the NPA), the FHWA includes a new symbol sign which combines the No Left Turn and the No U-turn symbol signs into one symbol sign (R3–18), and adds to the OPTION and GUIDANCE statements information on the proper use of the sign. This new sign will reduce the sign clutter at an intersection where both movements are restricted and make it easier for road users to understand the multiple turn restrictions. The FHWA received six comments from the NCUTCD, ATSSA, Caltrans and the Cities of Tucson, Arizona; and Plano, Texas, supporting this new sign. The Virginia DOT opposed this change due to the fact that Virginia State law already prohibits U-turns when a No Left Turn sign is present. Because not all States have this law, the FHWA believes that this sign should be available for use by States at those locations where both U-turns and left turns are prohibited. The FHWA adopts the OPTION and GUIDANCE statements in this final rule. Because it is an OPTION, States are not obligated to use the new sign.

40. In Section 2B.21 Mandatory Movement Lane Control Signs (R3–5, R3–5a, and R3–7) (numbered Section 2B.19 in the NPA), the FHWA revises the GUIDANCE statement to clarify that the lane control pavement markings mentioned are lane-use arrow markings. The FHWA received one comment from the City of Tucson, Arizona, in support of this change, and the FHWA adopts this change.

41. In Section 2B.25, Reversible Lane Control Signs (R3–9d, R3–9f through R3–9i) (numbered and titled, ''Section 2B.23 Reversible Lane Control Signs (R3–9c through R3–9i)'' in the 2000 MUTCD), the FHWA removes the R3–9c and R3–9e signs and all of their references in the section. Using just the R3–9d sign will improve uniformity and maintain consistency with the red X symbol used in reversible lane signal systems. The DO NOT ENTER symbol is intended to be used to prohibit entry into a roadway or ramp, and using this symbol to prohibit use of a single lane of a roadway that is otherwise available for travel is inconsistent and degrades the meaning of the symbol. The FHWA also revises the first STANDARD statement to clarify that the barriers mentioned are physical barriers.

Additionally, the FHWA modifies item B of the second OPTION statement to read, ''An engineering study indicates that the use of the Reversible Lane Control signs alone would result in an acceptable level of safety and efficiency.'' This is to clarify that an engineering study needs to evaluate whether safety and efficiency will be maintained with signs alone.

The FHWA received four comments from the NCUTCD and the City of Tucson, Arizona, in support of these changes, and the FHWA adopts the changes.

The FHWA establishes a phase-in target compliance date of 10 years from the effective date of this final rule for existing signs in good condition to minimize any impact on State or local governments.

42. In Section 2B.26 Preferential Only Lane Signs (R3–10 through R3–15) (numbered and titled Section 2B.48 Preferential Lane Signs (R3–10 through R3–17) in the NPA), the FHWA changes several GUIDANCE statements to STANDARD statements to be consistent with requirements of STANDARDS in other sections of the MUTCD and to ensure that these critical signs are properly designed and applied to enhance safety and reduce road user confusion. The FHWA also includes cross-references to other sections, as appropriate. Additionally, the FHWA revises information for the R3–10 through R3–14 signs in Table 2B–1 in this final rule. The FHWA also revises Figure 2B–7 (numbered Figure 2B–21 in the NPA) to correct errors and illustrate examples of signs consistent with the text in this final rule. All of these changes respond to comments received from Caltrans, the Florida and Minnesota DOTs, traffic engineering consultants, and private citizens requesting clarity, and they provide consistency with other areas of the MUTCD.

In the NPA, the FHWA proposed modifying the first paragraph of the third GUIDANCE statement regarding types of preferential lane signs for which the diamond symbol should not be used (because the diamond symbol is intended to be used only to denote HOV lanes). The restriction of using the diamond symbol only for HOV lanes is now included in a STANDARD statement in Section 2B.27 Preferential Only Lanes for High-Occupancy Vehicles (HOVs) (numbered 2B.49 in the NPA), and is cross-referenced in

Section 2B.26 Preferential Only Lane Signs (R3–10 through R3–15). As a result, the FHWA is not making the change to the first paragraph of the third GUIDANCE statement that was proposed in the NPA.

The FHWA changes the last paragraph of the third GUIDANCE statement (of the 2000 MUTCD) to a fifth STANDARD statement (second in the NPA) to be consistent with requirements in Section 2A.07 Changeable Message Signs. These requirements indicate that changeable message signs serving as HOV signs shall be the required sign size and shall display the required letter height and legend format that corresponds to the type of facility and design speed. This change from a recommended practice to a required practice is made to preclude the use of insufficiently sized or designed changeable message signs to display these important regulatory messages for HOV lane use. The FHWA received one comment from the NCUTCD in support of this change, and one comment from Caltrans suggesting further clarification. To respond to the comments, the FHWA inserts an OPTION statement prior to the STANDARD, indicating appropriate uses of changeable message signs, and the FHWA includes editorial modifications to the STANDARD.

Additionally, the FHWA adds a new GUIDANCE statement at the end of the section stating that the Inherently Low Emission Vehicle (ILEV) (R3–10b) sign should be used when it is permissible for a properly labeled and certified ILEV, regardless of the number of occupants, to operate in the HOV lanes and that, when used, the ILEV signs should be ground mounted in advance of the HOV lanes and at intervals along the HOV lanes based upon engineering judgment. A uniform sign design and application is needed to enhance driver understanding and compliance regarding ILEV use of HOV lanes and also to correspond to changes in Section 2B.27 Preferential Only Lanes for High Occupancy Vehicles (HOVs). The FHWA received one comment from ATSSA in support of this new statement, and two comments from Caltrans and the Minnesota DOT opposed to it. The opposing commenters suggested that there are different types of ILEV vehicles, and that the text needed to be clarified. To respond to those comments, the FHWA adds a SUPPORT statement, following the GUIDANCE, that explains what an ILEV is, similar to the definition in Section 1A.13, and also providing citations of applicable sections of the Code of Federal Regulations (CFR). The R3–10b sign is recommended for use when a State or local jurisdiction permits ILEVs to use a particular HOV lane facility.

The FHWA establishes a 10-year phase-in target compliance date from the effective date of this final rule for signs in good condition to comply with the new requirements of Section 2B.26 Preferential Only Lane Signs (R3–10 through R3–15), to minimize any impact on State or local governments.

43. In Section 2B.27 Preferential Only Lanes for High-Occupancy Vehicles (numbered and titled Section 2B.49 High Occupancy Vehicle (HOV) Lanes in the NPA), the FHWA adds a second paragraph to the first STANDARD statement that the requirements for a minimum number of occupants in a vehicle to use an HOV lane shall be in effect for most, or all, of at least one of the usual times during the day when the demand to travel is greatest (such as morning or afternoon peak travel periods) and the traffic congestion problems on the roadway and adjoining transportation corridor are at their worst. The FHWA also adds in the last paragraph the requirement of a Federal review (as outlined in Section 2 of the Federal-aid Highway Program Guidance on HOV Lanes [11]) prior to initiating a proposed project (including a proposed test or demonstration project) that seeks to significantly change the operation of the HOV lanes for any length of time. The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, in general support of the changes to this section, and one comment from Caltrans opposed to the specific change regarding Federal review of a proposed test or demonstration project. Caltrans felt that FHWA review is not currently required. However, the Federal review is required because of provisions in Titles 23 and 49 of the United States Code as well as a variety of commitments, agreements, transportation planning requirements, and transportation conformity requirements under the Clean Air Act. The FHWA responds by providing an additional reference to the Federal-Aid Highway Program Guidance on HOV Lanes, which gives very detailed information about the basis of the review and factors considered.

In the NPA, the FHWA proposed to modify the first STANDARD statement to allow motorcycles to use HOV lanes that received Federal-aid program funding. The FHWA also proposed to require agencies to allow a vehicle with less than the required number of occupants to operate in the HOV lanes if:

A. The vehicle is properly labeled and certified as an ILEV and the lane is not a bus-only HOV lane; or

B. The HOV lanes are part of a project that is participating in the FHWA Value Pricing Pilot Program.[12]

The FHWA adopts this requirement as it pertains to motorcycles because, under the provisions of 23 U.S.C. 102(a)(1), motorcycles are specifically identified as not a single-occupant vehicle. However, the FHWA recognizes that the provisions of 23 U.S.C. 102(a)(2) and Environmental Protection Agency (EPA) regulations in 40 CFR section 88.313–93 permit, but do not require, States to allow ILEVs to use HOV lanes. Further, the FHWA recognizes that the applicable provisions of the Transportation Equity Act for the 21st Century (TEA–21) permit, but do not require, States to allow vehicles with fewer than two occupants to operate in HOV lanes if the vehicles are part of a value pricing program. Therefore, the FHWA revises the paragraph in Section 2B.27 about these uses of HOV lanes to OPTION statements rather than STANDARD statements.

The FHWA also revises the first SUPPORT statement to clarify the examples of significant operational changes to HOV lanes. While most of this information was included in the NPA (and the 2000 MUTCD), the FHWA provides examples in the form of individual items in this final rule for clarity. The FHWA adds implementing a pricing option to an existing HOV lane, such as High Occupancy Toll (HOT) lane or toll lane to the list of example items to reflect current practice.

The FHWA modifies this section to add a SUPPORT statement at the end of the section. The SUPPORT statement states that the Inherently Low Emissions Vehicle (ILEV) program requirements, certification program, and other regulatory provisions are developed and administered through the U.S. Environmental Protection Administration (EPA). The U.S. EPA is the only entity with the authority to certify ILEVs. Vehicle manufacturers must request the U.S. EPA to grant an ILEV certification for any vehicle to be considered and labeled as meeting these standards. According to the U.S. EPA,

[11] The ''Federal-Aid Highway Program Guidance on High Occupancy Vehicle (HOV) Lanes'' dated March 28, 2001, is available at the following URL: *http://www.fhwa.dot.gov/operations/hovguide01.htm.*

[12] The Value Pricing Pilot Program is an experimental program to learn the potential of different value pricing approaches for reducing congestion authorized by Section 1216(a) of the Transportation Equity Act for the 21st Century (TEA–21). Information is available at the following URL: *http://www.fhwa.dot.gov/policy/vppp.htm.*

1996 was the first year that they certified any ILEVs. The U.S. EPA regulations specify that ILEVs must meet the emission standards specified in 40 CFR 88.311–93 and their labeling must be in accordance with 40 CFR 88.311–93(c).

The changes in Section 2B.27 are also necessary to assure consistency with the FHWA requirements to comply with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) process.

44. In Section 2B.28 Preferential Only Lane Sign Applications and Placement (numbered Section 2B.50 High-Occupancy Vehicle Sign Application and Placement in the NPA), in the NPA the FHWA proposed adding a SUPPORT statement after the GUIDANCE statement, to state that Figures 2E–44 through 2E–show application and placement examples of HOV signing for entrances to barrier-separated HOV lanes and direct entrances to and exits from HOV lanes. The FHWA received four comments regarding the proposed changes to this section. The NCUTCD and the City of Tucson, Arizona, supported the changes, the Connecticut DOT suggested an editorial change to clarify the new figure, and Caltrans opposed the number of signs required for concurrent-flow HOV lanes. The FHWA revises the number of signs required for concurrent-flow HOV lanes to be more consistent with the practice of some leading States with HOV lanes. Also, the FHWA makes editorial revisions to and reorganizes the section to add clarity to differentiate between specific situations of barrier-separated, buffer-separated, concurrent flow, and direct access ramps as they relate to Preferential Only Lane signing, to address comments on this and other related sections from agencies that operate HOV facilities, suggesting that the many provisions of this section were not consistent with other provisions of the MUTCD and the section needed clarification and consistency.

The FHWA establishes a 10-year phase-in target compliance date from the effective date of this final rule for existing signs in good condition to minimize any impact on State or local governments.

45. In Section 2B.33 Keep Right and Keep Left Signs (R4–7, R4–8) (numbered Section 2B.28 in the NPA), the FHWA adds to the first OPTION statement that the Keep Left (R4–8) sign may be used at locations where it is necessary for traffic to pass only to the left of a roadway feature or obstruction.

The FHWA adds to the GUIDANCE statement to clarify that the Keep Right sign should be mounted on the face of, or just in front of, a pier or other obstruction separating opposite directions of traffic in the center of the highway such that traffic will have to pass to the right of the sign.

Additionally, the FHWA adds a new STANDARD statement following the GUIDANCE statement indicating that the Keep Right sign shall not be installed on the right side of the roadway in a position where traffic must pass to the left of the sign.

The changes in this section clarify the proper uses of Keep Right and Keep Left signs. The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, in general support of the changes to this section, and adopts these changes.

46. In Section 2B.34 DO NOT ENTER Sign (R5–1) (numbered Section 2B.29 in the NPA), the FHWA modifies the GUIDANCE statement with respect to the placement of the DO NOT ENTER sign. The GUIDANCE states that, if used, the DO NOT ENTER sign should be placed directly in view of the road user at the point where a road user could wrongly enter a divided highway, one-way roadway, or ramp, and includes a reference to Figure 2B–10 (numbered Figure 2B–8 in the NPA). The FHWA received one comment from the City of Tucson, Arizona, supporting the overall changes to this section, and the FHWA adopts these changes.

Additionally, the FHWA renumbers and retitles Figure 2B–2 (as numbered in the 2000 MUTCD) from ''Typical Wrong-Way Signing for a Divided Highway'' to ''Figure 2B–10 Example of Wrong-Way Signing for a Divided Highway with a Median Width of 9 m (30 ft) or Greater'' (numbered Figure 2B–8 in the NPA). The FHWA received two comments from private citizens in general support of the changes to this figure, and the FHWA adopts the changes.

47. In Section 2B.36 Selective Exclusion Signs (numbered Section 2B.31 in the NPA), the FHWA changes item H in the SUPPORT statement from ''Hazardous Cargo'' to ''Hazardous Material'' to reflect the changes in Section 2B.52 Hazardous Material Signs (R14–2, R14–3). The FHWA received two comments from ATSSA and the City of Tucson, Arizona, in support of this change, and adopts this change. The FHWA received additional editorial comments to provide consistency with other areas of the MUTCD, and the FHWA incorporates the comments in this final rule.

48. In Section 2B.37 ONE WAY Signs (R6–1, R6–2) (numbered Section 2B.32 in the NPA), the FHWA relocates four figures from Section 2A.16 to this section. The FHWA renumbers and retitles Figures 2A–5 and 2A–6 to ''Figure 2B–12. Examples of Locations of ONE WAY Signs (Sheet 1 of 2, Sheet 2 of 2)'' (numbered Figures 2B–10 and 2B–11 in the NPA); Figure 2A–4 to ''Figure 2B–13. Examples of ONE WAY Signing for Divided Highways with Medians 9 m (30 ft) or Greater'' (numbered Figure 2B–12 in the NPA); and Figure 2A–3 to ''Figure 2B–14. Examples of ONE WAY Signing for Divided Highways with Medians Less Than 9 m (30 ft)'' (numbered Figure 2B–13 in the NPA). The FHWA also adds a new figure, ''Figure 2B–15. Examples of ONE WAY Signing for Divided Highways with Medians Less Than 9 m (30 ft) and Separated Left-Turn Lanes'' (numbered Figure 2B–14 in the NPA). These figures are most directly associated with ONE WAY signs and are most appropriately located in this section, which contains the text about ONE WAY signs. The FHWA received a few editorial comments regarding these figures, and incorporates those changes as appropriate in this final rule.

Additionally, the FHWA revises the depiction of the optional Keep Right signs on the medians in Figures 2B–14 and 2B–15 to show them at a 45 degree angle facing the road users on the cross street, to make it easier for drivers to determine the location of the median nose and to enter the proper roadway of a divided highway. The FHWA received three comments from ATSSA and private citizens in support of these changes. The FHWA adopts the changes to these figures.

49. In Section 2B.40 Design of Parking, Standing, and Stopping Signs (numbered Section 2B.35 in the NPA), the FHWA adds to the GUIDANCE statement that where special parking restrictions are imposed during heavy snowfall, Snow Emergency signs should be installed and that the legend will vary according to the regulations, but the signs should be vertical rectangles, having a white background with the upper part of the plate a red background. Signs of this type are used by many jurisdictions. The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, in support of this change, and adopts this change. In addition, the FHWA adds a paragraph at the end of the GUIDANCE statement regarding the use of the VAN ACCESSIBLE (R7–8a) plaque. A final rule adding this information to the 1988 edition of the MUTCD was adopted in 1998, however this was inadvertently left out of the 2000 MUTCD.

50. In Section 2B.44 Pedestrian Crossing Signs (R9–2, R9–3) (numbered Section 2B.39 in the NPA), the FHWA

modifies the second OPTION statement by changing ''PEDESTRIANS PROHIBITED'' to ''NO PEDESTRIAN CROSSING'' as the proper word message sign to be used as an alternate to the No Pedestrian Crossing (R9–3a) symbol sign. ''NO PEDESTRIAN CROSSING'' is the intended meaning of the symbol and more clearly describes the actual restriction of pedestrian movement. The FHWA received comments from the Association of Pedestrian and Bicycle Professionals and the City of Tucson, Arizona, specifically in support of this change, and adopts this change.

The FHWA also received comments from the Florida DOT and the City of Tucson, Arizona, suggesting that the section does not mention signalized crossings. These comments are outside the scope of this rulemaking and would need to be addressed in a future rulemaking.

51. In Section 2B.45 Traffic Signal Signs (R10–1 through R10–21) (numbered and titled ''Section 2B.40 Traffic Signal Signs (R10–1 through R10–13)'' in the 2000 MUTCD), the FHWA revises the title to reflect additional traffic signal signs. These signs are shown in Figures 2B–18 and 2B–19.

The FHWA adds to the second OPTION statement that the R10–3d sign may be used if the pedestrian clearance time is sufficient only for the pedestrian to cross to the median. This sign is similar to the existing R10–3b sign except that next to the WALK symbol is the message ''START CROSSING TO MEDIAN WATCH FOR VEHICLES.'' The FHWA also modifies Figure 2B–18 (numbered Figure 2B–17 in the NPA) to add illustrations of the R10–3d sign and the R10–3e sign. The R10–3e sign is a variant incorporating ''time remaining to finish crossing'' and is consistent with countdown pedestrian signals as adopted in Part 4. The FHWA received one comment from the City of Tucson, Arizona, in support of this change and one question from the U.S. Access Board regarding how this information would be given in audible and vibrotactile formats. The Access Board stated that, if accessible signals are used at an intersection where pedestrians should cross only to a median and then wait until a different phase to complete their crossing, it would be important for the accessible devices to communicate this fact to the pedestrian with visual disabilities. This comment actually pertains to Chapter 4E Pedestrian Signals, and it goes beyond the scope of this rulemaking and would need to be addressed in a future rulemaking. The FHWA adopts the change, as proposed in the NPA, in this final rule.

Additionally, the FHWA revises and relocates the third OPTION statement (from the 2000 MUTCD) to follow the second STANDARD statement to indicate that a symbolic NO TURN ON RED (R10–11) sign may be used as an alternate to the R10–11a and R10–11b signs. The symbolic sign has a symbolic red ball rather than using the ''No Right Turn'' symbol, to avoid confusion with the R3–1 (No Right Turn) sign.

In Figure 2B–19 Traffic Signal Signs (numbered Figure 2B–18 in the NPA), the FHWA received several comments regarding the illustration of ''No Right Turn on Red'' signs. ATSSA and a traffic engineering consultant agreed with the return of the R10–11 sign and the removal of the R10–11c and R10–11d signs. The Cities of Plano, Texas, and Los Angeles, California, and some private citizens were opposed to the removal of the R10–11c and R10–11d signs, stating that the use of symbol signs should be encouraged over word signs. The FHWA disagrees with the opposing commenters because the use of the No Right Turn symbol sign should be reserved for actual prohibition of all right turn movements at an intersection to have the appropriate impact on safety. Extensive use of a No Right Turn on Red sign featuring the No Right Turn symbol would degrade the influence of the R3–1 sign. The City of Los Angeles and a private citizen suggested different designs for the sign. The FHWA disagrees with these different designs because they are too complex. The FHWA adopts the R10–11 sign with a red ball symbol included on the bottom line of the sign. The FHWA also revises the sign number for R10–20b to be R10–20a, and places the word ''or'' between the two R10–20a signs to clarify that the signs illustrate two examples of different word messages that can be used to provide times and days.

Additionally, the FHWA adds to the second GUIDANCE statement to indicate that where turns on red after the driver stops are permitted and the turn signal indication is a RED ARROW, the RIGHT (LEFT) ON RED ARROW AFTER STOP (R10–17a) sign should be installed adjacent to the RED ARROW signal indication to conform to the ''Uniform Vehicle Code and Model Traffic Ordinance'' (UVC) as revised. The revised UVC prohibits turns on a RED ARROW after stopping unless a sign specifically allowing the turn is in place. The FHWA received one comment from ATSSA in support of this change, and three comments from the NCUTCD, Caltrans and the City of Kennewick, Washington, opposing it. Kennewick, Washington, opposed this new sign, because the State of Washington allows the turn on red arrow after stop in certain instances, unless otherwise prohibited by signs. The FHWA is in favor of maintaining consistency with the majority of the other States who already have laws that agree with this meaning of the red arrow.

The NCUTCD opposed this new paragraph as well as the signs, stating that it is ''inappropriate.'' Without additional explanation, the FHWA cannot respond to this comment.

Caltrans opposed the new sign suggesting that where turns on red are permitted after stopping and the signal indication is a RED ARROW, that changing the signal indication from a RED ARROW to a Red Ball would be more appropriate than fixing the situation with a sign. The FHWA agrees that while there may not be many places where the R10–17a sign is needed, there are intersections with unusual geometrics or special lane use control for which an all-arrow right-turn signal head makes sense and from which there is no reason that turns on red should be prohibited. It is primarily for these situations that the R10–17a sign should be used. The FHWA adopts use of this sign in this final rule, with minor modifications.

Additionally, the FHWA relocates the last item in the second GUIDANCE statement to the first paragraph under the third OPTION statement (new fourth OPTION statement) and changes it to read that when right turn on red after stop is permitted and pedestrian crosswalks are marked, the TURNING TRAFFIC MUST YIELD TO PEDESTRIANS (R10–15) sign may be used. This change is necessary to prevent potential overuse and a reduced effectiveness of the sign. The FHWA received two comments from ATSSA and a traffic engineering consultant in support of this change. The U.S. Access Board opposed, stating that the use of the sign should not be restricted to just marked crosswalks. The traffic engineering consultant who supported the change also suggested that the sign would also be useful during the green interval to remind drivers to yield to pedestrians who are crossing during the concurrent WALK interval. The FHWA agrees and adds a paragraph to the OPTION stating that a TURNING TRAFFIC MUST YIELD TO PEDESTRIANS sign may be used to remind drivers who are making turns to yield to pedestrians, especially at intersections where crosswalks are

marked and right turn on red is permitted.

In the NPA, the FHWA proposed to add a paragraph to the OPTION statement allowing the use of supplemental plaques showing times of day or with the legend WHEN PEDESTRIANS ARE PRESENT below a NO TURN ON RED sign, to allow the flexibility to restrict turns on red only during certain times or when a pedestrian conflict is present. The traffic engineering consultant also supported the use of both of the suggested plaques. The Insurance Institute for Highway Safety presented results from recent field research indicating that time-of-day restrictions are effective in reducing right turn on red related safety threats to pedestrians but the WHEN PEDESTRIANS ARE PRESENT plaque is not because its vague message makes enforcement difficult.[13] Based on this research, the FHWA revises the text to deletes the WHEN PEDESTRIANS ARE PRESENT plaque. Because it is a word message, State and local highway agencies may still use the WHEN PEDESTRIANS ARE PRESENT plaque prohibiting right turns on red when pedestrians are present if their laws so dictate, but they are not encouraged to do so because research has shown these plaques are ineffective. Finally, to respond to a comment from a traffic engineering consultant, the FHWA moves the last paragraph of this OPTION statement regarding the use of Traffic Signal Speed signs to the end of the second OPTION statement because this paragraph relates more to the information provided in the second OPTION.

The FHWA proposed in the NPA to add to the third STANDARD statement that the EMERGENCY SIGNAL—STOP WHEN FLASHING RED (R10–14) sign shall be used in conjunction with emergency beacons to correspond with proposed changes in Part 4 of the MUTCD, which proposed to require the use of these signs with Emergency Beacons. Due to extensive comments in opposition to the Emergency Beacon in Part 4, the FHWA does not adopt these changes in Part 4. (See the discussion of Section 4F.03). Therefore, the FHWA removes the R10–14 sign, associated text, and illustration from Part 2.

In the NPA, the FHWA proposed adding to the STANDARD statement the requirement to use a ''U Turn Yield to Right Turn'' sign when U-turns on a green arrow signal conflict with right turns on a green arrow signal. While there were comments from the City of Tucson, Arizona, and a traffic engineering consultant in support of this change, the FHWA received comments from the NCUTCD, Caltrans, and the City of Kennewick, Washington, opposed it, stating that the sign would not be understood, or was inappropriate. The FHWA concurs that there is some possibility of misunderstanding. Because there is no data to support or refute these concerns, the FHWA changes this to an OPTION statement, allowing the use of the sign but not requiring it. The FHWA also modifies Sections 4D.05 Application of Steady Signal Indications and 4D.09 Unexpected Conflicts During Green or Yellow Intervals accordingly.

52. The FHWA adds a new section numbered and titled, ''Section 2B.46 Photo Enforced Signs (R10–18, R10–19)'' (numbered Section 2B.51 in the NPA.) This new section provides guidance to State and local agencies on the use of the photo enforcement signs to alert road users of this type of traffic enforcement. The FHWA includes an OPTION statement with two paragraphs. The first paragraph states that a TRAFFIC LAWS PHOTO ENFORCED (R10–18) sign may be installed at a jurisdictional boundary to advise road users that some of the traffic regulations within that jurisdiction are being enforced by photographic equipment. The second paragraph states that a PHOTO ENFORCED (R10–19) sign may be mounted below a regulatory sign to advise road users that the regulation is being enforced by photographic equipment.

Additionally, the FHWA includes a STANDARD statement, which states that if the PHOTO ENFORCED (R10–19) sign is used below a regulatory sign, it shall be a rectangle with black legend and border on a white background.

The FHWA received three comments from the NCUTCD, ATSSA and the City of Tucson, Arizona, in support of this new section and two comments from the Wisconsin DOT and the Insurance Institute of Highway Safety opposed to it.

The Insurance Institute of Highway Safety stated that placing the TRAFFIC LAWS PHOTO ENFORCED sign at jurisdictional boundaries is vague with regard to which traffic laws (speed, red light) are photo enforced. The FHWA disagrees because this sign can be a useful reminder to drivers to obey all traffic laws, just speed limits and red lights. The Insurance Institute of Highway Safety also suggested that rather than the general PHOTO ENFORCED regulatory sign, specific regulatory signs should be developed for both red light cameras and automated speed enforcement. The FHWA disagrees because the consistent placement of the PHOTO ENFORCED sign should provide adequate notice and should have the desired effect on driver behavior.

The Wisconsin DOT noted that not all States allow the use of photo enforcement. Because use of these signs is optional, States that do not use photographic enforcement will not need to use these signs.

The FHWA adopts this section in its entirety, as proposed in the NPA, in this final rule. The FHWA establishes a phase-in target compliance date of 10 years from the effective date of this final rule for existing signs of different designs that are in good condition to minimize any impact on State or local governments.

53. In Section 2B.52 Hazardous Material Signs (R14–2, R14–3) (numbered and titled ''Section 2B.46 Hazardous Cargo Signs (R14–2, R14–3)'' in the 2000 MUTCD), the FHWA changes the title and revises the OPTION and GUIDANCE statements to replace ''cargo'' with the word ''material'' and revises the symbol for the Hazardous Material sign (R14–3) sign to be HM rather than HC, to correspond with Section 2B.36 Selective Exclusion Signs and to reflect the change in terminology in the industry. The FHWA received three comments from ATSSA, the City of Tucson, Arizona, and a private citizen in support of these changes, and three comments from private citizens suggesting changes to the design of the R14–3 sign, particularly changes in the color of the circle around the letters. The FHWA adopts the sign design as proposed in the NPA. The FHWA revises the phase-in target compliance date to 10 years from the effective date of this final rule (the NPA proposed five years) for existing signs in good condition to minimize any impact on State or local governments.

54. In Section 2B.54 Other Regulatory Signs (numbered Section 2B.51 in the 2000 MUTCD), the FHWA proposed to revise the STANDARD statement to indicate that the symbol for the seat belt symbol is in the ''Standard Highway Signs'' book. The FHWA received one comment from the City of Tucson, Arizona, in support of this change. However, consistent with FHWA's desire to include illustrations of all

[13] ''Field Evaluation of Two Methods for Restricting Right Turn on Red to Promote Pedestrian Safety,'' by Retting, Nitzburg, Farmer, and Knoblauch, for the Insurance Institute for Highway Safety, was published in the January 2002 issue of the ''ITE Journal,'' a publication of the Institute of Transportation Engineers (ITE). Information on obtaining a copy of this publication is available from ITE at the following URL: *http://www.ite.org.*

signs from the SHS that are referenced in the MUTCD, as discussed above, the FHWA retains the symbol for the seat belt symbol, and places it in a new Figure 2B–22.

55. In Section 2C.02 Application of Warning Signs, the FHWA modifies the SUPPORT statement to reflect that ''categories'' not ''applications'' of warning signs are shown in Table 2C–1. This change makes the text and Table 2C–1 consistent.

Additionally, the FHWA changes the title of Table 2C–1 from ''Application of Warning Signs'' to ''Categories of Warning Signs'' and adds new roadway related and traffic related signs and supplemental plaques to the table based on changes in other sections of Chapter 2C. The change in the title of the table better reflects the actual content of the table. There was one comment from the City of Tucson, Arizona, in agreement with the overall changes in this section. One traffic engineering consultant questioned why the Railroad Advance Warning sign is not listed in the table. This table only includes those signs that are found in Chapter 2C, not those found in other parts such as Part 8. The MUTCD has separate sign tables in other Parts as appropriate. Another traffic engineering consultant questioned why W16–8, W14–1p, and W14–2p are identified as plaques. The W16–8 plaque must be used in combination with a W2 or W3 sign according to Section 2C.49 Advance Street Name Plaque (W16–8, W16–8a), and thus is correctly referred to as a plaque. Because the W14–1P and W14–2P plaques can be used alone according to Section 2C.21 DEAD END/NO OUTLET Signs (14–1, W14–1a, W14–2, W14–2a), the FHWA revises the table to remove the ''P'' designation from these two signs, and the rectangular forms of these signs are designated the W14–1a and W14–2a signs.

56. In Section 2C.03 Design of Warning Signs, based on an editorial comment from a traffic engineering consultant, the FHWA adds playgrounds to the listing of signs in the OPTION statement that may have a black legend and border on a yellow background or a black legend and border on a fluorescent yellow-green background.

57. In Section 2C.04 Size of Warning Signs, the FHWA removes the SUPPORT statement referencing the ''Standard Highway Signs'' book because this statement is general and applies to regulatory, warning, and guide signs. A similar statement is included in Section 2A.12 Dimensions. The removal of this SUPPORT statement responds to two comments from the NCUTCD and the Illinois DOT.

The FHWA changes Table 2C–2 to add sizes for the Expressways W1 Series Arrows signs, the Expressways and Freeways W7 Series Truck Runaway signs, the Expressways and Freeways W12–2P Low Clearance signs, and to increase the sizes for all roadways except Freeways for the W10–1 Advance Grade Crossing sign, to enhance visibility of this sign for all road users, including older drivers. The FHWA received one comment from the NCUTCD in overall agreement with the changes to the table. The Oregon DOT suggested that the size for the W1 series signs be 900 x 900 mm (36″ x 36″) for conventional roads because these curvature signs are very important. The FHWA agrees that these signs are important, but these signs are in the 750 x 750 mm (30″ x 30″) category because they are symbol signs that can be recognized from a greater distance than words can be read.

The FHWA adopts the changes to Table 2C–2 as proposed in the NPA and adds the W1 Combination series signs to the Diamond shaped category in this final rule. The FHWA establishes a phase-in target compliance date of 10 years from the effective date of this final rule for existing signs in good condition to minimize any impact on State or local governments.

58. In Section 2C.05 Placement of Warning Signs, the FHWA changes the STANDARD statement to a SUPPORT statement, to respond to a comment from the City of Tucson, Arizona, suggesting that using the phrase ''general requirements'' in a STANDARD statement was not clear. The FHWA agrees and revises the wording to reference Sections 2A.16 to 2A.21 for information on placement of warning signs.

The FHWA changes Table 2C–4 so that the distances for the placement of advance warning signs correspond to the values in the 2001 AASHTO ''A Policy on Geometric Design of Highway and Streets'' [14] book and to make the table easier to use. The FHWA combines the ''Condition B'' and ''Condition C'' columns (as shown in the 2000 MUTCD) and labels them ''Condition B''. The FHWA also adds columns for 90, 100, and 110 km/h and 60 and 70 mph for the deceleration to the listed advisory speed and rows for 70 and 75 mph for the Posted or 85th Percentile Speed. Finally, the FHWA revises the Notes to reflect the other changes taking place throughout the MUTCD. These changes to Table 2C–4 reflect the needs of older road users and improve the clarity of the Notes. The FHWA received two comments from the NCUTCD and ATSSA in support of the changes. There were three comments from the Nevada, Wisconsin, and Oregon DOTs opposed to these changes, suggesting that the sign placement distances were either too long, or too short. Advanced placement distances have significantly decreased based on the 2001 AASHTO Policy, and the MUTCD reflects these changes. To address comments about this table the FHWA removes the word ''minimum'' from footnote 5 in both sheets of the table, and removes the metric units from the notes on the English units table, and vice versa.

59. In Section 2C.06, Horizontal Alignment Signs (W1–1 through W1–5, W1–11, W1–15) (titled ''Horizontal Alignment Signs (W1–1 through W1–5)'' in the 2000 MUTCD), the FHWA revises the section title to reflect the new Hairpin Curve (W1–11) sign and the 270 Degree Loop (W1–15) sign.

In the first OPTION statement, the FHWA adds the use of the Hairpin Curve sign and the 270 Degree Loop sign based on the change in horizontal alignment. These new signs better portray the severe curvature for these types of alignment changes. The FHWA received three comments from the NCUTCD, ATSSA, and the City of Tucson, Arizona, supporting the addition of these new signs, and adopts the OPTION statement regarding these signs.

The FHWA also adds to the GUIDANCE statement a recommendation to install a One-Direction Large Arrow (W1–6) sign or Chevron Alignment (W1–8) sign on the outside of a turn or curve when the Hairpin Curve sign or 270-Degree Loop sign is installed. This provides for enhanced warning to road users of the severe alignment change and may help reduce run-off-the-road crashes.

In the NPA, the FHWA proposed to add a second GUIDANCE statement following the STANDARD statement. This proposed GUIDANCE recommended that the need for additional curve warning signs or advisory speed reduction warning plaques be based on an engineering

[14] ''A Policy on Geometric Design of Highways and Streets,'' 4th Edition, 2001, in both hardcopy and CD–ROM, is available from the American Association of State Highway and Transportation Officials (AASHTO) by telephone (800) 231–3475, facsimile (800) 525–5562, mail AASHTO, P.O. Box 96716, Washington, DC 20090–6716, or at its Web site *http://www.transportation.org* and click on Bookstore. This document is a guide, based on established practices and supplemented by research, to provide guidance to the highway designer to provide for the needs of highway users while maintaining the integrity of the environment. It is incorporated by reference into the CFR at 23 CFR 625.4.

study or on engineering judgment. The FHWA received one comment from the NCUTCD suggesting that this statement was redundant. The FHWA agrees with this comment because traffic engineers consider the need for additional warning signs for curves or turns using engineering judgment or studies as part of common practice. The FHWA withdraws this proposal, and deletes this GUIDANCE from this final rule.

The FHWA adds an OPTION statement at the end of the section that provides a method that may be used to determine the need for additional speed reduction warning signs. The FHWA includes these optional criteria for determining the need for additional recommended speed reduction signs to mitigate the high number of run-off-the-road crashes along curves and ramps. Similar to their comments in Section 2C.36 Advisory Exit, Ramp, and Curve Speed Signs (W13–2, W13–3, W13–5), the NCUTCD Regulatory and Warning Sign Technical Committee, Caltrans and the City of Kennewick, Washington, suggested deleting this statement as well as other statements in this section referring to the Curve Speed sign. Those opposed cited their disagreement with the whole concept of the Curve Speed sign and the lack of criteria for its use. The FHWA believes this is a helpful sign to remind drivers of the advisory speed that should be added for optional use. Most curves are very well outlined with delineators or chevron signs. However, because crashes are still occurring, the FHWA believes that this sign could be used to advantage to remind drivers of the recommended reduction in speed as they proceed along the curve or ramp. The FHWA includes this statement, as well as other references to the Curve Speed sign in this final rule.

Additionally, the FHWA adds metric information to Table 2C–5 to show the metric speed value of less than or equal to 50 km/h along with the English unit of less than or equal to 30 mph and shows the metric speed value of greater than 50 km/h along with the English unit of greater than 30 mph. The metric values were inadvertently omitted from the 2000 MUTCD.

60. In Section 2C.07 Combination Horizontal Alignment/Advisory Speed Signs (W1–1a, W1–2a) (titled ''Combination Horizontal Alignment/Advisory Speed Sign (W1–9)'' in the 2000 MUTCD), the NPA included several proposed revisions to this section and the addition of Figure 2C–2 to provide for enhanced uniformity of application of these types of signs and improved safety on curves and turns. While there were two comments from the City of Tucson, Arizona, and a private citizen in support of the changes, several commenters from the NCUTCD, the Washington and Wisconsin DOTs, and the Product and Highway Safety Institute expressed concern.

The NCUTCD Regulatory and Warning Sign Technical Committee recommended deleting this section and the associated sign images on Figure 2C–1 because of a lack of consensus in the profession on the proper application of these signs. The NCUTCD offered to review applications and develop a recommendation for future consideration. As a result of the comments received, the FHWA withdraws these proposed revisions and Figure 2C–2. However, in order to distinguish between the combination curve signs, the FHWA retains the revised sign codes of W1–1a and W1–2a instead of W1–9. The FHWA also renumbers subsequent figures (as numbered in the NPA). After the NCUTCD has reviewed existing applications of this type of signing (which exist in only a few States) and makes further recommendations on application and placement issues, the FHWA may consider changes to this section in a future rulemaking.

61. In Section 2C.10 Chevron Alignment Sign (W1–8), the FHWA adds to the STANDARD statement that a border shall not be used on the Chevron Alignment sign. This change corrects an error in the 2000 MUTCD. The FHWA adopts this change.

The FHWA received one comment from the NCUTCD suggesting that the second OPTION statement be revised to state that multiple Chevron Alignment signs may be used on the far side of a T-intersection to inform drivers of a change of horizontal alignment. The FHWA disagrees because a Two-Direction Large Arrow sign (W1–7) may be used instead. Chevron signs should be limited to use for curves only. Changes to this statement may be appropriate for a future rulemaking.

62. The FHWA adds a new section numbered and titled, ''Section 2C.11 Truck Rollover Warning Signs (W1–13).'' This section was numbered Section 2C.54 in the NPA. This new section includes OPTION and STANDARD statements on the use of the Truck Rollover warning sign to warn drivers of vehicles with a high center of gravity of a curve or turn having geometric conditions that are prone to cause such vehicles to lose control and overturn. This new section provides for uniform design and application of signs for this purpose, using the Pennsylvania sign design that research found to be most effective in warning truckers of the condition.[15] The FHWA received four comments from the NCUTCD, ATSSA, the City of Tucson, Arizona, and a private citizen in support of this change, and four comments from the Oregon and Wisconsin DOTs and a private citizen suggesting that the sign design be revised for clarity. As a result, the FHWA adds a SUPPORT statement clarifying that the curved arrow on the sign shows the direction of the roadway curvature, and that the truck tips in the opposite direction. In the NPA, the FHWA proposed two versions of the sign. Several commenters from State DOTs opposed the W1–13a Combination sign, stating that there was too much information on the sign for the motorist to understand. Based on these comments, the FHWA removes the W1–13a Combination sign from this final rule. The FHWA establishes a phase-in target compliance date of 10 years from the effective date of this final rule for existing signs in good condition to minimize any impact on State or local governments.

63. In Section 2C.12 Hill Signs (W7–1, W7–1a, W7–1b) (numbered Section 2C.11 in the NPA), the FHWA adds to the GUIDANCE statement to clarify that on longer grades, the Hill sign with distance (W7–3a) plaque or the combination distance/grade (W7–3b) plaque at periodic intervals of approximately 1.6 km (1 mi) spacing should be considered. This change clarifies that the plaques should not be used alone but should supplement the Hill sign. The FHWA received one comment from the City of Tucson, Arizona, in support of this change, and adopts this change.

64. In Section 2C.13 Truck Escape Ramp Signs (W7–4 Series) (numbered Section 2C.12 in the NPA), the FHWA adds to the STANDARD statement to indicate that at least one of the W7–4 series warning signs shall be used when truck escape ramps are installed. This change clarifies that additional warning signs may be used as conditions warrant. The FHWA received one comment from the City of Tucson, Arizona, in support of this change, and adopts this change. The FHWA also adds an illustration of the regulatory RUNAWAY VEHICLES ONLY (R4–10) sign on Figure 2B–8 (numbered Figure 2B–6 in the NPA) in this final rule.

[15] ''Ramp Signing for Trucks,'' by the Center for Applied Research, Inc., December 20, 1989, a research project conducted for the Federal Highway Administration (FHWA) under contract number DTFH61–88-C–00048, is available from FHWA Turner-Fairbank Highway Research Center, 6300 Georgetown Pike, McLean, Virginia 22101, Web site *http://www.tfhrc.gov*.

65. The FHWA adds a new section numbered and titled, ''Section 2C.14 HILL BLOCKS VIEW Sign (W7–6).'' This section was numbered Section 2C.50 in the NPA. This section includes an OPTION statement on the use of the HILL BLOCKS VIEW sign in advance of the crest of a vertical curve to advise road users to reduce speed as they approach and traverse the hill as only limited sight distance is available. The FHWA adds this sign because it is in use, fulfills an important need, and has been found by older driver research [16] to be well understood by road users. The FHWA received two comments from the City of Tucson, Arizona, and a traffic engineering consultant in support of this new section and the HILL BLOCKS VIEW sign, and seven comments from the NCUTCD, the Kansas, Minnesota, and Arizona DOTs, as well as Pierce County, Washington, and a private citizen questioning its effectiveness. Two commenters representing the Kansas DOT suggested that the side-road/cross-road warning signs, with the appropriate advisory speed, are more informative to the driver. Because this sign may be needed to warn of limited view over a hillcrest where side roads and cross roads are not present, the FHWA includes this section and the HILL BLOCKS VIEW sign in this final rule. Because this is an OPTION, some State and local DOTs may choose to use this sign, and others may not.

Additionally, the FHWA includes a GUIDANCE statement, indicating that when a HILL BLOCKS VIEW sign is used, an Advisory Speed plaque based on available stopping sight distance should accompany it. The FHWA includes the plaque because road users should be advised of the recommended speed for traversing the hillcrest.

66. In Section 2C.15 ROAD NARROWS Sign (W5–1) (numbered Section 2C.13 in the NPA), the FHWA included a proposal in NPA to renumber and retitle the Narrow Bridge (W5–2a) sign as a new symbolic Road Narrows (W5–1a) sign. The FHWA proposed these changes because it felt that the road user's understanding of the symbol is not exclusively as ''narrow bridge ahead,'' but rather as symbolic of any narrowing of the road, such as the presence of curb bulb-outs or chicanes. The FHWA received five comments from the NCUTCD, the Arizona and Minnesota DOTs, Caltrans, and private citizens opposing this change, stating that the symbolic sign is unsuitable for the Road Narrows message due to its depiction of a relatively short distance of narrow roadway, which may not agree with all narrow roadway situations. The FHWA agrees and deletes the W5–1a sign (designated W5–2a in the 2000 MUTCD) and associated OPTION statement as proposed in the NPA, and adopts only the word message ROAD NARROWS (W5–1) sign in this final rule.

67. In Section 2C.16 NARROW BRIDGE Sign (W5–2) (numbered Section 2C.14 in the NPA), the FHWA removes the reference to the Narrow Bridge symbol (W5–2b in the NPA, W5–2a in the 2000 MUTCD) sign from the OPTION statement. This change was proposed in the NPA to reflect the proposed change of the Narrow Bridge symbol (W5–2b) sign to the Road Narrows symbol (W5–1a) sign. The FHWA received comments from the NCUTCD, the Ohio DOT, and the City of Tucson, Arizona, in support of this change, while the Florida DOT and Caltrans opposed it. The Florida DOT felt that replacing a symbol sign with a word message sign is an exception to the international movement toward a more symbolic sign vocabulary. Caltrans indicated that the symbolic graphic provides more information than the text sign because it indicates a temporary short constriction in the roadway with the road widening back to normal after the constriction. Based on comments (see discussion regarding Section 2C.15 ROAD NARROWS Sign (W5–1)), the FHWA deletes the symbol sign in this final rule, because it's meaning is not clear. The FHWA establishes a phase-in target compliance date of 10 years from the effective date of this final rule for replacing existing Narrow Bridge symbol signs in good condition with the word message signs to minimize any impact on State or local governments.

68. In Section 2C.19 Divided Highway (Road) Ends Sign (W6–2) (numbered Section 2C.17 in the NPA), the FHWA modifies the GUIDANCE statement to clarify that a Divided Highway Ends (W6–2) symbol sign should be used in advance of the end of a section of physically divided highway (not an intersection or junction) as a warning of two-way traffic ahead. The reason for this change is that the warning sign should be placed in advance of, rather than at, the start of the divided highway section. The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, supporting this change and adopts this change.

69. In Section 2C.21 DEAD END/NO OUTLET Signs (W14–1, W14–1a, W14–2, W14–2a) (numbered Section 2C.19 in the NPA), the FHWA combines Section 2C.40 DEAD END/NO OUTLET Plaques as numbered in the NPA with this section because the FHWA redesignates these plaques as signs. The FHWA modifies the STANDARD statement to clarify that when the W14–1 or W14–2 sign is used, the sign shall be posted as near as practical to the entry point or at a sufficient advance distance to permit the road user to avoid the dead end or no outlet condition by turning off, if possible, at the nearest intersecting street. This change gives additional flexibility to jurisdictions when posting the sign at the exact entry point is not practical due to obstructions or other factors. The FHWA received one comment from the City of Tucson, Arizona, in support of this change, and incorporates this change.

The FHWA also received a comment from a traffic engineering consultant suggesting restoration of text from the 1988 MUTCD, that was removed in the 2000 MUTCD, restricting the use of the W14–1P and W14–2P plaques in lieu of the W14–1 and W14–2 signs where traffic can proceed straight through the intersection into the dead end street. The FHWA agrees that this is necessary to adequately warn road users and includes this text as a separate paragraph in the STANDARD statement in this final rule.

70. In Section 2C.22 Low Clearance Signs (W12–2 and W12–2) (numbered Section 2C.20 in the NPA), the FHWA clarifies the STANDARD statement by removing the words ''or minimum structure height.'' This change clarifies the proper application of Low Clearance signs. The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, in support of this change, and incorporates the change.

Additionally, the FHWA clarifies the GUIDANCE statement by changing the phrase ''legal limit'' to ''legal maximum vehicle height'' to reflect more precisely the proper dimension. The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, in support of this change, and one from the Virginia DOT opposed to it. The Virginia DOT stated that the text in this section differs from the text in Section 8B.17 Low Ground Clearance Highway-Rail Grade Crossing Sign (W10–13) (numbered Section 8B.16 in the NPA), where there is no mention of using distance plaques, and suggests that the text in both sections should be the same, and that the GUIDANCE statement in this section be changed to

[16] Information about this research is summarized on pages 235 and 236 of the ''Highway Design Handbook for Older Drivers and Pedestrians,'' Report number FHWA–RD–01–103, published by the FHWA Office of Safety Research and Development, 2001. It is available for purchase from The National Technical Information Service, Springfield, Virginia 22161, (703) 605–6000, and at the following URL: *http://www.ntis.gov*.

an OPTION. The FHWA disagrees with downgrading this paragraph to an OPTION because drivers of high profile vehicles need this information where they can still execute a turning maneuver and an OPTION would not be appropriate. However, in response to this comment, the FHWA adds a distance plaque to the list of sign types in Section 8B.17.

71. In Section 2C.23 BUMP and DIP Signs (W8–1, W8–2) (numbered Section 2C.21 in the NPA), the FHWA modifies the second GUIDANCE statement to indicate that a short stretch of depressed alignment that might momentarily hide a vehicle should be treated as a no-passing zone when centerline striping is provided on a two-lane or three-lane road. The change replaces the word ''may'' with ''might'' to avoid possible confusion of this GUIDANCE statement as an OPTION statement, and clarifies that the use of a no-passing zone in this situation only applies when centerline striping is provided on the road. The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, in support of this change, and adopts this change.

72. In Section 2C.24 SPEED HUMP Sign (W17–1) (numbered Section 2C.22 in the NPA), the FHWA adds a sentence to the OPTION statement to allow the use of the legend SPEED BUMP instead of the legend SPEED HUMP on the W17–1 sign. This provides additional flexibility to jurisdictions and reduces sign inventory. The FHWA received two comments from the City of Tucson, Arizona, and a traffic engineering consultant in support of this change, and one comment from the NCUTCD opposed to it. The NCUTCD stated that speed humps and speed bumps are not the same and are designed and applied differently, and therefore should be signed accordingly. While the FHWA agrees that speed humps and speed bumps are different, the FHWA believes that the general public does not readily perceive the difference in terminology or design between speed humps and speed bumps. To allow jurisdictions to use the terminology that will be best understood locally and to minimize maintenance issues, the FHWA adopts the OPTION statement as proposed in the NPA in this final rule. To clarify the intent, the FHWA adds a new SUPPORT statement immediately following the OPTION that describes speed humps and speed bumps and that, because the terminology is not well known by the public, for signing purposes the terms are interchangeable.

73. In Section 2C.26 SHOULDER Signs (W8–4, W8–9, and W8–9a) (numbered and titled ''Section 2C.24 SHOULDER and UNEVEN LANES Signs (W8–4, W8–9, W8–9a, and W8–11)'' in the NPA), the FHWA removes the UNEVEN LANES (W8–11) sign from the title and section text, as well as the first SUPPORT and STANDARD statements to move temporary traffic control applications signs out of Chapter 2C to respond to comments from the NCUTCD and the Washington DOT.

In the NPA, the FHWA proposed to add a STANDARD statement just before the GUIDANCE statement requiring the use of the SHOULDER DROP OFF (W8–9a) sign when a shoulder drop-off, adjacent to the travel lane, exceeds 75 mm (3 in) in depth and is not delineated by portable barriers. The FHWA received two comments from the City of Tucson, Arizona, and the Motorcycle Safety Foundation in support of this new STANDARD, and three comments from the Illinois and Minnesota DOTs opposed to it. Those opposed expressed that the text should remain a GUIDANCE because requiring the use of SHOULDER DROP OFF signs at all locations that meet the criteria would be a considerable hardship on agencies to properly identify all locations and sign them at all times. The opposing commenters also stated that the public does not fully understand the differences between the LOW SHOULDER and SHOULDER DROP OFF signs, and suggested that the LOW SHOULDER sign be omitted. The FHWA believes that jurisdictions need the proper warning signs to sign accurately for conditions where the drop off is greater than 75 mm (3 inches) and has not yet been repaired. Accordingly, the FHWA restores this statement to a GUIDANCE and clarifies the use of the SHOULDER DROP OFF sign.

74. The FHWA adds a new section numbered and titled, ''Section 2C.28 BRIDGE ICES BEFORE ROAD Sign (W8–13).'' (This section was numbered Section 2C.52 in the NPA.) This new section includes an OPTION statement on the use of the BRIDGE ICES BEFORE ROAD sign, which states that the sign may be used in advance of bridges to advise road users as they approach and traverse the bridge during winter weather conditions. The FHWA received four comments from the NCUTCD, ATSSA, and the City of Tucson, Arizona, in support of this change, and three comments from the Kansas and Wisconsin DOTs as well as the City of Plano, Texas, opposed to it. The opposing commenters indicated that the sign either served no purpose, or that as an OPTION statement, States may still choose to use different wording for the sign. The FHWA believes that States should not use a different wording for a standardized warning sign legend because that decreases uniformity. The FHWA adopts this new section in this final rule, but modifies the proposed GUIDANCE to OPTION because there is no research indicating that display of this sign message during warm weather causes any safety or operational problem. However, some agencies feel it is good practice to cover or not display the message when it is not appropriate. The FHWA also moves this section to follow Section 2C.25 SLIPPERY WHEN WET because this follows a more logical order within the chapter.

75. In Section 2C.29 Advance Traffic Control Signs (W3–1, W3–2, W3–3, W3–4) (numbered Section 2C.26 in the NPA), the FHWA received several informational and editorial comments from State DOTs regarding the text in the OPTION statement about the use of the BE PREPARED TO STOP sign. One comment from the Oregon DOT suggested that other legends be used for signs at intersection traffic control in order to preserve the BE PREPARED TO STOP signs for flagger applications. The FHWA believes that although the BE PREPARED TO STOP sign is mentioned in Section 6F.29 Flagger Sign (W20–7a, W20–7) in conjunction with the Flagger sign, it is not intended to be used only for flagger applications. Because this is an OPTION statement, States are not required to use the BE PREARED TO STOP sign for non-flagger situations.

The FHWA also received two comments from private citizens suggesting shortening the message on the sign to PREPARE TO STOP for conciseness and to allow use of a larger text font. The FHWA disagrees because PREPARE TO STOP would imply that the condition that must be stopped for is always present.

The FHWA also clarifies that the reference to a beacon in the second OPTION statement and the second GUIDANCE statement is a reference to a warning beacon. This clarification is necessary to be consistent with prescribed use of warning beacons in Part 4 of the MUTCD. The FHWA received one comment from the City of Tucson, Arizona, in support of these changes, and the FHWA incorporates these changes.

76. The FHWA adds a new section numbered and titled, ''Section 2C.30 Speed Reduction Signs (W3–5, W3–5a).'' (This Section was numbered Section 2C.51 in the NPA.) This new section includes a GUIDANCE statement, which recommends using the Speed Reduction signs to inform road users of a reduced speed zone when engineering judgment indicates the need

for advance notice to comply with the posted speed limit ahead. These new warning signs replace the R2–5a, b, and c signs because the intended message is more properly categorized as a warning message rather than regulatory message. The FHWA received five comments from ATSSA, the City of Tucson, Arizona, and a private citizen in support of this change, and fourteen comments from several State and local DOTs opposed to the change. Those who opposed the change indicated that the existing signs are more recognized by drivers, and therefore have the desired effect of reducing speeds where needed. Although some of the opposing commenters, such as the NCUTCD and the Washington DOT, agreed that the sign should be classified as a warning rather than a regulatory sign, many still favored use of the existing signs for economic reasons or indicated disagreement with the design of the proposed signs.

The FHWA disagrees with the use of an advisory speed plaque with a word message ''Reduced Speed Ahead'' sign as was suggested by some commenters. This is an inappropriate use of an advisory speed plaque and would only serve to further confuse the motoring public about what the difference is between a (regulatory) speed limit and a (non-enforceable) advisory speed. The sign proposed in the NPA is the most logical and the one that best serves the public because it is consistent with other advance warning signs that warn of a specific regulation ahead, such as the symbolic Stop Ahead and Yield Ahead signs. The Canadian MUTCD [17] has incorporated a similar concept of speed reduction signs for several decades. The NCUTCD and the Missouri DOT felt that the proposed sign would be a maintenance burden on jurisdictions due to having to stock and carry on sign maintenance vehicles multiple versions of the Speed Reduction sign with different numerical speed values. In view of Canada's long-standing use of this concept of speed reduction sign, the FHWA believes that this has not proven to be an unreasonable maintenance burden in Canada, nor has it been an unreasonable problem for jurisdictions in the U.S. with other standard signs in the MUTCD that provide for multiple speed values or distance values, such as the R2–1 Speed Limit sign, the W12–2 Low Clearance warning sign, the W13–1 Advisory Speed Plaque, or the W13–2 and W13–3 Exit and Ramp Speed advisory signs. Clear and unambiguous advance warning of a reduced regulatory speed limit ahead is an extremely important message that warrants the use of the sign as proposed in the NPA. The FWHA adopts the language for this section, as proposed in the NPA.

To respond to comments regarding the costs associated with this change, the FHWA revises the phase-in target compliance date to 15 years from the effective date of this final rule for existing R2–5 signs in good condition to be changed to W3–5 or W3–5a signs, to minimize any impact on State or local governments.

The FHWA received several comments from the Arizona DOT and private citizens suggesting revisions to the design of the W3–5 and W3–5a signs to make them more legible from longer distances. To address these comments, the FHWA makes minor refinements to the English unit version of the W3–5 symbol sign to make the numerals 9 inches high for the 36'' x 36'' sign and 12 inches high for the 48'' x 48'' sign, and adjusts the layout slightly. The FHWA also deletes the metric alternate of the W3–5 symbol sign because the numerals on it would be too small. The only allowable metric version of the Speed Reduction Warning sign is to be the metric word message W3–5a sign.

Additionally, the FHWA includes a STANDARD statement, which requires that a Speed Reduction Warning sign be followed by a Speed Limit (R2–1) sign installed at the beginning of the zone where the speed limit applies and that the speed limit displayed on the Speed Reduction sign shall be identical to the speed limit displayed on the subsequent Speed Limit sign. This is needed to provide for uniform application of these signs. The Minnesota DOT opposed this new paragraph, indicating that Section 2B.13 Speed Limit Sign (R2–1) already states that an R2–1 sign is required. The FHWA disagrees because Section 2B.13 does not require that statutory speed limits be posted, and this new paragraph is needed because it correctly limits the use of the Speed Reduction signs to only locations that are prior to ''posted'' speed limits. The FHWA adopts this paragraph in this final rule.

77. In Section 2C.31 Merge Signs (W4–1, W4–5) (numbered Section 2C.28 in the NPA), the FHWA includes the addition of the new Entering Roadway Merge (W4–5) sign in the title (referred to as W4–1a in the NPA). In addition to the title change, the FHWA adds a recommendation to the GUIDANCE statement, which states that when a Merge sign is to be installed on an entering roadway that curves before merging with the major roadway, the Entering Roadway Merge (W4–5) sign should be used. This sign is recommended for this condition because it better portrays the actual geometric conditions to road users on the entering roadway. The FHWA received three comments from the NCUTCD, ATSSA, and the City of Tucson, Arizona, in support of this change, and one comment from the Minnesota DOT opposing it. The Minnesota DOT indicated that drivers will not understand the sign, and suggested changing the W4–5 sign to an ''ENTERING MERGE AREA'' word sign. The FHWA disagrees and believes that this symbol sign would more accurately inform the drivers on the ramp that they must merge and adopts the change as proposed in the NPA. The FHWA establishes a phase-in target compliance date of 10 years from the effective date of this final rule for existing signs in good condition to minimize any impact on State or local governments.

78. In Section 2C.32 Added Lane Signs (W4–3, W4–6) (numbered Section 2C.29 in the NPA), the FHWA changes the title to reflect the addition of the new Entering Roadway Added Lane (W4–6) sign (referred to as W4–3a in the NPA). In addition to the title change, the FHWA adds to the GUIDANCE statement, that when an Added Lane sign is to be installed on a roadway that curves before converging with another roadway that has a tangent alignment at the point of convergence, the Entering Roadway Added Lane (W4–6) sign should be used. This sign is recommended for this condition because it better portrays the actual geometric conditions to road users on the entering roadway. The FHWA received three comments from the NCUTCD, ATSSA, and the City of Tucson, Arizona, in support of this change, and one comment from the Minnesota DOT opposed to it. The Minnesota DOT stated that drivers would not understand the sign. The FHWA disagrees because the orientation of the symbol on the sign will better convey to drivers on the ramp that they are about to flow into an added lane. Also, the FHWA notes that this sign has been used in the State of Washington for the intended geometric conditions. The FHWA adopts the change, as proposed in the NPA, in this final rule. The FHWA establishes a phase-in target compliance date of 10 years from the effective date of this final rule for existing signs in good condition to

[17] Manual on Uniform Traffic Control Devices for Canada'', 1998, and a December 2002 update, are available for purchase from the Transportation Association of Canada, at the following URL: *https://mediant.magma.ca/tacatc/bookstore/bookstore.cfm* click on ''Traffic Control''.

minimize any impact on State or local governments.

79. In Section 2C.33 Lane Ends Signs (W4–2, W9–1, W9–2) (numbered Section 2C.30 in the NPA), the FHWA changes the title of the section to reflect the addition of the Lane Ends (W4–2) sign (referred to as the Lane Reduction sign in the NPA.) This symbol sign was included in the 1988 edition of the MUTCD but in the 2000 Edition of the MUTCD it was deleted from Part 2 due to poor comprehension of the 1988 symbol by road users. However, in Part 6 of the 2000 MUTCD this symbol sign continued to be shown in many of the figures, particularly for the Typical Applications in Chapter 6H, and therefore this symbol sign has continued to be widely used by State and local highway agencies.

The FHWA believes that a symbolic sign for the Lane Ends message continues to be needed and in the NPA the FHWA proposed changes the design of the Lane Ends (W4–2) symbol sign to improve comprehension by road users. The FHWA received nine comments from the NCUTCD, the Minnesota DOT, and private citizens opposed to the new sign design and five comments from the Oregon, Virginia and Wisconsin DOTs as well as private citizens in support of the new sign design.

The opposing commenters suggested that the new design would not be understood and also stated that there was not sufficient research to support the new design. An FHWA human factors research project [18] has found that road users very poorly comprehend the meaning of the previous design of the W4–2 sign. The research found that the old design is commonly misinterpreted to mean ''merge ahead'' or ''road narrows'' and does not adequately convey the intended message of a lane ending (reduction in the number of lanes.) This research also evaluated an alternative design similar to the design used in Canada but with more graphic elements (bent arrows.) This study found that comprehension of the tested alternative symbol was much better than the old W4–2 design, but because of the complexity of the added graphical elements (arrows) the legibility distance was less than that of the old W4–2 design. The FHWA adopts a revised design for the W4–2 sign that is identical to the design used in Canada for several decades. A study in Canada [19] found the Canadian symbol sign to be legible in the range of 70 to 200 meters, which is better legibility than most symbols. The FHWA adopts this design in this final rule because the long-standing Canadian use of this sign indicates it is successful and because having a uniform design between the U.S. and Canada will benefit cross-border travelers. Several State DOTs suggested that the OPTION allowing jurisdictions to modify the Lane Ends sign to represent the actual road lane configuration be removed. The FHWA agrees and eliminates the OPTION allowing the sign to be modified. The adopted sign design conveys that the number of lanes is being reduced by one, regardless of how many total lanes are on the roadway. The FHWA establishes a phase-in target compliance date of 10 years from the effective date of this final rule for existing signs in good condition to minimize any impact on State or local governments.

Additionally, the FHWA adds the Lane Ends (W4–2) symbol sign to the first and second GUIDANCE statements and to the OPTION statement, indicating that the W4–2 symbol sign is an alternative to the LANE ENDS MERGE LEFT (RIGHT) (W9–2) word sign. This will provide additional flexibility to jurisdictions. The FHWA received one comment from Caltrans opposed to this change, stating that allowing the option to use word or symbol signs will lead to motorist confusion. The FHWA disagrees because there are many examples in the MUTCD where jurisdictions may choose between symbol signs and word message signs and there is no data indicating this causes confusion. Also, this provides jurisdictions with more flexibility. The FHWA adopts this change, as proposed in the NPA, in this final rule.

80. In Section 2C.34 Two-Way Traffic Sign (W6–3) (numbered Section 2C.31 in the NPA), the FHWA adds to the GUIDANCE statement that a Two-Way Traffic sign with an AHEAD (W16–9P) plaque should be used to warn road users of a transition from a one-way street to a two-lane, two-way section of roadway. The FHWA makes this addition in response to three comments received from private citizens regarding this section and a figure in Section 2B.37 ONE WAY Signs (R6–1, R6–2) (numbered 2B.32 in the NPA), where use of the sign is also illustrated, indicating that this revision should be made to clarify the text. The most common use of the W6–3 sign is along sections of two-lane, two-way roadways. In the specific case that is illustrated in Section 2B.37, the W6–3 sign is posted on the one-way street, in advance of where it changes to a two-way road. Therefore, the use of an AHEAD plaque with the W6–3 sign is recommended to enhance safety by minimizing possible misinterpretation of the meaning of the sign in that particular application. The FHWA establishes a phase-in target compliance date of five years from the effective date of this final rule for existing signs in good condition to minimize any impact on State or local governments.

81. In Section 2C.36 Advisory Exit, Ramp, and Curve Speed Signs (W13–2, W13–3, W13–5) (numbered Section 2C.33 in the NPA), the FHWA changes the design of the metric exit speed, ramp speed, and curve speed signs, and advisory speed signs/plaques so that the metric speed value is within a black circle with ''km/h'' below. This new design better differentiates between warning signs and plaques with metric units for speed from those using English units for speed. The FHWA received two comments from ATSSA and the City of Tucson, Arizona, in overall support of changes in this section. Three commenters representing the Minnesota and Ohio DOTs and a private citizen opposed the design of the metric exit speed sign, stating that this non-standard sign may not be recognized and understood by motorists. The FHWA disagrees and, consistent with decisions regarding the R2–1 sign in Chapter 2B, the FHWA adopts the metric exit speed sign as proposed in the NPA.

The FHWA received one comment from the Oregon DOT opposed to the first STANDARD statement regarding the use of the RAMP SPEED sign in addition to the EXIT SPEED sign, stating that the added signs clutter the sign environment and that the warning can more easily be handled with proper curvature signs with advisory speed plaques. The commenter suggested that the RAMP SPEED signs be an OPTION rather than a STANDARD. While the FHWA does not agree with removing the RAMP SPEED sign from the STANDARD, the FHWA adds a new OPTION paragraph stating that a Curve or Turn sign with Advisory Speed plaque may be used in place of a Ramp Speed sign if it is located such that it clearly does not apply to drivers on the main roadway. The NCUTCD suggested that all of the references to curves and

[18] ''Evaluation of Selected Potential MUTCD Signs,'' by Alicandri and Wochinger, 2000, Federal Highway Administration (FHWA) report number FHWA–RD–00–053, is available from FHWA Turner-Fairbank Highway Reserach Center, 6300 Georgetown Pike, McLean, Virginia 22101, or through their web site at the following URL: *http://www.tfhrc.gov.*

[19] ''Age Differences in the Legibility of Symbol Highway signs,'' by Frank Schieber and Donald Kline, 1994, is available for downloading at the University of South Dakota's Web site at the following URL: *http://www.usd.edu/_schieber/pdf/signs.pdf.*

Curve Speed signs be removed from the STANDARD and OPTION statements. The FHWA disagrees because this is a helpful sign to remind drivers of the advisory speed. Most curves are very well outlined with delineators or chevron signs. Because crashes are still occurring on curves, the FHWA believes that there is a need to remind drivers of the recommended reduction in speed as they proceed along the curve or ramp. The FHWA includes this statement, as well as other references to the Curve Speed sign, in this final rule.

The FHWA also adds a new paragraph to the OPTION stating that, based on engineering judgment, the Curve Speed sign may be installed on the inside or the outside of the curve to enhance its visibility. The FHWA incorporates this new paragraph in this final rule to be consistent with changes elsewhere in Part 2 of the MUTCD.

The FHWA also adds a new figure numbered and titled ''Figure 2C–7 Example of Advisory Speed Signing for an Exit Ramp.'' This figure illustrates the use of the Exit Speed sign along the deceleration lane and the use of the Ramp Speed signs along the actual ramp. The figure clarifies application of these signs to jurisdictions. Based on editorial comments suggesting additional clarity to this figure, the FHWA adopts this new figure, with revisions, in this final rule.

Additionally, the FHWA adds to the OPTION statement at the end of the section, that the advisory speed may be the 85th percentile speed of free-flowing traffic, the speed corresponding to a 16-degree ball-bank indicator reading,[20] or the speed otherwise determined by an engineering study due to unusual circumstances. The wording of this paragraph in this final rule incorporates comments received from the NCUTCD, the Kansas DOT, a traffic engineering consultant and private citizens on the proposed wording in the NPA, specifically the ball-bank test. The FHWA includes this OPTION criteria to enhance the uniformity of determining the recommended advisory speed and to provide additional warning to motorists, because highway curves have a crash rate about three times the rate for highway tangent segments and a run-off-the-road crash rate about four times the tangent segment rate. The FHWA also adds a new SUPPORT statement that further describes the ball-bank indicator reading and its correlation with the 85th percentile speed, based on research conducted for the Maryland Department of Transportation.[21]

82. In Section 2C.37 Intersection Warning Signs (W2–1 through W2–6) (numbered Section 2C.34 in the NPA), the FHWA changes the design of the CIRCULAR INTERSECTION (W2–6) sign to a symbol sign with three rotating arrows to better portray the operations at circular intersections. The FHWA received eight comments from ATSSA, the City of Tucson, Arizona, traffic engineering consultants, and private citizens in support of the new sign design and six comments from the Kansas, Virginia, and Wisconsin DOTs as well as the City of Lenexa, Kansas, opposing it. The commenters who opposed suggested that road users may not understand the new sign and offered new designs, or stated that the sign in the 2000 MUTCD should be restored. The FHWA adopts the three-arrow sign as proposed in the NPA because it is consistent with the international symbol for a roundabout intersection and with FHWA roundabout design guidance[22] and has significantly longer recognition distance than the previous sign. The FHWA establishes a phase-in target compliance date of 10 years from the effective date of this final rule for existing signs in good condition to minimize any impact on State or local governments.

In order to educate road users, the FHWA clarifies the first paragraph of the OPTION statement to include that a TRAFFIC CIRCLE word message plaque may accompany the Circular Intersection (W2–6) sign installed in advance of a circular intersection.

Additionally, the FHWA modifies the GUIDANCE statement to clarify that the Intersection Warning signs, other than the Circular Intersection Warning symbol (W2–6) sign and the T-intersection symbol (W2–4) sign, should not be used on approaches controlled by STOP signs, YIELD signs, or signals. This change, which was suggested by the NCUTCD, allows the W2–4 sign to be used on the stem of a T-intersection, regardless of how the intersection is controlled, to provide additional warning information to road users.

83. The FHWA adds a new section numbered and titled, ''Section 2C.39 Traffic Signal Signs (W25–1, W25–2).'' (This section was numbered Section 2C.53 in the NPA.) This new section includes a STANDARD statement on the use of the ONCOMING TRAFFIC HAS EXTENDED GREEN (W25–1) and ONCOMING TRAFFIC MAY HAVE EXTENDED GREEN (W25–2) traffic signal signs. The STANDARD statement requires that, unless a separate left-turn signal face is provided and is operated as described in Section 4D.06 Application of Steady Signal Indications for Left Turns, if the possibility exists that a CIRCULAR YELLOW signal indication could be displayed to an approach from which drivers are turning left permissively without the simultaneous display of a CIRCULAR YELLOW signal indication to the opposing approach (*see* Section 4D.05), either a W25–1 or a W25–2 sign be installed near the left-most signal head. The FHWA adds this new section because these signs are adopted in Chapter 4D as one of several ways to eliminate or reduce safety issues associated with the ''yellow trap'' (as described in the discussion of Section 4D.05) in some traffic signal phasing sequences. The FHWA received three comments from ATSSA, the City of Tucson, Arizona, and a traffic engineering consultant in support of this new section and associated signs, and many comments from the NCUTCD, State and local DOTs, and private citizens opposed to it. The proposed wording of the signs in the NPA, CAUTION ONCOMING GREEN EXTENDED (W25–1) and CAUTION ONCOMING GREEN MAY BE EXTENDED (W25–2), stimulated many comments from the NCUTCD, the Arizona DOT, Pierce County, Washington; the City of Plano, Texas; and the City of Los Angeles, California, regarding the use of the word ''Caution,'' stating that the warning sign colors should communicate to the driver that caution is needed, rather than explicit use of the word. Many of these same commenters suggested that the public would not understand the signs, and some jurisdictions are opposed to allowing any situations in which the ''yellow trap'' can occur. The FHWA recognizes that there are some locations where no other signal sequence other than a yellow trap is reasonably feasible due to unique combinations of intersection geometrics, traffic volumes, and the like. The FHWA believes that these signs will serve a useful purpose, and revises the text of the signs to remove the word ''Caution'' and to clarify their meaning.

84. In Section 2C.40 Vehicular Traffic Signs (W8–6, W11–1, W11–5, W11–5a, W11–8, W11–10, W11–11, W11–12p,

[20] The ball bank indicator reading is a measure of the overturning force (side friction), measured in degrees, on a vehicle negotiating a horizontal curve.

[21] ''Advisory Speeds on Maryland Highways—Technical Report'', August 1999, by Brudis and Associates, Inc., is available from Brudis and Associates, 9220 Rumsey Road; Suite 110, Columbia, Maryland 21045, Phone (410) 884–3607.

[22] ''Roundabouts: An Informational Guide,'' FHWA, 2000. Report Number: FHWA–RD–00–067 is available at the following URL: *www.tfhrc.gov/safety/00068.htm.*

W11–14) (numbered and titled ''Section 2C.36 Motorized Traffic Signs (W8–6, W11–5, W11–5a, W11–8, W11–10, W11–10a, W11–12)'' in the NPA), the FHWA changes the title to be consistent with the changes in Section 2C.41 and to reflect the addition and deletion of some signs from this section.

The FHWA received several comments from the NCUTCD, ATSSA, State DOTs, traffic engineering consultants, and private citizens regarding specific signs listed in the first OPTION statement, as well as the signs shown in Figure 2C–9 (numbered Figure 2C–10 in the NPA). The Ohio DOT suggested that bicycles be included in the list of vehicles in this statement and removed from the first paragraph of Section 2C.41 because bicycles are vehicles. The FHWA agrees and, in addition to adding bicycles and the W11–1 sign to this section, the FHWA adds the W11–11 Golf Cart and W11–14 Horse-Drawn Vehicle signs.

The FHWA adds a sentence in this OPTION that the TRUCK CROSSING (W8–6) word message sign may be used as an alternate to the Truck Crossing symbol sign, to provide additional flexibility. The FHWA received one comment from the City of Tucson, Arizona, supporting this change, and incorporates this change. The FHWA establishes a 10-year phase-in target compliance date from the effective date of this final rule for the new symbol signs W11–1, W11–5, W11–5a, W11–11, and the W11–14 signs, for existing signs in good conditions, to minimize any impacts on State and local governments.

The FHWA received several comments regarding the sign images in Figure 2C–9 (numbered Figure 2C–10 in the NPA). The NCUTCD, the Illinois DOT, and private citizens opposed the W11–5a tractor sign, and the Virginia DOT supported the sign. Many of the commenters who opposed the new sign suggested that the existing W11–5 sign is sufficient, and road users will not distinguish the differences between the two signs. The W11–5a sign was actually adopted in a 1997 final rule,[23] and inadvertently omitted from the 2000 MUTCD. Accordingly, the FHWA adopts the W11–5a sign in this final rule.

Four commenters representing State and local DOTs and private citizens also opposed the new W11–10a truck sign, again stating that existing W11–10 sign is sufficient, and road users will not distinguish the differences between the two signs. The FHWA agrees and removes the W11–10a sign from the MUTCD in this final rule. In addition, based on a comment from the Ohio DOT, the FHWA separates Figure 2C–9 into two figures titled ''Figure 2C–9 Vehicular Traffic Signs'' and ''Figure 2C–10 Nonvehicular Traffic Signs.'' On the figure titled ''Nonvehicular Traffic Signs,'' the FHWA adds sign images of the W11–7 Equestrian and W11–9 Handicapped signs. Based on the comments from the NCUTCD and a private citizen, the FHWA removes the W11–4a Horse-and-Buggy, W11–15 Waterfowl, and the W11–10a construction dump truck signs from Figure 2C–9 as well as the section text. The FHWA believes that only one sign depicting a horse and buggy and one sign depicting a truck is necessary. *See also* the discussion that follows regarding the Waterfowl Sign.

In the second OPTION statement, the FHWA adds that a supplemental plaque with the legend SHARE THE ROAD may be mounted below Vehicular Traffic warning signs. The purpose of this addition is to allow the use of this sign to provide additional warning to road users. The NCUTCD suggested that the SHARE THE ROAD plaque be moved to Figure 2C–11 and removed from this section. The FHWA adds the SHARE THE ROAD plaque to Figure 2C–11.

85. In Section 2C.41 Nonvehicular Signs (W11–2, W11–3, W11–4, W11–6, W11–7, W11–9) (numbered Section 2C.37 in the NPA), the FHWA changes the title to reflect that this section pertains to nonvehicular signs, not just Crossing signs. The FHWA moves the Bicycle (W11–1), Golf Cart (W11–11) and Horse-Drawn Vehicle (W11–14) symbol signs from this section to Section 2C.40 because they represent vehicular signs. This responds to several comments from State DOTs and traffic engineering consultants. The FHWA adds the Equestrian (W11–7) symbol sign, which had been adopted previously as a standard symbol in an amendment to the 1988 MUTCD but which had been inadvertently omitted from the figure illustrating Nonvehicular Signs in the 2000 MUTCD. Based on comments from the NCUTCD, State and local DOTs, and private citizens opposed to the Waterfowl Crossing sign that was proposed in the NPA because of lack of research showing effectiveness of the symbol, the FHWA withdraws that sign from the figure and the text of this final rule. Future research may develop an improved symbol for this message.

The FHWA also revises the second OPTION statement to clarify that the supplemental plaques such as AHEAD or XX METERS may be used with the Nonvehicular warning signs, when used in advance of a crossing. These plaques are specifically intended to provide advance notice to road users of crossing activity. The FHWA received no comments regarding this change, and adopts this change.

Additionally, the FHWA modifies the STANDARD statement to specify that when Nonvehicular warning signs are used at a crossing, the signs shall be supplemented with a diagonal downward pointing arrow (W16–7p) plaque showing the location of the crossing. This reflects the fact that Nonvehicular warning signs can be used either in advance of or at the crossing, and is consistent with the practice of using the diagonal downward pointing arrow with other similar signs located at a crossing. The FHWA received one comment from the Kansas DOT in support of this change, and one comment from the Oregon DOT opposed to it, stating that the requirement to use the arrow plaque at all signed crossings adds excessive signing without much benefit. The Oregon DOT suggested that use of the arrow plaque remain an option for supplementing any crossing sign, but not be required. The FHWA notes that the required use of the plaque was established in the 2000 MUTCD, and at that time the FHWA established a January 17, 2011 phase-in target compliance date. The revisions to this STANDARD statement in the 2003 MUTCD merely add clarity. Consistent use of the arrow plaque at crossings is needed to educate the public regarding the meaning of the plaque.

Additionally, the FHWA adds to the third OPTION statement to state that Pedestrian, Bicycle, School Advance Crossing, and School Crossing signs and their related supplemental plaques may have a fluorescent yellow-green background with a black legend and border. This change reflects the common practice for supplemental plaques to be of the same color as the signs they supplement. The FHWA received one comment from ATSSA in support of this change and adopts this change.

86. In Section 2C.46 Advisory Speed Plaque (W13–1) (numbered Section 2C.42 in the NPA), the FHWA adds to the first OPTION statement to permit the use of an Advisory Speed (W13–1) plaque to supplement any warning sign to indicate the advisory speed for a condition. The FHWA received one comment from Pierce County, Washington, suggesting that the 2000 MUTCD wording be retained, stating that the proposed revision may

[23] Final rule on FHWA Docket 95–7, published in the Federal Register on January 9, 1997, at 62 FR 1363, amended the 1988 MUTCD to include the ruling on Official Request for Change number II–228 (C) to add an alternative symbol sign W11–5a for farm machinery.

encourage widespread and ineffective use of the W13–1 plaque. The FHWA disagrees and adopts the revision in this final rule, changing the proposed phrase ''recommended speed'' to ''advisory speed'' in this statement, as well as the STANDARD, GUIDANCE, and OPTION statements for consistency.

In the STANDARD statement, the FHWA requires the use of the Advisory Speed plaque where an engineering study indicates a need to inform road users of the advisory speed for a condition and, if they are used, the speed shown shall be a multiple of 10 km/h or 5 mph. This change clarifies which sign should be used when an engineering study indicates the need to advise road users of the advisory speed and how to determine what the recommended speed is for the condition. The FHWA received two comments from the Oregon and Kansas DOTs stating that an engineering study is an unnecessary expense, and recommended that the statement be changed to engineering judgment. The OPTION statement gives the flexibility to use the Advisory Speed plaque where only engineering judgment has been applied and no study has been performed. The STANDARD only requires the use of an Advisory Speed plaque where an engineering study has been performed and shows a need for the plaque. Because there is no requirement for an engineering study, the FHWA adopts the change, as proposed in the NPA, in this final rule.

In the NPA, the FHWA proposed to add an OPTION statement at the end of the section indicating how to determine the advisory speed along a ramp or curve. The FHWA received several comments from the NCUTCD, Yakima and Pierce Counties in Washington State, and a traffic engineering consultant opposed to the language in the NPA. As a result, the FHWA replaces the proposed language with the language adopted in Section 2C.36 Advisory Exit, Ramp, and Curve Speed Signs (W13–2, W13–3, W13–5). In concert with the changes in Section 2C.36, the FHWA also repeats the SUPPORT statement that further describes the ball-bank indicator reading and its correlation with the 85th-percentile speed in this section. (See also the discussion in Section 2C.36 regarding the ball-bank indicator reading and its correlation with the 85th percentile speed.)

87. In Section 2C.47 Supplemental Arrow Plaques (W16–5p, W16–6p, W16–7p) (numbered Section 2C.43 in the NPA), the FHWA changes the title to reflect the existence of the diagonally pointing down arrow plaque and includes the designation in the section text. The FHWA received one comment from the City of Tucson, Arizona, in support of this change and adopts this change. The FHWA also received another editorial comment from a traffic engineering consultant suggesting that all plaques be assigned a ''p'' designation to distinguish them as plaques. The FHWA agrees that this change will provide additional clarity and consistency and will perform a comprehensive review of the MUTCD to achieve consistency in this designation in the future. The FHWA will consider including this in a future rulemaking.

88. The FHWA removes Section 2C.46 DEAD END/NO OUTLET Plaques (W14–1P, W14–2P), as numbered in the NPA, from the MUTCD. The FHWA changes the designation of these plaques to signs because they are permitted to be used alone, and moves the appropriate information to Section 2C.21 DEAD END/NO OUTLET Signs (W14–1, W14–1a, W14–2, W14–2a) in this final rule.

89. In Section 2C.50 CROSS TRAFFIC DOES NOT STOP Plaque (W4–4p) (numbered Section 2C.27 in the NPA), the FHWA replaces the entire section (of the 2000 MUTCD) with new OPTION and STANDARD statements. The OPTION statement specifies that the CROSS TRAFFIC DOES NOT STOP (W4–4p) plaque may be used in combination with a STOP sign when engineering judgment indicates that conditions are present that are causing or could cause drivers to misinterpret the intersection as a multi-way stop condition. The STANDARD statement specifies that if the W4–4p plaque is used, it shall be installed below the STOP sign. The new text for this section is necessary to provide for more uniform application of this plaque. The FHWA received two comments from the Cities of Plano, Texas, and Tucson, Arizona, in support of these changes and one editorial comment from the NCUTCD, which the FHWA incorporates in this final rule. The FHWA also changes the sign designation in the title to ''W4–4p'' and changes corresponding text throughout the section. In response to two comments from private citizens, the FHWA adds to the OPTION statement that the W4–4p plaque may use alternate messages such as TRAFFIC FROM LEFT (RIGHT) DOES NOT STOP or ONCOMING TRAFFIC DOES NOT STOP when such messages more accurately describe the traffic controls established at the intersection.

Additionally, the FHWA removes the arrow from the design of the plaque to reduce potential confusion and misunderstanding as to whether the arrow denotes the direction cross traffic is flowing or the direction toward which the driver is to look for cross traffic. The FHWA received four comments from the Cities of Plano, Texas, and Tucson, Arizona, and private citizens in support of this change. The FHWA received one comment from the Minnesota DOT opposed to it, citing concerns that removal of the arrow would increase the confusion. The FHWA believes that the arrow is the source of the confusion and therefore removes the arrow from the design of the plaque.

90. The FHWA adds a new section numbered and titled, ''Section 2C.52 High Occupancy Vehicle (HOV) Plaque (W16–11).'' (This section was numbered Section 2C.48 in the NPA.) This new section includes an OPTION statement on the use of the High Occupancy Vehicle (HOV) Plaque. Specifically, an HOV (W16–11) plaque may be used to warn drivers in an HOV lane of a specific condition and to differentiate a warning sign specific for HOV lanes when the sign is also visible to traffic on the adjoining general purpose roadway. Additionally the diamond symbol may be used instead of the word message HOV and, when appropriate, the words LANE or ONLY may be used. This will enhance road user understanding of which signs apply to which lanes. The FHWA received three comments from the NCUTCD, ATSSA, and the City of Tucson, Arizona, in support of this new section, and adopts this new section, with minor changes to Figure 2C–11.

91. The FHWA adds a new section numbered and titled, ''Section 2C.53 PHOTO ENFORCED Plaque (W16–10).'' (This section was numbered Section 2C.49 in the NPA.) This new section includes an OPTION statement on the use of the PHOTO ENFORCED plaque in advance of locations of photo enforcement of traffic laws, thereby alerting motorists of the use of cameras as an enforcement tool. This section facilitates consistency with the PHOTO ENFORCED plaque for use with regulatory signs, as described in Section 2B.46 Photo Enforcement Signs (R10–18, R10–19).

Additionally, the FHWA adds a STANDARD statement to require that, if used below a warning sign, the PHOTO ENFORCED plaque be a rectangle with a black legend and border on a yellow background. This STANDARD makes the color of the plaque consistent with the color of the warning sign it supplements.

The FHWA received three comments from the NCUTCD, ATSSA, and the City of Tucson, Arizona, in support of this new section, and adopts this section. The Wisconsin DOT stated that some States have statutes that do not allow

photo enforcement of traffic regulations, and therefore those States will not allow the use of these signs. Because this is an optional plaque used to indicate an optional application, States are not required to use this plaque.

The FHWA establishes a phase-in target compliance date of 10 years from the effective date of this final rule for the PHOTO ENFORCED plaque, for existing signs in good condition to minimize any impact on State or local governments.

92. In Section 2D.03 Color, Retroreflection, and Illumination, the FHWA makes revisions to provide for enhanced uniformity of design and application of color-coding of destinations in guide signs. The FHWA adds a SUPPORT statement following the first STANDARD statement, which states that color coding is sometimes used to help road users distinguish between multiple potentially confusing destinations. The SUPPPORT statement gives examples of valuable uses of color coding including guide signs for roadways approaching or inside an airport property with multiple terminals serving multiple airlines, and wayfinding signs for various traffic generator destinations within a community or area. The FHWA received three comments from the NCUTCD, the City of Tucson, Arizona, and a traffic engineering consultant supporting this change, and adopts this change.

The FHWA adds a second STANDARD statement that prohibits the use of different color sign backgrounds to provide color-coding of destinations and requires that the color-coding shall be accomplished by the use of different colored square or rectangular panels on the face of the guide signs. The FHWA received three comments from the NCUTCD, ATSSA, and the City of Tucson, Arizona, supporting this change, and adopts this change.

The FHWA also adds an OPTION statement, which states that the different colored panels may include a black or white (whichever provides the better contrast with the panel color) letter, numeral, or other appropriate designation to identify the airport terminal or other destination. The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, supporting this change, and adopts this change.

Additionally, the FHWA adds a SUPPORT statement, which states that two examples of color-coded guide sign assemblies are shown in Figure 2D–1. Figure 2D–1 is a new figure titled ''Examples of Color-Coded Destination Guide Signs'' and illustrates two overhead guide signs examples of color-coded airport terminal destination guide signs and an example of a color-coded community destination guide sign. The FHWA received three comments from the NCUTCD, ATSSA, and a private citizen supporting this new figure, as well as suggesting editorial changes to the figure, which the FHWA incorporates in this final rule. The FHWA received one comment from a representative of an airport suggesting a separate standard for on-roadway signing at major international airports. This goes beyond the scope of the NPA, and will have to be addressed in a future rulemaking.

93. In Section 2D.04 Size of Signs, the FHWA rephrases the first OPTION statement to clarify that reduced letter height, reduced interline spacing, and reduced edge spacing may be used on guide signs if the sign size is limited by factors such as lane width, and vertical and lateral clearance. The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, in support of this change, and one from a private citizen opposed to it. The opposing commenter stated that allowing the reduction of guide sign dimensions may lead to substandard sign dimensions being used in situations where it would otherwise be possible to remove the constraint, and suggests that an engineering study be performed before substandard guide signs are used. The FHWA disagrees and believes that, because agencies install guide signs to provide drivers with needed information, they will not intentionally and repeatedly use smaller signs based on the revisions to this OPTION. The FHWA adopts this change, as proposed in the NPA, in this final rule.

In the NPA, the FHWA proposed to add a STANDARD statement that prohibits the use of reduced spacing between the letters or words of the legend as a means of reducing the overall size of a guide sign, to provide for enhanced legibility of guide signs, especially for older road users.

The FHWA received one comment from ATSSA supporting this STANDARD. Four commenters from State DOTs opposed this language as a STANDARD, and suggested that it be GUIDANCE to provide necessary flexibility to deal with unusual situations. The FHWA agrees that this flexibility is needed in some cases, and adopts this language, with additional clarifying information, as a GUIDANCE statement in this final rule.

94. In Section 2D.05 Lettering Style, the FHWA revises the second paragraph of the STANDARD to specify that the lettering for place names and destinations for conventional road guide signs shall be in capital letters or combination lower-case letters with initial upper-case letters and that all other lettering for conventional road guide signs shall be in capital lettering. To respond to a comment from a private citizen suggesting complete consistency between the ''Standard Highway Signs'' book and the MUTCD, the FHWA revises the text slightly from that proposed in the NPA.

95. In Section 2D.06 Size of Lettering, the FHWA removes the last paragraph in the STANDARD statement (from the 2000 MUTCD), which required sign panels to be large enough to accommodate the legend without crowding. The FHWA modifies that information and includes it in Section 2D.04 Size of Signs, where it is more appropriately located. The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, in support of this change, and adopts this change.

One comment from a private citizen suggested that language in this section be added expressly forbidding the use of mixed case lettering on conventional-road guide signs unless it is Series E Modified/Lowercase. The FHWA disagrees because street name signs are guide signs and they can use mixed case lettering other than E Modified.

96. In Section 2D.08 Arrows, the FHWA received one comment from a private citizen stating that the first paragraph of the STANDARD statement indicating that down arrows shall be used only on overhead guide signs that restrict use of specific lanes to traffic bound for the destination(s) and/or route(s) indicated by the arrows, is in conflict with the optional signs that have down arrows in Figures 2E–35, 2E–36, and 2E–37. The FHWA agrees that some of the optional signs depicted in Figures 2E–35, 2E–36, and 2E–37 are in error. The FHWA revises Figures 2E–35, 2E–36, and 2E–37 by removing the optional signs as appropriate.

97. In Section 2D.11 Design of Route Signs, the FHWA revises the first paragraph of the fourth STANDARD statement by removing the reference to the publication ''A Proposal for Uniform County Route Marker Program on a National Scale'' for design and use of County road identification signs because this publication is no longer available from the National Association of Counties or any other source. However, because the pertinent requirements of that document are still valid, the FHWA incorporates applicable text from that document into the STANDARD statement. No new requirements are imposed by this change, because the

previously referenced document had been incorporated by reference into the 2000 MUTCD as well as previous editions.

98. In Section 2D.17 ALTERNATE Auxiliary Signs (M4–1, M4–1a), the FHWA adds the qualifiers of time or distance to the word ''shorter'' in the GUIDANCE statement. This addition clarifies that the shorter (time or distance) or better-constructed route should retain the regular route number. The ability to define the shorter route in terms of either time or distance provides additional flexibility. The FHWA received one comment from the City of Tucson, Arizona, in support of this change, and adopts this change.

99. In Section 2D.23 TEMPORARY Auxiliary Signs (M4–7, M4–7a), the FHWA changes the title to reflect the addition of the new TEMP (M4–7a) sign and adds the TEMP (M4–7a) sign to the OPTION and STANDARD statements. The FHWA received three comments from the NCUTCD, ATSSA, and the City of Tucson, Arizona, in support of this change, and adopts this change.

100. In Section 2D.26 Directional Arrow Auxiliary Signs (M6 Series), the FHWA removes the M6–8 and M6–9 multiple direction advance arrow auxiliary signs. These specific arrow signs are not consistent in design concept with the other Directional Arrow Auxiliary Signs. The M6–6 and M6–4 signs or separate assemblies for each route direction should be used instead to provide enhanced clarity to road users. The FHWA received three comments from the NCUTCD, a State DOT, and the City of Tucson, Arizona, in support of this change, and adopts this change.

101. In Section 2D.27 Route Sign Assemblies, the FHWA renumbers Figure 2D–2 of the 2000 MUTCD to Figure 2D–6 and modifies all three sheets of the figure to make the sign assemblies illustrated in the figure consistent with requirements in Section 2D.15 Cardinal Direction Auxiliary Signs (M3–1 through M3–4) regarding the size of the initial letter of the Cardinal Direction Auxiliary Signs, and to illustrate directional assemblies that reflect the most recent practice. The FHWA received comments from the NCUTCD and the City of Tucson, Arizona, in support of these changes, and a few editorial changes. In this final rule, the FHWA revises the numbers of the U.S. routes on all three sheets to conform to the convention of odd numbers for north-south routes and even numbers for east-west routes. The FHWA also revises the numbers for all the State routes on these three sheets, even though not all States adopt the U.S. route numbering convention for their State routes.

102. In Section 2D.31 Confirming or Reassurance Assemblies, the FHWA removes from the STANDARD statement the requirement that, if used, the Confirming Assembly be installed just beyond intersections of numbered routes.

Additionally, in the first GUIDANCE statement, the FHWA recommends that a Confirming assembly should be installed just beyond intersections of numbered routes.

The FHWA also adds a SUPPORT statement that states that Confirming and Reassurance Assemblies are Directional Assemblies.

These changes are adopted because use of the Confirming assembly beyond intersections with numbered routes should be a recommended practice rather than completely optional. Confirming assemblies are an important safety and operational feature that lets the road user know that he/she is on the correct route just beyond the decision point. The Confirming assembly provides highly desirable information to road users. These changes allow flexibility in installing the signs to adjust to roadside conditions. The FHWA received one comment from the City of Tucson, Arizona, in support of the changes to this section, and adopts these changes.

103. In Section 2D.34 Destination Signs (D1 Series), the FHWA changes the title to add sign number designations and changes the section text to clarify which signs are applicable to the material in the section. The FHWA received one comment from the City of Tucson, Arizona, in overall support to the changes in this section.

In the NPA, the FHWA proposed moving material concerning the use of a sloping arrow at an irregular intersection from the second GUIDANCE statement (of the 2000 MUTCD) to a new second OPTION statement. The FHWA received one comment from the Illinois DOT opposed to this change, suggesting that the term ''irregular'' is not appropriate. The FHWA agrees and, to address this issue, the FHWA combines the preceding GUIDANCE and the OPTION into one GUIDANCE statement that reads, ''Unless a sloping arrow will convey a clearer indication of the direction to be followed, the directional arrows should be horizontal or vertical.''

104. In Section 2D.36 Distance Signs (D2 Series), the FHWA changes the title to add sign number designations. The FHWA also changes the section text to clarify which signs are applicable to the material in the section, and adds the D2–3 (three destination distance sign), to reflect all the signs included in the series.

In the NPA, the FHWA proposed adding a recommendation in the first GUIDANCE statement that the distance shown on the sign be the distance to the center of the central business district, or to the point where the major north/south and east/west routes serving the city intersect, or to some point near the center of the city. While two commenters representing the NCUTCD and the City of Tucson, Arizona, supported this change, commenters from the Illinois and Kansas DOTs opposed the wording. The Kansas DOT suggested that the distance on the sign should be to a point where the city limits either cross or abut the route. The FHWA disagrees because many cities have city limits that now encompass large geographic areas or the entire county, and using the city limit as a basis for distance would give misleading information to the driver. The Illinois DOT suggested that the distance be determined on a community-by-community basis, and that the layout of the community be considered in relation to the highway being signed. The FHWA agrees with this suggestion and revises the GUIDANCE accordingly because the FHWA believes it provides the flexibility to determine distances that will be better understood and accepted by road users.

105. In Section 2D.38 Street Name Sign (D3–1), the FHWA changes the title to reflect the appropriate sign designation. In the first GUIDANCE statement the FHWA adds a recommendation that on multi-lane streets with speed limits of 60 km/h (40 mph) or more the minimum letter size should be 200 mm (8 in). Larger letter sizes are needed to improve sign legibility and safety for older road users. In this same GUIDANCE statement, the FHWA deletes the recommendation that larger letter heights be used for Street Name signs mounted overhead because more specific guidance is added elsewhere in this section. The FHWA received comments from ATSSA and the Virginia DOT in support of these changes, while the NCUTCD suggested even larger letter sizes for lettering on multilane higher-speed streets.

The Oregon and Wisconsin DOTs, the Cities of Tucson, Arizona; and Plano, Texas; and Pierce County, Washington, opposed the change. The opposing commenters primarily indicated that this change creates a financial impact on agencies, and that the larger letter heights will create longer street name signs that cannot be mounted and maintained using post top mounts.

Several commenters suggested that this be an OPTION, rather than GUIDANCE. The FHWA disagrees. The use of larger letter sizes is not precluded in the 2000 MUTCD, so it is already an option. Fewer agencies will convert their street name signs to the larger letter sizes if the GUIDANCE is reduced to an OPTION. The larger signs will be beneficial to all road users on higher-speed multi-lane streets, especially older road users. Also, many jurisdictions use post-top mountings of longer street name signs with larger letters, taking advantage of appropriately designed attachment hardware. Because this is GUIDANCE, rather than a STANDARD, jurisdictions can be used in special circumstances if determined necessary by the engineer. To mitigate the financial impact on State or local governments, the FHWA establishes a phase-in target compliance date of 15 years from the effective date of this final rule for existing signs in good condition. The phase-in target compliance date for symbol sizes and 6'' letter sizes for lettering on ground-mounted Street Name signs on roads that are not multi-lane streets with speed limits greater than 60 km/h (40 mph) remains unchanged from that previously established, and is still January 9, 2012.

The FHWA also adds a clarification to the first OPTION statement. The OPTION statement in the 2000 MUTCD generally states that a symbol or letter designation may be used to identify the government jurisdiction. The FHWA revises the paragraph to provide more specificity by stating that a symbol or letter designation may be used on a Street Name sign to identify the governmental jurisdiction, area of jurisdiction, or other government-approved institution. This change provides additional flexibility for jurisdictions that install Street Name signs, allowing them to identify areas of the city, neighborhoods, and the like. The FHWA received no comments regarding this change, and adopts this change.

The FHWA adds to the first STANDARD statement that if a symbol or letter designation is used, the height and width of the symbol or letter designation shall not exceed the letter height of the sign. This provides for more uniform Street Name sign design and assures that the name of the street will have more prominence on the sign than the jurisdictional symbol or letter designation. The FHWA received one comment from ATSSA supporting this change, and one editorial comment, which the FHWA adopts in this final rule.

In the NPA, the FHWA proposed two changes in the second OPTION statement. First, the FHWA proposed eliminating midblock locations from the provision concerning locations where Street Name signs may be installed because Street Name signs are not appropriate at non-intersection locations. The FHWA received two comments from the NCUTCD and a local DOT opposed to this revision because there are locations other than intersections where Street Name signs are appropriate. The FHWA agrees and withdraws this proposal. Second, the FHWA eliminates the provision allowing the installation of a supplemental Street Name sign separately or below an intersection-related warning sign on intersection approaches because this is an inappropriate use of the sign. Instead, the Advance Street Name plaque, as described in Section 2C.49 Advance Street Name Plaque (W16–8, W16–8a), is appropriate for this purpose. The FHWA received no comments regarding this change, and adopts this change.

The FHWA adopts several changes to the fourth GUIDANCE statement. First, the FHWA eliminates the recommendation on the color of the supplemental Street Name sign when it is combined with a warning sign because this is now termed an Advance Street Name plaque and is discussed in Section 2C.49.

Second, the FHWA recommends that in urban and suburban areas, especially where Advance Street Name signs are not used, overhead-mounted street name signs be considered. If overhead Street Name signs are used, the lettering should be at least 300 mm (12 in) high in capital letters or 300 mm (12 in) upper-case letters with 225 mm (9 in) lower-case letters. The FHWA received two comments from ATSSA and the U.S. Access Board in support of this change, and five from the NCUTCD and State and local DOTs opposed to it. Those who opposed this change felt that the signs would be too large, that the size of the sign may not properly fit on traffic signal mast arms, that wind loading may also be an issue on mast arms, and that financial impacts would be high. The FHWA adopts this change in this final rule because 300 mm (12 in) letters are superior to 250 mm (10 in) letters in terms of legibility distance for older drivers as well as all drivers. Lettering on overhead signs need to be larger than roadside mounted signs to achieve adequate visibility. The 300 mm (12 in) size is a GUIDANCE, not a STANDARD, so smaller letters can be used if determined necessary by the engineer. To mitigate economic impacts, the FHWA establishes a 15-year phase-in target compliance date from the effective date of this final rule (rather than January 9, 2012, as proposed in the NPA) for this paragraph, for existing signs in good condition.

Additionally, the FHWA adds a SUPPORT statement at the end of the section referencing Section 2C.49 for information regarding the use of street name signs as supplemental plaques for use with intersection-related warning signs. The FHWA received one editorial comment, which it incorporates in this final rule.

106. The FHWA adds a new section, numbered and titled ''Section 2D.39 Advance Street Name Signs (D3–2)'' that describes the uses, placement, legend, and lettering sizes for Advance Street Name signs. The FHWA received two comments from the City of Tucson, Arizona, and a traffic control device manufacturer supporting this new section, and several editorial comments that the FHWA adopts in this final rule.

The GUIDANCE includes two separate paragraphs regarding placement of Advance Street Name signs on arterial highways in rural areas and in urban areas. The FHWA received four comments from the NCUTCD and the Virginia, Minnesota, and Kansas DOTs opposing the language that Advance Street Name signs be used in advance of all intersections with exclusive turn lanes in rural areas. The Virginia DOT felt that this could have a major cost impact. The Kansas DOT felt that Advance Street Name signs could contribute to sign clutter along major arterials, and suggested that their use in urban areas be based on an engineering study. The FHWA disagrees and adopts the language, with minor modifications, in this final rule. The FHWA strongly encourages the use of these signs in rural and urban areas as specified in the MUTCD. These signs, especially in rural areas, are one of the most important things that can be done to improve older driver safety and convenience, and they also benefit other drivers. To mitigate economic impacts, the FHWA establishes a 15-year phase-in target compliance date from the effective date of this final rule (rather than January 9, 2012, as proposed in the NPA) for existing signs in good condition.

To respond to a comment by the NCUTCD suggesting that the paragraph is redundant, the FHWA withdraws the second OPTION statement that was proposed in the NPA because this information is contained in the first OPTION statement in this final rule.

To preserve consistency of letter sizes, the FHWA withdraws two paragraphs from the STANDARD statement that

were proposed in the NPA, and creates a new GUIDANCE that references the letter sizes given in Section 2D.38 Street Name Sign (D3–1).

To clarify the intent and recognize common practices regarding the use of directional arrows on these signs, the FHWA adds a new paragraph to the last OPTION statement that provides information regarding the placement of directional arrows.

The FHWA renumbers the following sections accordingly.

107. In Section 2D.45 General Service Signs (D9 Series) (numbered Section 2D.44 in the 2000 MUTCD), the FHWA adds Electric Vehicle Charging to the list of services, one or more of which General Services signs must carry, in accordance with the second STANDARD statement. The FHWA received one comment from the City of Tucson, Arizona, in support of this change, and adopts this change. The FHWA also adds an illustration of the Electric Vehicle Charging sign (D9–11b) to Figure 2D–11.

The FHWA changes the words ''CB Monitoring'' in the fourth OPTION statement to ''Channel 9 Monitored'' and makes a corresponding change in item C of the fourth GUIDANCE statement. These changes reflect current practice and terminology. The FHWA received one comment in support of these changes from the City of Tucson, Arizona, and adopts these changes. The FHWA establishes a phase-in target compliance date of 10 years from the effective date of this final rule for existing signs in good condition to minimize any impact on State or local governments.

Additionally, the FHWA removes references in the fourth OPTION statement to the Road Conditions Dial 511 (D12–5) sign and adds new OPTION, STANDARD, and GUIDANCE statements regarding the use and design of the redesigned TRAVEL INFO CALL 511 (D12–5) sign. These changes reflect the assignment of 511 as the nationwide traveler information telephone number. The FHWA received one comment from ATSSA in support of these changes. The Virginia DOT suggested that the sign legend be ''TRAVEL INFO DIAL 511.'' The FHWA agrees to change ''TRAVELER'' to ''TRAVEL'' in this final rule, however does not agree to use the word ''DIAL'' because it is antiquated terminology. The NCUTCD and Minnesota suggested that allowing the logo of a transportation agency or traveler information service to be two times the letter height used in the legend of the sign, as proposed in the GUIDANCE, was too large. The FHWA disagrees because some large traveler information agency logos are more recognizable than the sign text and this instant recognition is valuable to the traveler.

108. In Section 2D.46 Reference Location Signs (D10–1 through 10–3) and Intermediate Reference Location Signs (D10–1a through D10–3a) (numbered and titled ''Section 2D.45 Reference Posts (D10–1 through D10–3)'' in the 2000 MUTCD), the FWHA changes the title and the term ''reference posts'' to ''reference location signs'' throughout the section to correspond to terminology used throughout the MUTCD. The FHWA received several comments from the NCUTCD, Caltrans, the Kentucky, Wisconsin, and Kansas DOTs, Pierce County, Washington, and private citizens regarding proposed changes to this section as well as to Section 2E.54 Reference Location Signs and Enhanced Reference Location Signs (D10–4, D10–5) in the NPA. The FHWA revises both of these sections in this final rule. The following paragraphs describe this final rule, specifically differences between this final rule and the 2000 MUTCD. Where applicable, notations are included to detail where the language for this final rule reflects comments received.

The FHWA adds a SUPPORT statement at the beginning of the section to identify two types of reference location signs and their sign designations: Reference Location signs (D10–1, 2, 3) and Intermediate Reference Location signs (D10–1a, 2a, 3a).

The FHWA also adds to the first OPTION statement a description of Intermediate Reference Location signs.

In the first STANDARD statement, the FHWA adds a paragraph indicating that when Intermediate Reference Location signs are used to augment the reference location sign system, the Reference Location sign at the even kilometer (mile) shall display a decimal point and zero numeral. The FHWA also distinguishes between use on conventional roads and freeways. The design of reference location signs used on conventional roads is the same as currently listed in the STANDARD, and the FHWA includes a minimum sign size of 250 mm (10 in) wide vertical panel. If reference location signs are used on freeways or expressways, the FHWA requires that the Reference Location signs contain 250 mm (10 in) white numerals on 300 mm (12 in) wide vertical green panels with a white border. The FHWA received several comments from State DOTs suggesting that blue panels be used, or at least included as an option. Although a blue background has been used by some States in FHWA-approved experimentations,[24] the FHWA believes that the standard green background of the 30-year old ''mile marker'' system should be used. These signs fit into the category of guidance signs much more than they do into the category of motorist information signs. The FHWA does allow the use of blue backgrounds for the Enhanced Reference Location signs, as described in Section 2E.54. The FHWA also includes panel heights for one, two, and three digit signs.

The FHWA also includes a paragraph in the first STANDARD indicating how to determine reference location sign distance numbering for routes within a State, with and without overlaps with other routes. The FHWA also requires the installation of reference location signs on the right side of the roadway, except as provided in the OPTION statement. One commenter suggested that reference location markers be installed in the median because they are less of a maintenance issue when placed in the median. The FHWA disagrees because road users generally expect signs to be mounted on the right side of the roadway.

The FHWA adds an OPTION statement indicating that Reference Location signs may be installed in the median where conditions limit or restrict installation on the right side of the roadway. The FHWA further expands the OPTION, based on comments, to indicate that on two-lane conventional roadways, Reference Location signs may be installed on one side of the road only and that they may be installed back-to-back. The OPTION also states that Reference Location signs may be placed up to 9 m (30 ft) from the edge of the pavement.

The FHWA also revises the first STANDARD statement to clarify that the minimum mounting height of reference location signs shall be 4 feet to the bottom of the sign, to be consistent with the mounting height for delineators.

To mitigate economic impacts, the FHWA establishes a 10-year phase-in target compliance date from the effective date of this final rule for the location and spacing of Reference Location Signs and design of Intermediate Reference Location Signs, for existing signs in good condition.

[24] Information on the various designs and colors used for these experimentations is included in ''Location Marker Signs for Incident Management,'' September 2001, a report by Didier M. Valdes, *et al.,* of the University of Puerto Rico at Mayagüez, for the Federal Highway Administration under contract number DTFH61–00–X–00091–F. This document is available from the Department of Civil Engineering and Surveying. University of Puerto Rico, Mayagüez, Puerto Rico, 00681–9041.

The FHWA removes the last OPTION statement from the 2000 MUTCD in this final rule because the signs that the statement refer to are now called Intermediate Reference Location signs, and are described in more detail in Section 2E.54.

109. In Section 2D.48 General Information Signs (I Series) (numbered Section 2D.47 in the 2000 MUTCD), the FHWA removes all references concerning Adopt-A-Highway signs from the MUTCD. Current State and local practices pertaining to Adopt-A-Highway signs vary widely and, in some cases, include the use of commercial logos for indicating Adopt-A-Highway sponsors. The use of logos has raised deeper policy issues regarding Federal and State laws concerning advertising along the right-of-way, general commercialization of the right-of-way, the safety of motorists and workers, and the ability to raise revenues for activities such as litter removal. Recent discussions of the signing criteria in the MUTCD, along with dialogue of several American Association of State Highway and Transportation Officials (AASHTO) subcommittees, have highlighted that these issues go beyond the current standards included in the MUTCD. For example, the AASHTO Subcommittee on Maintenance has argued that several States have existing contracts that allow a commercial entity to exchange maintenance and litter pickup services for signs acknowledging the commercial sponsors who pay for the services. These contracts supplement scarce maintenance resources for these States. The Subcommittee also noted that the use of more experienced crews in such arrangements is safer than using volunteers.

The AASHTO Subcommittee on Traffic Engineering, on the other hand, has argued that these acknowledgements of the commercial sponsors is an opening for other types of advertising (including electronic advertising on overhead dynamic message signs along freeways and at signalized intersections) and raise serious concerns over driver distraction, confusion, and crash potential and liability. At the request of the Subcommittee on Maintenance, the AASHTO Standing Committee on Highways has established a task force to consider commercialization within the right-of-way, including, but not limited to, signage for the Adopt-A-Highway program.

An FHWA policy memorandum dated November 9, 2001 [25] indicated that these signs are acknowledgement signs, not advertisements. However, until the AASHTO study is completed, the FHWA removes all references to Adopt-A-Highway signs in the MUTCD. The FHWA received two comments from the NCUTCD and Caltrans in support of this position, and two from ATSSA and the Connecticut DOT opposed to it.

In the NPA, the FHWA proposed adding new OPTION, GUIDANCE, and STANDARD statements regarding the use of signs to display safety or transportation-related messages. These messages, such as ''SEAT BELTS BUCKLED?'' and ''DON'T DRINK AND DRIVE,'' are in common and widespread use in many jurisdictions and they provide valuable reminders to road users of important laws. The additions to this section were proposed in order to provide for consistency in application of these types of messages on General Information signs and to reduce the possibility of such signs being misused. The FHWA received four comments from the NCUTCD, Caltrans, the Minnesota DOT, and a private citizen opposed to these new statements, stating that they do not regulate, warn or guide motorists, and should not be encouraged. The FHWA disagrees with these comments. However, because these statements are duplicative of statements already contained in Chapter 2A, the FHWA withdraws these statements from Section 2D.48 in this final rule.

Finally, the FHWA revises the third STANDARD statement replacing the words ''jurisdiction logos'' with ''boundary'' to provide additional flexibility to highway agencies to use different colors for political boundary signs. The FHWA received no comments regarding this change, and adopts this change.

110. In Section 2D.49 Signing of Named Highways (numbered Section 2D.48 in the 2000 MUTCD), in the first STANDARD statement the FHWA adds additional requirements for installing memorial signs on the mainline. These requirements prohibit the use of memorial names on the directional guide signs, interference with necessary highway signing, and placement which compromises the safety or efficiency of traffic flow. The STANDARD statement is identical to the STANDARD statement in Section 2E.08 Memorial Highway Signing. The FHWA adds this for consistency and to clarify the acceptable locations to install memorial signs. The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, supporting this change, and adopts this change.

111. The FHWA adds a new section, numbered and titled ''Section 2D.52 National Scenic Byways Sign (D6–4, D6–4a).'' This section includes SUPPORT, OPTION, and STANDARD statements that describe the National Scenic Byways program and the signs that may be placed on roads designated as National Scenic Byways or All-American Roads by the U.S. Secretary of Transportation. This new section provides for uniformity of design and application of markers on designated National Scenic Byways. The FHWA received three comments in support of the new section and the D6–4 signs. The FHWA incorporates several suggested clarifications to the proposed language in this final rule, including revising the SUPPORT statement to remove unnecessary information. In addition, the FHWA includes the proper color illustration of the D6–4 and D6–4a signs, which features a blue flag and border, red text, and white background. The black and white version was inadvertently published in the NPA. The FHWA also adds an illustration of a half-size D6–4 sign in response to comments.

112. In Section 2E.01 Scope of Freeway and Expressway Guide Sign Standards, the FHWA adds to the SUPPORT to clarify that guide signs for freeways and expressways are primarily identified by sign name and not necessarily by a standard sign number. The FHWA incorporates this additional minor editorial information in this final rule to clarify the intent of the section.

113. In Section 2E.10 Number of Signs at an Overhead Installation and Sign Spreading, the FHWA expands the title and relocates the SUPPORT and GUIDANCE statements related to sign spreading from Section 2E.11 Pull-Through Signs to this section because they are more appropriately associated with sign location installation. The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, supporting this change, and adopts this change.

114. In Section 2E.11 Pull-Through Signs, the FHWA shortens the title to reflect the relocation of the SUPPORT and GUIDANCE statements that deal with ''sign spreading'' to Section 2E.10 Number of Signs at an Overhead Installation and Sign Spreading.

In the first sentence in the GUIDANCE statement, the FHWA replaces the words ''only when'' with ''where'' to broaden the use of Pull-Through signs. The FHWA adopts this change to recognize that Pull-Through signs can be beneficial in congested traffic for

[25] Policy memorandum is available for downloading from the following URL: *http://mutcd.fhwa.dot.gov/res-memorandum_adopt-a-highway_110901.htm.*

road users, especially older drivers, at many locations. The FHWA also recommends that Pull-Through signs with down arrows be used where alignment of the through lanes is curved and the exit direction is straight ahead, where the number of through lanes is not readily evident, and at multi-lane exits where there is a reduction in the number of through lanes. The FHWA received three comments from the NCUTCD, the City of Tucson, Arizona, and a private citizen supporting the proposed changes to the text and one comment from a private citizen opposed to it. The opposing commenter suggested the wording be revised to clarify that Pull-Through signs be used where there is a reduction in the number of through lanes because it is not appropriate to recommend Pull-Through signs at all multi-lane exits. The FHWA agrees and modifies the text to clarify the use of Pull-Through signs with down arrows at multi-lane exits where there is a reduction in the number of through lanes.

115. In Section 2E.13 Size and Style of Letters and Signs, in Table 2E–3, the FHWA adds dimensions for the ''Action Message Word'' row and adds a row with dimensions for the sizes of ''Numerals and Letter'' for Gore signs. The FHWA received one comment from the NCUTCD in support of the changes to this table. Based on an editorial comment, the FHWA revises the dimensions for the Action Message Word under ''category a'' for major interchanges to make this entry consistent with all of the other entries on this table.

In Table 2E–4, under item H, Rest Area and Scenic Area Signs, the FHWA changes the values for Distance Fraction to 250 mm (10 in), and the values for Distance Word to 300 mm (12 in) to correct an error in the 2000 MUTCD. A commenter from the Oregon DOT noted this inadvertent transposition of values and the FHWA agrees with this correction.

116. In Section 2E.19 Diagrammatic Signs, the FHWA proposed in the NPA to add to item A of the first STANDARD statement the option of showing each individual lane arrangement, based on research related to the needs of older road users.[26] The FHWA also proposed adding a second illustration to Figure 2E–3 Diagrammatic Sign for a Single-Lane Left Exit to show two diagrammatic arrows instead of just one. The FHWA received comments from the NCUTCD, the Kansas DOT, and a private citizen opposing the new sign design, stating that the size of the sign would be increased, the message difficult to read, and that additional guidance should be provided so that readers know how to design the signs. The FHWA agrees that additional research and study is needed to refine the design of the individual lane arrangement style of the diagrammatic sign. Therefore, the FHWA withdraws this proposal to include the option of showing each individual lane arrangement, as well as the proposal to add an illustration within Figure 2E–3.

The FHWA adopts additional editorial changes to improve the graphic representations in Figures 2E–3 through 2E–7 to be consistent with the text.

117. In Section 2E.23 Lateral Offset (titled ''Lateral Clearance'' in the 2000 MUTCD and the NPA), the FHWA changes the title to be consistent with changes in terminology as discussed in Section 2A.19 Lateral Offset.

118. In Section 2E.28 Interchange Exit Numbering, the FHWA revises the first STANDARD statement to require that a space be included between the suffix letter and the exit number on an exit number plaque for multi-exit interchanges. The FHWA received one comment from Caltrans opposed to this change, suggesting that the FHWA change this to a GUIDANCE because total width is an issue on signs, especially in retrofitting signs. The FHWA disagrees and adopts this change because the space between the exit number and suffix letter is important for adequate legibility. The FHWA also adds to this STANDARD that exit numbers shall not include the cardinal initials corresponding to the directions of the cross route. This sentence is moved from Section 2E.42 Cloverleaf Interchange because it is more appropriate in this section.

The FHWA relocates the second OPTION statement (of the 2000 MUTCD) to the first GUIDANCE statement. Because road users might not expect a left exit and have difficulty in maneuvering to the left, the FHWA recommends that the word ''LEFT'' be added to the exit number plaque. The FHWA received one comment from a private citizen in support of this change, and six comments from the NCUTCD, and the Minnesota, Kansas, and Wisconsin DOTs opposed to it. Most of the commenters in opposition felt the addition of the word ''LEFT'' to the exit number plaque should be an OPTION, rather than GUIDANCE. The FHWA disagrees and adopts this change as a GUIDANCE because of numerous complaints of the difficulty that road users have in knowing when an exit is on the left. Very few road users know that when the exit plaque is installed on the top left edge of the sign, it means the exit is on the left.

The FHWA also adds additional text that, for exits that are not numbered (no exit plaque), a LEFT plaque should be added to the top left edge of the sign for a left exit. The FHWA adopts this text to address a comment from a private citizen suggesting that non-numbered exits needed to be addressed in a manner that is consistent with the way numbered left exits are signed, to provide for adequate safety at these locations. The FHWA establishes a phase-in target compliance date of 15 years from the effective date of this final rule for the new GUIDANCE for existing signs in good condition to minimize any impact on State or local governments.

The FHWA adds an OPTION statement following the first GUIDANCE statement, stating that the portion of the exit number plaque containing the word ''LEFT'' may have a black legend and border on a yellow background. This OPTION statement mirrors other similar uses of the black on yellow color pattern for signs and panels associated with left exits in the MUTCD. The FHWA received three comments from the NCUTCD, the Minnesota DOT, and a private citizen opposed to this new statement, but these commenters provided no reasoning for their opposition. The FHWA adopts the OPTION in this final rule because it is consistent with the EXIT ONLY and LEFT EXIT color scheme, it further increases conspicuity of the infrequent left exit, and it is an optional treatment that jurisdictions may use but is not required.

Additionally, the FHWA removes the EXIT 13 plaque from Figure 2E–3 to reflect the changes in Section 2E.28. The FHWA makes additional editorial modifications to the figures to correspond with the text and correct minor errors.

119. In Section 2E.30 Advance Guide Signs, the FHWA modifies the first GUIDANCE statement to provide necessary clarification for placement of advance guide signs. This change responds to a comment from Caltrans stating that clarification on advance sign placement is necessary to address situations where it is not practical to use three Advance Guide signs because of very close spacing between interchanges. This minor change does not add any new requirements and

[26] Information about this research is summarized on pages 190 and 191 of the ''Highway Design Handbook for Older Drivers and Pedestrians,'' Report number FHWA–RD–01–103, published by the FHWA Office of Safety Research and Development, 2001. It is available for purchase from The National Technical Information Service, Springfield, Virginia 22161, (703) 605–6000, or at their Web site at the following URL: *http://www.ntis.gov.*

provides additional flexibility to jurisdictions to address unique situations.

In the STANDARD, the FHWA removes the requirement to use the specific distance message for the 2 km (1 mi) and 4 km (2 mi) Advance Guide signs, to respond to a question from Caltrans as to why the 1 km (0.5 mile) sign was not included. All Advance Guide signs shall contain the appropriate distance message.

120. In Section 2E.34 Exit Gore Signs, the FHWA revises the STANDARD statement so that it is worded in a manner consistent with the rest of the MUTCD. The STANDARD statement in this final rule includes a definition of ''gore'' and indicates that the Exit Gore sign shall be located in the gore.

The FHWA adds an OPTION statement to allow mounting a panel indicating the advisory speed the for the ramp below the Exit sign, to supplement and not replace the exit or ramp advisory speed warning sign where extra emphasis of an especially low advisory ramp speed is needed. The FHWA received one comment from the NCUTCD in support of the new OPTION statement as proposed in the NPA, one comment from Caltrans requesting additional information, and two comments from Minnesota and Kansas DOTs opposed to the change, stating that more information was needed. The FHWA adopts the new OPTION statement with additional language to clarify the usage of the advisory speed panel and to emphasize that the supplemental advisory speed panel is not intended to replace the exit or ramp speed warning sign. This option provides jurisdictions additional flexibility for reminding road users of the recommended speed for an especially low-speed exit ramp.

121. In Section 2E.36 Distance Signs, the FHWA adds a SUPPORT statement after the first STANDARD statement that the minimum size of route shields identifying a significant destination point appear in Tables 2E–1 through 2E–4. The FHWA received a comment from Caltrans that route shields are more commonly used on Distance Signs than text identification of route numbers. The FHWA agrees with this comment and believes that route shields are more quickly identifiable by road users than words. Accordingly, the FHWA revises Figure 2E–22 to show a U.S. 38 route shield rather than a text identification of the route, and adds an OPTION that the text identification of a route may be shown instead of a route shield.

122. In Section 2E.42 Cloverleaf Interchange, the FHWA relocates the last sentence of the STANDARD statement regarding exit numbers to Section 2E.28 Interchange Exit Numbering because that section deals with overall interchange exit numbering, and the statement is applicable to all interchanges, not just cloverleaf interchanges. Although this change was not included in the NPA, the FHWA includes this minor editorial change in this final rule to clarify the intent based on a comment from Caltrans questioning whether the information regarding exit numbers was applicable only to cloverleaf interchanges. The FHWA also changes the OPTION to a second GUIDANCE statement to be consistent with similar GUIDANCE in Section 2E.44 Partial Cloverleaf Interchange.

123. In Section 2E.43 Cloverleaf Interchange with Collector-Distributor Roadways, the FHWA adds a new Figure 2E–29 and a SUPPORT statement referencing Figure 2E–29 for examples of guide signs for full cloverleaf interchanges with collector-distributor roadways. The FHWA renumbers subsequent figures accordingly. A figure very similar to new Figure 2E–29 was in the 1988 MUTCD, but was inadvertently left out of the 2000 MUTCD. Several commenters pointed out this error and the FHWA corrects it in this final rule.

124. In Section 2E.49 Signing of Approaches and Connecting Roadways, the FHWA removes the entire text of the section (from the 2000 MUTCD) and adds new SUPPORT, GUIDANCE, STANDARD, and OPTION statements, as well as five new figures (Figures 2E–34 through 2E–38). The new statements address sign sequences and sign design for conventional roads with one lane and multi-lane traffic approaching an interchange. The new statements also clarify the use of signs for approaches and connecting roadways in order to better convey to road users the ramp configuration and the maneuver that a road user would have to make to get on the desired ramp or connecting roadway. The FHWA adopts the statements proposed in the NPA, with editorial modifications to the text and figures to respond to comments and maintain consistency with changes in other sections. The FHWA also removes from Figures 2E–28 through 2E–33 the depiction of signing on the roads approaching the freeway and adds a note cross-referencing to the appropriate Figure 2E–34 through 2E–38.

125. In Section 2E.51 General Service Signs, the FHWA changes from three to two the number of meals per day for which a food establishment should have a continuous operation to serve in item B.2 in the first GUIDANCE statement. The FHWA received two comments from the NCUTCD and the Wisconsin DOT supporting this change, and three comments from the Minnesota and Connecticut DOTs and a private citizen opposed to it. The opposing commenters indicated that restaurants that serve less than three meals a day are not adequately serving the motoring public, and that the more stringent criteria should remain, in order to reduce sign clutter and better serve motorists. The FHWA disagrees because many restaurants of interest to travelers serve only two meals per day. In addition, this is consistent with changes made in Section 2F.01 Eligibility regarding eligibility of businesses for Specific Service Signs. The FHWA adopts the change, as proposed in the NPA.

126. In Section 2E.54, the FHWA changes the title from ''Reference Posts'' to ''Reference Location Signs and Enhanced Reference Location Signs (D10–4, D10–5)'' to reflect the new Enhanced Reference Location sign and to be consistent with changes in other chapters of Part 2 of the MUTCD. The FHWA received comments from the City of Tucson, Arizona, in support of these changes. Caltrans and a private citizen suggested that the abbreviation of kilometer be corrected. The same private citizen opposed the green color of the signs, stating that a blue background is used by some States, and opposed the FHWA's proposal to include the decimal point to indicate the fractional character of the mile or kilometer in both this section and Section 2D.46 Reference Location Signs (D10–1 through D10–3) and Intermediate Reference Location Signs (D10–1a through D10–3a). The FHWA revises both of these sections to address comments as appropriate, and to provide consistency with Section 2D.46. The FHWA also adds Figure 2E–45 illustrating the sign images. The FHWA adopts the decimal point for intermediate signs because the FHWA believes that this will make it clearer to road users that it denotes a portion of a mile or kilometer.

To mitigate economic impacts, the FHWA establishes a phase-in target compliance date of 10 years from the effective date of this final rule for the design of Enhanced Reference Location signs and Intermediate Enhanced Reference Location Signs as specified in the second STANDARD statement, for existing signs in good condition.

127. In Section 2E.56 Radio Information Signing, the FHWA adds a SUPPORT statement at the end of the section with a cross-reference to Section 2D.45 General Service Signs (D9 Series),

for information about the use and design of a TRAVEL INFO CALL 511 (D12–5) sign. In the NPA, the FHWA proposed the addition of OPTION and STANDARD statements mirroring text in Section 2D.45, however, the FHWA believes that a cross-reference to Section 2D.45 is sufficient in this section.

128. In Section 2E.57 Carpool and Ridesharing Signing (titled ''Carpool Information Signing'' in the NPA), the FHWA adds to the OPTION statement that Carpool Information signs may include Internet addresses or telephone numbers within the legend. This exception to a general prohibition against Internet addresses or telephone numbers with more than four characters in Section 2A.06 Design of Signs, reflects long-standing and common current practice and provides for additional information to road users. The FHWA received two comments from the Virginia DOT and the City of Tucson, Arizona, in support of this change, and one from the NCUTCD opposed to it, stating the inconsistency with Section 2A.06. The FHWA adopts this change, as proposed in the NPA. Section 2A.06 allows the use of telephone numbers and Internet addresses when specifically authorized for certain signs in the MUTCD. A specific exemption is intended to be authorized by Section 2E.57 for carpool signs. However, to encourage use of shorter numbers, the FHWA changes the illustration of the Carpool sign (D12–2) in Figure 2D–12 to show ''*CAR'' rather than a 10-digit number.

Additionally, the FHWA changes the size of the maximum vertical dimension of the logo or symbol in the STANDARD statement from 900 mm (36 in) to 450 mm (18 in) to enhance the legibility of the primary message. The FHWA received no comments regarding this change, and adopts it in this final rule.

129. The FHWA adds a new section numbered and titled ''Section 2E.59 Preferential Only Lane Signs.'' This section was titled ''High-Occupancy Vehicle (HOV) Signs'' in the NPA. In the NPA, the FHWA proposed to include STANDARD, GUIDANCE, OPTION, and SUPPORT statements regarding the use and placement of signs for HOV lanes and facilities and five figures illustrating examples of HOV signing applications. The FHWA received several comments from Caltrans, the Minnesota DOT, and private citizens regarding this new section, ranging from editorial comments to opposition regarding specific statements, to a suggestion not to include the new section or figures until the section is reviewed in more detail by the Guide and Motorist Information Sign Technical Committee of the NCUTCD. The FHWA disagrees with the commenter suggesting that additional time is needed for review. There was ample time for individuals to review and provide comments on this proposed section. Also, prior to preparing the NPA, the FHWA considered available information about the state of the practice of HOV signing. The FHWA reviewed the docket comments and conducted a thorough revision of the proposed language to address comments, remove inconsistencies, and clarify the text as it relates to signing for specific situations for barrier-separated, buffer-separated, concurrent flow, and direct access ramps.

One of the private citizens suggested that the section provide guidance that differentiates between an HOV lane physically ending and an HOV lane designation ending with the lane continuing as a mixed-flow lane. The FHWA agrees and clarifies the text and figures to provide examples of these conditions and guidance for proper signing.

Caltrans suggested that additional information and examples be provided regarding the use of changeable message signs (CMS), so that States do not inadvertently implement CMS signs for static, rather than dynamic signing purposes. The FHWA agrees and includes references to new Sections 2B.26 Preferential Only Lane Signs and 2B.28 Preferential Only Lane Sign Application and Placement (numbered Sections 2B.48 and 2B.50 in the 2000 MUTCD) at the beginning of this section and repeats pertinent information regarding the use of CMS signs in this section.

Caltrans also suggested that the proposed size of ground mounted/barrier mounted HOV signs was too small to contain all of the necessary information at the appropriate text size. The FHWA agrees and, in concert with Section 2B.26, the FHWA modifies the size and layout of the text that appears in the legend of the R3–10 through R3–14 signs to be consistent with the other sections in Part 2 regarding size of text associated with the type of facility.

The FHWA also received several comments from a private citizen regarding the use of the diamond symbol on the HOV signs. In some cases, the diamond was inadvertently shown incorrectly and/or inappropriately on signs in the figures in the NPA. The FHWA clarifies the use of the diamond symbol and the word ''HOV'' on signs to correspond with the option that agencies have to use either the diamond symbol or ''HOV'' that is included in Sections 2B.26 and 2B.28. The FHWA clarifies the use of the diamond symbol and includes a diamond in the top left corner of the legend of the guide sign for all guide signs that appear in the gore areas for exits onto HOV lanes. These guide signs in gore areas appear in the figures for this section to respond to comments from a private citizen suggesting additional information on the gore signs.

The FHWA establishes a phase-in target compliance date of 10 years from the effective date of this final rule for this new section, for existing signs in good condition.

130. In Section 2F.01 Eligibility, the FHWA changes from three to two the number of meals per day for which a food establishment should have a continuous operation to serve in item B.2 of the fourth GUIDANCE statement to be consistent with changes in Section 2E.51 General Service Signs. (See also the discussion in Section 2E.51.)

131. In Section 2F.04 Number and Size of Logos and Signs, the FHWA changes the second STANDARD statement to require that a logo panel on signs for conventional roads and ramps not exceed 750 mm (30 in) in width instead of 600 mm (24 in) to be consistent with the proportions of panels for freeways and expressways. The FHWA received three comments from the NCUTCD, ATSSA and the City of Tucson, Arizona, in support of this change, and adopts this change.

132. In Section 2F.08 Double-Exit Interchanges, the FHWA adds to the OPTION statement that at a double-exit interchange where there are four logo panels displayed for one of the exits and one or two panels to be displayed for the other exit, the logo panels may be arranged in three rows with two panels per row, to make the layout of the sign more logical. The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, in support of this change, and one from the Minnesota DOT opposed to it. The opposing commenter suggested that the signing concept would confuse motorists. The FHWA believes that the commenter was confused as to what the sign would look like. Therefore the FHWA adds an illustration in Figure 2F–1 and believes that there should be no reason for drivers to be confused with this arrangement. The FHWA adopts the change.

133. In Chapter 2G TOURIST-ORIENTED DIRECTIONAL SIGNS, the FHWA changes ''Typical'' to ''Examples of'' in the titles of Figures 2G–1 and 2G–2 because the information shown is only an example of many acceptable arrangements of signs. The FHWA

received no comments regarding these changes, and adopts these changes.

134. In Section 2G.01 Purpose and Application, in the second STANDARD statement, the FHWA adds language prohibiting the placement of tourist-oriented directional signs on conventional roads in urban areas. This clarifies and strengthens the current requirement that such signs shall only be used on rural conventional roads.

Also, the FHWA relocates the current first paragraph of the GUIDANCE statement to become a new second paragraph of the second STANDARD statement. This change requires, rather than recommends, that tourist-oriented directional signs incorporate information from and be used in place of Specific Service signs where both types of signs are needed at an intersection.

The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, in support of these changes, and adopts these changes.

135. In Section 2G.07 State Policy, the FHWA changes the phrase ''State or Federal laws'' to ''State and Federal laws'' in the STANDARD statement, to clarify that both types of laws must be heeded. The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, in support of this change, and adopts this change.

136. In Section 2H.08 Placement of Recreational and Cultural Interest Area Symbol Signs, the FHWA combines Figures 2H–5 and 2H–6 into a single figure titled ''Figure 2H–5 Recreational and Cultural Interest Area Symbol Signs'' illustrating all approved recreational and cultural interest symbol signs. The previous titles of Figures 2H–5 and 2H–6 were inaccurate, and the FHWA received a comment from the Arizona DOT recommending that all currently approved recreational and cultural interest symbols be shown in the figures of Chapter 2H. The FHWA agrees and adopts these minor changes for accuracy and consistency.

137. In Section 2H.09 Destination Guide Signs, the FHWA clarifies in the second STANDARD statement that linear parkway-type highways that primarily, rather than merely, function as arterial connectors, even if they also provide access to recreational or cultural interest areas, shall not qualify for the use of white-on-brown destination guide signs. The FHWA adopts this change to improve uniformity of guide signing on these important arterials. The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, in support of this change, and adopts this change.

In the NPA, the FHWA proposed adding illustrations of trapezoidal-shaped directional guide signs to Figure 2H–2 to correspond with the optional use of this shape for recreational or cultural interest area directional signing as provided for in this section. The FHWA received two comments from the NCUTCD and the Minnesota DOT opposed to adding these illustrations, suggesting that the trapezoidal shape not be included in the figure nor the section text. The trapezoidal shape was not illustrated in the 2000 MUTCD because it is not widely used, due to higher costs for sign blanks versus rectangular shaped blanks. However, some agencies do still use the trapezoidal shape, so it is inappropriate to remove this option from the text of the MUTCD without allowing public comment. Therefore, the FHWA includes illustrations of the trapezoidal shaped signs in Figure 2H–2 in this final rule with a note identifying them as optional.

138. In Section 2I.03 EVACUATION ROUTE Sign (EM–1), in the first STANDARD statement, the FHWA changes the design of the EVACUATION ROUTE (EM–1) sign to a rectanglular sign with a blue circular symbol with a directional arrow and the legend EVACUATION ROUTE. This change reserves the circular shape sign exclusively for rail grade crossings and enhances the conspicuity and legibility of the EVACUATION ROUTE sign. The FHWA received three comments from the NCUTCD, ATSSA and the City of Tucson, Arizona, in support of this change, and three comments from the Florida and Oregon DOTs and a private citizen opposed to it. The Florida DOT feels that the change would have a large statewide impact to their hurricane evacuation signing program. The private citizen felt that the sign shape should remain circular so that it will continue to be recognized as a Civil Defense sign, and that changing the shape creates unnecessary work and expense for agencies. The Oregon DOT indicated their belief that the new design was too similar to the Trail Marker sign and, as a result, motorists may not recognize the Evacuation Route Markers with the appropriate amount of importance. The FHWA notes that the Emergency Evacuation Route Marker has not been changed; it has just been put onto a white rectangular background so that the circular shape can be reserved for another use. The FHWA adopts the change in this final rule. The FHWA revises the phase-in target compliance date to 15 years from the effective date of this final rule (the NPA proposed 10 years) for existing signs in good condition to minimize any impact on State or local governments.

In the NPA, the FHWA proposed to add a sentence in the first STANDARD stating that the minimum size for this sign is 600 x 600 mm (24 x 24 in) and the circular symbol diameter is 2.5 mm (1 in) smaller than the width of the sign. The FHWA received one comment from the Arizona DOT suggesting that increasing the minimum size of the EM–1 sign to be the same size as other standard route markers may distract drivers from other route markers that are far more important for everyday route guidance, and suggests that the 450 x 450 mm (18 x 18 in) size be left as an available option. The FHWA agrees and removes this sentence from the STANDARD statement and creates a new table in Chapter 2I listing sign sizes for the EM–1 through EM–7 signs for two categories ''Conventional Roads'' and ''Minimum.'' For the EM–1 sign, the FHWA includes 600 x 600 mm (24 x 24 in) for conventional roads and 450 x 450 mm (18 x 18 in) as the minimum.

In the second STANDARD statement, the FHWA changes the detail regarding the colors to be used on the EVACUATION ROUTE (EM–1) sign to correspond with the design changes required by the first STANDARD statement. In the NPA, the FHWA proposed that at least the arrow, legend and corners of the sign shall be retroreflective. The FHWA received two comments from ATSSA and a traffic control device manufacturer opposed to this change, stating that the entire sign needs to be retroreflective because, in the event of a need to evacuate, power systems may not be available to externally illuminate these signs and weather conditions may be extremely poor for visibility. The FHWA agrees and requires that the entire sign be retroreflective.

The FHWA adds to the second OPTION statement that the legend on the EVACUATION ROUTE sign may be modified to describe the type of evacuation route, such as HURRICANE, to provide additional information to road users. The FHWA did not receive any comments regarding this change, and adopts this change.

Additionally, the FHWA adds to Figure 2I–1 illustrations of the HURRICANE EVACUATION ROUTE, AREA CLOSED, TRAFFIC CONTROL POINT, MEDICAL CENTER, and HURRICANE SHELTER signs and illustrations of six new directional signs for EMERGENCY SHELTER, FALLOUT SHELTER, CHEMICAL SHELTER, WELFARE CENTER, REGISTRATION CENTER, and DECONTAMINATION

CENTER signs. The FHWA removes all size notations from the signs in this figure, and lists the sign sizes under the ''Conventional Roads'' column in the new table in this chapter. The FHWA received two comments from Caltrans and the Arizona DOT questioning why the EM–1 sign in the illustration includes the word ''HURRICANE.'' Because this is probably the most common type of evacuation route that is currently signed in the U.S., the FHWA uses the hurricane sign in the figure as an example. To address these comments in this final rule, the FHWA adds an asterisk to the EM–1 sign and a note stating that HURRICANE is an example of one type of evacuation route, and that the legend for other types may also be used, or this line of text may be omitted.

139. In Section 2I.08 Emergency Aid Center Signs (EM–6 Series), the FHWA adds to the STANDARD statement that the EM–6 series signs shall be a horizontal rectangle and that the identifying word and the word ''CENTER'', the directional arrow, and the border shall be black on a white background. Although this text was not included in the NPA, the FHWA adopts this change in this final rule to clarify the colors of these signs, consistent with longstanding requirements of the Standard Highway Signs book for the design of these signs. This does not impose any new requirements.

Discussion of Adopted Amendments to Part 3—Markings

140. In Section 3A.01 Functions and Limitations, based on a comment from the NCUTCD, the FHWA adds a list describing the hierarchy system for longitudinal lines in order to clarify the intended functions of various types of longitudinal lines, similar to text that was in Section 3A.06 of the 2000 MUTCD. This text is most appropriately located in Section 3A.01.

141. In Section 3A.03 Materials, the FHWA received one comment from the Motorcycle Safety Foundation requesting that motorcycles be considered when selecting pavement marking materials, especially longitudinal markings, because traction is important to motorcyclists. Because the FHWA did not propose changes to this section in the NPA, and a change to add ''motorcycles'' could have a significant impact on agencies, the FHWA declines incorporating any changes at this time. This goes beyond the scope of this rulemaking and would need to be addressed in a future rulemaking.

142. In Section 3A.04 Colors, the FHWA revises the STANDARD statement to clarify the use of black markings. Black markings can be used in conjunction with any other color marking to add contrast to it. The FHWA removes the existing reference to object markers because it is not an appropriate reference. The FHWA received one comment from the City of Tucson, Arizona, supporting these changes to this section. A traffic control device manufacturer suggested adding a paragraph to denote that channelizing devices such as tubular markers and longitudinal channelizers are often used to reinforce white channelizing lines. The FHWA declines incorporating this comment because this topic is adequately covered in Section 3F.02 Channelizing Devices.

Additionally, the FHWA removes the section titled, ''Section 3A.05 Colors of Pavement Markings'' (as it appeared in the NPA) and moves this information to Section 3A.04. The FHWA renumbers the remaining sections accordingly.

In response to comments from the NCUTCD and the Wisconsin DOT, the FHWA removes the reference to white and yellow raised pavement markers, because raised pavement markers are distinguished from others by their physical characteristics, rather than color. Raised pavement markers are described in detail in Section 3B.11 Raised Pavement Markers.

The Ohio DOT and a traffic engineering consultant suggested adding text in this section to acknowledge that blue raised pavement markers may be used as fire hydrant locators. The FHWA agrees with this addition in conjunction with the addition of blue raised pavement markers to Section 3B.11, and adds a sentence to the STANDARD statement in Section 3A.04.

143. In Section 3A.05 Widths and Patterns of Longitudinal Pavement Markings (referred to as Section 3A.06 in the NPA), the FHWA received two comments from the NCUTCD and the Ohio DOT opposed to proposed changes to the STANDARD statement to remove the descriptions of the functions of longitudinal pavement markings. The FHWA agrees with these comments and moves these items to Section 3A.01 Functions and Limitations. Additionally, the FHWA moves the last item of the STANDARD, pertaining to lengths of broken and dotted lines, to Section 3B.11 Raised Pavement Markers and revises it to clarify that it pertains to the spacing of raised pavement markers.

The FHWA deleted ''on rural highways'' from the GUIDANCE statement to clarify that this guidance refers to all roadway types, not just rural highways. A private citizen expressed concern that this revision would imply that the pavement marking section would be applicable to toll facilities as well. Due to the unique nature of toll plazas, the citizen suggested that uniformity of toll plaza marking be addressed before including toll facilities under the blanket of ''all roadway types.'' While the FHWA realizes that toll plaza applications are not specifically discussed in the MUTCD, the FHWA plans to study toll plaza applications and defers that discussion to a future rulemaking. The FHWA adopts the revision, as proposed in the NPA.

The FHWA received one comment from the Washington DOT supporting the FHWA's proposal to revise the OPTION statement to differentiate between the dimensions for dotted lines used for line extensions and lane drop/add markings and the proposed revisions to the dimensions for the line segments and gaps to be consistent with other sections in Part 3. The Wisconsin DOT opposed this revision, stating that they are using a higher gap ratio. The Ohio DOT felt that this should be a GUIDANCE statement. Because changing this to a GUIDANCE may have cost impacts to agencies, the FHWA adopts the language as proposed in the NPA as an OPTION, but the FHWA may consider changing it to a GUIDANCE in a future rulemaking.

144. In Section 3B.01 Yellow Centerline Pavement Markings and Warrants, the FHWA changes the title ''Yellow Centerline and Left Edge Line Pavement Markings and Warrants'' to ''Yellow Centerline Pavement Markings and Warrants.'' The FHWA also moves the fourth STANDARD statement of Section 3B.01 to Section 3B.06 Edge Line Pavement Markings because edge lines are appropriately covered in Section 3B.06. The FHWA received one comment from the City of Tucson, Arizona, in support of these changes, and the FHWA adopts these changes.

A traffic engineering consultant suggested that the term ''traffic lane'' be clarified to specify whether parking lanes and bicycle lanes were included. The FHWA agrees with this suggestion, and replaces the phrase ''traffic lane'' with ''lanes for moving motor vehicle traffic'' where appropriate in this section. The FHWA received a comment from a private citizen in Newton, Massachusetts stating that it is common practice in the northeast to paint a single yellow centerline stripe on narrow or low-volumes streets. The commenter suggests additional language explaining the use of single yellow centerlines be added to this section to account for the proposed changes to remove the descriptions of longitudinal

lines from Section 3A.05 Widths and Patterns of Longitudinal Pavement Markings. As a result of this and other comments received to the proposed change in Section 3A.05, the FHWA moves the descriptions of line types to Section 3A.01 Functions and Limitations in this final rule. Accordingly, the FHWA believes that the meaning of solid centerlines will be clear. Adding additional information regarding single yellow centerlines requires additional research in the future and goes beyond the scope of this rulemaking.

145. In Section 3B.02 No Passing Zone Pavement Markings and Warrants, the FHWA revises the second STANDARD statement to clarify that no-passing zone markings on approaches to highway-rail grade crossings shall conform with Section 8B.20 Pavement Markings, and eliminates the requirement that no passing zone markings be used at other appropriate locations, to be consistent with Part 8 Traffic Controls for Highway-Rail Grade Crossings, and eliminate overlap with more specific requirements for no passing zone markings elsewhere in Section 3B.02. One commenter from Pierce County, Washington, suggested clarification in this section, as well as in Part 8, that No Passing Zone striping is not required on roadways that otherwise have no centerline striping. The FHWA agrees with this comment and incorporates this clarification into this final rule.

Additionally, the FHWA revises the third STANDARD statement to clarify the dimensions of a no-passing buffer zone, and to eliminate the buffer zone dimensions specific to areas where no passing zones are required because of limited passing sight distance. There was one comment from the City of Tucson, Arizona, supporting this change.

146. In Section 3B.03 Other Yellow Longitudinal Pavement Markings, the FHWA revises the text in the first paragraph of the first STANDARD statement to substitute the phrase ''normal double'' for ''two double'' in the description of the pavement marking requirements for reversible lanes. In the third paragraph of the first STANDARD statement, the FHWA clarifies that the pavement marking requirements for a two-way left turn lane applies to such lanes that are never operated as a reversible lane. These changes improve the clarity of the requirements and provide consistency with requirements elsewhere in Chapters 3A and 3B. There was one comment from the City of Tucson, Arizona, in support of these changes.

The FHWA received comments from two traffic engineering consultants regarding Figure 3B–7, Example of Two-Way Left-Turn Marking Applications. One commenter suggested that the left turn arrow at the nose of the left turn bay at the major street be required, rather than optional. The FHWA believes that a possible upgrade from OPTION or SUPPORT to GUIDANCE is a significant change and would require discussion and comment in a future rulemaking. The commenter did not present sufficient justification for this requirement therefore the FHWA declines incorporating this comment. A traffic engineering consultant suggested that the FHWA establish a phase-in target compliance date for the spacing of two-way left turn lane pavement markings, which was changed in the 2000 MUTCD. The FHWA agrees and establishes a five-year phase-in target compliance date from the effective date of this final rule for markings in good condition.

147. The FHWA received one comment from the City of Tucson, Arizona, in support of the proposal to change the title of Section 3B.04 from ''Edge Line Pavement Markings and Warrants'' to ''White Lane Line Pavement Markings and Warrants,'' and to move the fourth STANDARD statement of Section 3B.04 to Section 3B.06 Edge Line Pavement Markings, because edge lines are appropriately covered in Section 3B.06. The FHWA adopts these changes.

148. In Section 3B.05 Other White Longitudinal Pavement Markings, the FHWA changes the gap length for lane drop markings from 3.6 m (12 ft) gaps to 2.7 m (9 ft) gaps in the third OPTION statement to be consistent with the ratio of other marking gaps. While the City of Tucson, Arizona, supported this change, the Wisconsin DOT opposed this revision because they are using a higher gap ratio. The FHWA changed the gap spacing in the final rule for the 2000 MUTCD, however there were inconsistencies between the text in Section 3B.05 and Figure 3B–10 of the 2000 MUTCD. The intent of the proposed change was merely to correct this inconsistency, and therefore the FHWA adopts the wording as proposed in the NPA.

149. In Section 3B.06 Edge Line Pavement Markings, the FHWA adds to the STANDARD statement text pertaining to left and right edge lines that is being moved from Sections 3B.01 Yellow Centerline Pavement Markings and Warrants and 3B.04 White Lane Line Pavement Markings and Warrants. These changes result in all edge line pavement marking information being contained within one section. ATSSA opposed the reference to ''normal'' lines in these two paragraphs, because ''normal'' lines are defined in Section 3A.05 Widths and Patterns of Longitudinal Pavement Markings as 4 inches to 6 inches in width. ATSSA suggests that FHWA require 6-inch lines on all Federal-aid projects, based on a recent study by the Texas Transportation Institute [27] that 29 States are using 6-inch or wider longitudinal lines on the roadway in at least some applications. However, this study did not indicate that 6-inch lines would improve safety or have better visibility than 4-inch lines. Four-inch lines are adequate. This is a topic for further study and possibly a future rulemaking. Accordingly, the FHWA adopts the changes to this section as proposed in the NPA.

To respond to a suggestion from a traffic engineering consultant, the FHWA changes the STANDARD statement to include major driveways in the locations where edge line markings shall not be continued and to include major driveways as locations where dotted edge lines extensions may be used. The addition of ''major driveways'' will clarify the intent of this section.

The FHWA also adds an OPTION statement, which states that wide solid edge line markings may be used for greater emphasis. Wide edge lines can sometimes be useful in reducing run-off-the-road crashes at curves and this option will provide additional flexibility for jurisdictions to use these markings where needed.

Additionally, in the GUIDANCE statement, the FHWA clarifies that edge line markings should not be broken for minor driveways, to be consistent with other areas of the MUTCD.

The FHWA received a comment from the City of Tucson, Arizona, supporting the changes to this section.

150. In Section 3B.08 Extensions Through Intersections or Interchanges, the FHWA received two comments from the Wisconsin DOT and a traffic engineering consultant regarding the proposed addition to the GUIDANCE statement on the placement and dimensions of pavement markings that are continued through intersections and interchanges. The traffic engineering consultant opposed the proposal that edge lines not be extended into or continued through intersections or

[27] ''The Use of Wider Longitudinal Pavement Markings,'' Texas Transportation Institute (TTI) Research Report 0024–1, Timothy J. Gates and H. Gene Hawkins, 2002. This report is available at the following URL: *http://ted.tamu.edu/Documents/02-0024-1.pdf*.

interchanges. Accordingly, the FHWA adds an OPTION statement after the STANDARD statement to indicate that a normal line may be used to extend a wide line through an intersection. In addition, the FHWA adds an OPTION statement after the first GUIDANCE to clarify that dotted extensions of edge lines may be used as line extensions. The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, supporting these changes.

The FHWA clarifies the first paragraph of the second GUIDANCE statement by including ''major driveways'' to be consistent with other changes made in this chapter.

151. In Figure 3B–11, Examples of Extensions through Intersections or Interchanges, the FHWA deletes ''Interchanges'' from the title, because this figure does not include interchanges, and makes other modifications to the graphic and legend for clarity.

152. In Figure 3B–12, Examples of Lane Reduction Markings, the FHWA adds a graphic ''c'', which was contained in the 2000 MUTCD and incorporates modifications in the graphic to be consistent with changes in the MUTCD in order to address two comments; one from the NCUTCD and the other from the Wisconsin DOT suggesting that graphic ''c'' be added.

153. In Section 3B.10 Approach Markings for Obstructions, the FHWA revises the first STANDARD and GUIDANCE statements to change ''diagonal'' to ''tapered'' where it refers to the line type. This change is as a result of the decision made by the FHWA in Official Interpretation #3–156 [28] to correct an error in word usage and clarify the text. The FHWA received no comments regarding this change.

154. In Section 3B.11 Raised Pavement Markers, the FHWA changes the first SUPPORT statement to a STANDARD because this is a definition and all definitions are standards. Because there were several comments from the NCUTCD, Caltrans, and a traffic control device manufacturer opposed to specifying 10 mm (0.4 in) as the height of the retroreflective surface, the FHWA withdraws this proposal due to lack of research to support a specific height of retroreflective surface and restores the language to that used in the 2000 MUTCD, indicating that the height of the device is at least 10 mm (0.4 in).

The FHWA adds an OPTION statement after the STANDARD statement, which states that blue raised pavement markers may be used to mark the positions of fire hydrants. This is common practice in many jurisdictions.

The FHWA adds a second STANDARD statement describing the spacing for raised pavement markers. This statement is moved from Section 3A.05 Widths and Patterns of Longitudinal Pavement Markings (Section 3A.06 in the NPA).

The FHWA also adds a SUPPORT statement at the end of this section that references the Institute of Transportation Engineers 2001 ''Traffic Control Devices Handbook'' [29] for more information regarding the spacing of raised pavement markings.

155. In Section 3B.12 Raised Pavement Markers as Vehicle Positioning Guides with Other Longitudinal Markings, the FHWA received one comment from the City of Tucson, Arizona, supporting the changes and comments from the NCUTCD and the Ohio DOT suggesting clarifications and reversion back to some of the 2000 MUTCD text. Accordingly, the FHWA withdraws this proposal to indicate that raised pavement markers as positioning guides should be spaced ''no greater than 3N'' and retains the 2000 MUTCD language of the SUPPORT, indicating that typical spacing for raised pavement markers as positioning guides is ''2N''. The FHWA also revises the second OPTION statement to the language of the 2000 MUTCD for consistency.

To address the Ohio DOT comment and provide agencies with flexibility in raised pavement marker spacing, the FHWA adds an OPTION statement to indicate that a spacing of 3N may be used for some applications on freeways and expressways. A 1997 study by the Ohio Department of Transportation [30] found that 120 foot spacing (3N) spacing is adequate in providing guidance to the wet-night driver on freeways in some, but not all, circumstances.

156. In Section 3B.13 Raised Pavement Markers Supplementing Other Markings, the FHWA's proposal to revise item B1 of the GUIDANCE statement to indicate that raised pavement markers should not supplement right edge line markings unless they are spaced closely enough (no greater than 3 m (10 ft) apart) to approximate the appearance of a solid line received several opposing comments from the Metropolitan Planning Organization of Cincinnati, Ohio, the City of Phoenix, Arizona, traffic engineering consultants, and private citizens. In particular opposition, the bicycle community stated that raised pavement markers cause steering difficulties for bicyclists. The NCUTCD and the City of Tucson, Arizona, supported the proposed changes, however these commenters expressed that more information was needed on the proper spacing of raised pavement markers. Accordingly, the FHWA does not adopt the proposed revision to Item B1 of the GUIDANCE statement. In the future, the FHWA may engage in rulemaking to address the use of raised pavement markers on edge lines in locations where bicycles are not permitted.

In item B.2 of the GUIDANCE statement, the FHWA revises the recommended spacing to be used between raised pavement markers supplementing broken line markings from 2N to ''no greater than 3N'' because this is an acceptable spacing for most applications. There were no comments regarding this change. (*See also* the discussion in Section 3B.12 Raised Pavement Markers as Vehicle Positioning Guides with Other Longitudinal Markings regarding Ohio's testing of raised pavement marker spacing.)

Additionally, in item B.5 of the GUIDANCE statement, the FHWA revises the recommended spacing to be used between raised pavement markers that supplement edge line extensions through freeway interchanges from N/2 to ''no greater than N'' because this is an acceptable spacing for most applications. There were no comments regarding this change.

157. In Section 3B.14 Raised Pavement Markers Substituting for Pavement Markings, there were several comments from the Washington and Ohio DOTs and the City of Plano, Texas, opposing the FHWA's proposal to revise the required spacing between raised pavement markers, while the NCUTCD supported the proposed change. The FHWA modifies the first paragraph of the STANDARD statement to clarify raised pavement marker spacing when used to substitute for broken line markings. The FHWA adds language to clarify spacing for 4 and 5 marker installations, as well as to clarify placement of retroreflective or internally illuminated markers. The FHWA

[28] A copy of the FHWA's Official interpretation #3–156 is available for downloading from the American Traffic Safety Services Association the following URL: *http://www.atssa.com/pubinfo/downloads/10-16-02a.pdf.*

[29] Traffic Control Devices Handbook,'' Institute of Transportation Engineers (ITE), 2001 is available for purchase from the ITE Bookstore at the following URL: *http://www.ite.org/bookstore/index.asp.*

[30] ''A Field Demonstration and Accident Study of 120-Foot Spacing of Raised Pavement Markers on Ohio Freeways,'' January 2, 1997, by Whit W. Wardell and Mohammad M. Khan, is available from the Ohio DOT Office of Traffic Engineering, 1980 West Broad Street, Columbus, Ohio 43223, telephone number (614) 466–3601.

eliminates the proposed 10-year phase-in target compliance date, because no new requirements are being imposed.

The FHWA proposed to revise the second STANDARD statement to change the spacing of raised pavement markers substituting for dotted lines to N/4, rather than N/8. The NCUTCD agreed, but the City of Plano, Texas, opposed it, suggesting that the spacing be ''no greater than N/4.'' The FHWA agrees with the City of Plano, because it would be consistent with the first STANDARD statement, and makes this change in this final rule.

158. In Section 3B.15 Transverse Markings, in the first STANDARD statement the FHWA adds ''yield lines'' and ''speed hump'' markings to the list of transverse markings required to be white markings.

The FHWA changes the second paragraph of the GUIDANCE statement to a STANDARD statement, which requires that pavement marking letters, numerals, and symbols be installed in accordance with the Pavement Markings chapter of ''Standard Highway Signs book'' [31] to be consistent with requirements elsewhere in the MUTCD and to correct an oversight in the 2000 MUTCD.

There were two comments from the NCUTCD and the City of Tucson, Arizona, in support of the changes to Section 3B.15.

159. In Section 3B.16 Stop and Yield Lines, in the second paragraph of the first GUIDANCE statement, the FHWA clarifies that YIELD signs are an exception to the recommendations on the use of stop lines to be consistent with the intended use of yield lines. One traffic engineering consultant suggested that Stop lines should be an OPTION, because wide crosswalk lines work well. This goes beyond the scope of this rulemaking and would need to be addressed in a future rulemaking. The NCUTCD, City of Tucson, Arizona, and The Association of Pedestrian and Bicycle Professionals agreed with changes to this section. The FHWA adopts the text as proposed in the NPA.

The FHWA modifies the OPTION statement to clarify that yield lines may also be placed at locations where vehicles are to yield to pedestrians in compliance with a YIELD HERE TO PEDESTRIANS (R1–5 or R1–5a) sign to correspond with the addition of this new sign to Chapter 2B Regulatory Signs. There were no comments on this change.

The FHWA revises and adds to the second GUIDANCE statement to enhance pedestrian safety by indicating the recommended placement of yield lines at unsignalized midblock crosswalks. One private citizen suggested that yield lines extend across both directions of travel, from sidewalk to sidewalk, on both sides of the crosswalk so that all motorists are aware of the pedestrian crossing. The FHWA disagrees with this comment because drivers are not approaching the crosswalk from the left side of the centerline, therefore it would not be appropriate to place a yield line all the way across the roadway on both sides of the crosswalk.

The FHWA also adds a new paragraph to the second GUIDANCE statement regarding placement of yield lines at midblock crosswalks. The Florida DOT suggested that ''Yield to Pedestrians (R1–5 or R1–5a)'' signs be used in the vicinity of transit stops. The FHWA disagrees with this comment because local agencies will likely take the location of transit stops into consideration when determining where midblock crosswalks will be installed.

The Oregon DOT requested that an OPTION be added to allow the use of a stop line with ''Stop Here for Pedestrians'' signs at crosswalks not controlled by a signal, stop sign, or yield sign. The FHWA disagrees with this comment, because research has not been conducted to determine if driver response and obedience to these signs would be adequate. Research that led to the proposal to add the ''Yield Here to Pedestrians'' sign and the yield line markings for midblock uncontrolled pedestrian crossings only evaluated driver response to the ''Yield Here * * *'' sign, and did not evaluate a ''Stop Here * * *'' sign.[32] The FHWA adopts the text as proposed in the NPA.

The FHWA also adds a new figure numbered and titled ''Figure 3B–15 Examples of Yield Lines at Unsignalized Midblock Crosswalks'' relating to the new text, and renumbers all of the following figures in the chapter accordingly.

Additionally, the FHWA adds a new SUPPORT statement at the end of the section to emphasize that drivers who yield too close to crosswalks on multi-lane approaches place pedestrians at risk by blocking other drivers' view of pedestrians. There were no comments regarding this change.

160. In Section 3B.17 Crosswalk Markings, the FHWA received several comments from the NCUTCD, Caltrans, the City of Plano, Texas, and traffic engineering consultants regarding proposed changes in the second GUIDANCE statement increasing the upper limit of the range for spacing diagonal or longitudinal crosswalk marking lines from 300 to 600 mm (12 to 24 in) to 300 to 1500 mm (12 to 60 in) and specifying the relationship between marking spacing and line width. The NCUTCD supported the proposed change, and the other comments suggested additional clarification. In response to these comments, the FHWA revises the first GUIDANCE statement to clarify the width of crosswalks (with transverse lines or with diagonal or longitudinal lines) and to indicate that the width is measured as the gap between the inside of the lines. The City of Plano, Texas, requested that options for different crosswalk patterns be included in the MUTCD. This goes beyond the scope of this rulemaking and will have to be addressed in a future rulemaking.

161. In Section 3B.19 Pavement Word and Symbol Markings, the FHWA changes the fourth paragraph of the first GUIDANCE statement to clarify that the longitudinal space between word or symbol message markings does not apply to the two opposing arrows of a two-way left-turn lane marking. This change is in response to a comment from Caltrans requesting clarification.

In addition, the FHWA modifies the third STANDARD statement to allow the use of STOP markings at the ends of aisles in parking lots even though there is no STOP sign. The NCUTCD opposed this additional language, and requested that the language from the 2000 MUTCD be retained until the broader issue of the MUTCD and private property is addressed. The FHWA adopts the changes, as proposed in the NPA, because the MUTCD is applicable to public and private parking lots in a growing number of States, and the change is very important for parking lot safety.

162. In Section 3B.21 Curb Markings, in the first paragraph of the STANDARD statement, the FHWA clarifies that the requirement for signs to be used with curb markings does not apply if the no parking zone is controlled by statute or

[31] ''Standard Highway Signs,'' FHWA, 2002 Edition is available for purchase from the U.S. Government Printing Office Bookstore, Superintendent of Documenets, Room 118, Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222. Internet Web site at *http://bookstore.gpo.gov*. It is also available on the FHWA's Web site at *http://mutcd.fhwa.dot.gov/ser-shs__millennium.htm* is available for inspection and copying at the FHWA Washington Headquarters and all FHWA Division Offices as prescribed at 49 CFR part 7.

[32] ''Advance Yield Markings Reduce Motor Vehicle/Pedestrian Confllicts at Multilane Crosswalks with an Uncontrolled Approach,'' by Van Houten, Malenfant, and Malenfant, and McCusker, 2001. It is available from the Center for Education and Research in Safety, at the following URL: ''http://www.cers-safety.com/advanceyieldmarkings.pdf.''

local ordinance, to minimize unnecessary sign clutter. The NCUTCD and the City of Tucson, Arizona, supported this change. In response to a comment from a private citizen, the FHWA adds additional clarity by inserting an OPTION statement indicating that curb markings without signs or word markings may be used to convey a general prohibition of parking within a specified distance of a stop sign, driveway, fire hydrant, or crosswalk.

163. In Section 3B.22 Preferential Lane Word and Symbol Markings, the FHWA adds to the second STANDARD statement that more than one symbol or word marking can be used to mark a preferential lane, that the word message ''HOV'' is acceptable as a preferential marking (relocating this from the OPTION statement), and that the ''T'' marking shall be the light rail transit preferential lane symbol. Additionally, in the same STANDARD statement, the FHWA requires that symbol or word markings for each preferential lane use be installed if two or more preferential lane uses are permitted in a single lane. These changes provide uniformity for marking of multi-use preferential lanes and provide a distinctive symbol for light rail transit. The NCUTCD and the Florida DOT supported this change. Caltrans opposed the ''T'' marking, stating that the ''T'' marking could be mistaken as the abbreviation for other uses (such as taxis, trams, and trains). The FHWA adopts the wording as proposed in the NPA. While possible future research may find that there is a better marking, there are currently very few applications of exclusive light rail transit lanes on street. If a better symbol is indicated by research in the future the FHWA will address this accordingly in a future rulemaking.

164. In Section 3B.24 Markings for Roundabout Intersections, the FHWA adds a new STANDARD statement, which prohibits marking bicycle lanes on roundabout intersections. Many comments, especially from the bicycling community, agreed with this statement.

As a result of a comment from the New York DOT, the FHWA changes Item C of the SUPPORT statement to clarify that the flare or widening for a roundabout intersection approach should allow for proper operation as needed. This is a critical characteristic of a modern roundabout intersection. In addition, the FHWA adds a paragraph to the last OPTION statement regarding the option of using yield lines in roundabout intersections. The FHWA also adds yield lines to the figures illustrating roundabout intersection markings to correct an omission noted by a traffic engineering consultant, regarding yield lines in roundabout intersections. These minor changes to the SUPPORT, OPTION, and figures do not impose any new requirements and are considered editorial in nature.

165. In Section 3C.01 Object Marker Design and Placement Height, the FHWA adds to the text of the first STANDARD statement the sign numbers for Type 1 markers for clarity. The FHWA also adds text to reflect the FHWA's Official Interpretation #3–155(I) [33] to clarify the text for Type 2 markers. The FHWA inserts that the minimum width of both the yellow and black stripes on a Type 3 striped marker shall be 75 mm (3 in), to provide for uniformity of appearance of these markers. The FHWA establishes a 10-year phase-in target compliance date from the effective date of this final rule for existing markers in good condition.

One commenter suggested that there be a maximum width specified for the stripes. The FHWA has no information regarding a reasonable maximum width and therefore additional research is necessary. This issue may be the subject of a future rulemaking.

166. In Section 3D.01 Delineators, the FHWA changes the STANDARD statement indicating that delineators are considered guidance devices rather than warning devices to a SUPPORT statement to be consistent with other parts of the MUTCD. Two commenters from the NCUTCD and the City of Tucson, Arizona, supported this change.

167. In Section 3D.04 Delineator Placement and Spacing, in response to a comment from a traffic engineering consultant, the FHWA adds to the first GUIDANCE statement a description of the three ways that delineators can be mounted with guardrail. This text is needed for consistency with the notes in Figure 3D–1 and to reflect common practices.

168. In Section 3E.01 Colored Pavements, the FHWA makes several changes to reflect that red colored pavement is no longer being considered a traffic control device. The FHWA adds to the SUPPORT statement that colored pavement located between the crosswalk lines is not considered to be a traffic control device. The FHWA removes item A of the STANDARD statement concerning when the color red is used, and removes the second GUIDANCE statement concerning how the color red is used. The FHWA received several comments regarding this change from the NCUTCD, traffic control device manufacturers, and State DOTs, many in favor and requesting that colored pavement for bicycle lanes also be included. One commenter from the Arizona DOT expressed concern that the use of colored pavement may be expanded and used inappropriately, in the absence of further direction. The FHWA adopts the language as proposed in the NPA. The use of colored pavement in bicycle lanes is currently under experimentation and may be appropriate for discussion in a future rulemaking.

Additionally, in the first GUIDANCE statement, the FHWA adopts text that recommends that colors that degrade the contrast of white crosswalk lines, or that might be mistaken by road users as a traffic control application, not be used for colored pavement located between crosswalk lines. Four commenters, representing associations for the blind, agreed with this statement.

Discussion of Adopted Amendments to Part 4—Highway Traffic Signals

169. In Section 4A.02 Definitions Relating to Highway Traffic Signals, the FHWA removes the definition of ''Emergency Beacons'', to correspond with FHWA's decision to remove the proposed section numbered and titled in the NPA ''Section 4F.04 Emergency Beacon'' from this final rule (see discussion of Section 4F.03 Operation of Emergency-Vehicle Traffic Control Signals).

The FHWA received three comments from the Missouri DOT and the cities of Tucson, Arizona, and Plano, Texas, opposed to the proposal to revise the definition of ''Pedestrian Clearance Time'' to correspond to proposed changes in the standards contained in Section 4E.10 Pedestrian Intervals and Signal Phases. The commenters stated that defining pedestrian clearance time as a standard eliminates the flexibility in calculating clearance time. The FHWA disagrees with the commenters because this definition must correspond to the text of Section 4E.10, and in that section, the FHWA adopts the provision to calculate pedestrian clearance time from curb to curb and not to allow clearance time to be calculated to the middle of the farthest lane. (See discussion of Section 4E.10.) The FHWA adopts the language as proposed in the NPA.

The FHWA also received two comments from the NCUTCD and the City of Plano, Texas, requesting that the new definitions for ''Separate Left Turn Signal Face,'' and ''Shared Left Turn Signal Face'' be deleted, because these phrases are described in Section 4D.06

[33] A copy of the FHWA's Official Interpretation number 3–155(I) is available from the American Traffic Safety Services Association's web site at the following URL: *http://www.atssa.com/pubinfo/downloads/5-31-02b.pdf.*

Application of Steady Signal Indications for Left Turns, and the definitions are not completely consistent with practice in some areas of the country. The FHWA disagrees with these comments and adopts the language because different jurisdictions do have their own accepted definitions for these terms that are not necessarily consistent with the MUTCD, thus it is important to have the MUTCD definitions for these terms stated at the beginning of this part to avoid misunderstanding.

170. In Section 4B.02 Basis of Installation or Removal of Traffic Control Signals, the FHWA received one comment from Caltrans regarding the proposal to remove the maximum time limit of one year for signal poles and cables to remain in place after removal of the signal heads from item E of the OPTION statement. The commenter requested deleting this OPTION and not allowing poles to remain in place after removal of a signal, because the commenter believes that this practice could result in a potential safety hazard and maintenance responsibilities. The FHWA adopts the wording proposed in the NPA, because leaving the poles in place is only an option, and agencies can remove poles if they believe them to constitute a significant safety problem and/or if they are reasonably certain that the signal would never be placed back into service.

171. In Section 4B.03 Advantages and Disadvantages of Traffic Control Signals, the FHWA received four comments from the NCUTCD, local DOTs, and a private citizen regarding the proposal to revise item B of the second paragraph of the SUPPORT statement to suggest that signal timing review and updating be conducted if needed and that every two years is just one of several possible frequencies of review. The private citizen suggested that the timeframe reference be lengthened to ''at least every five years'' and strengthened to a STANDARD in order to encourage jurisdictions to maintain traffic signal timings. The NCUTCD and the cities of Tucson, Arizona, and Plano, Texas, opposed a reference to any specific time frame, and suggested that the timeframe be determined by engineering judgment. The FHWA agrees with the concept of these comments and revises the sentence to delete the timeframe reference and to include engineering judgment and significant traffic flow and/or land use changes in determining the frequency of the review of signal timing.

172. In Chapter 4C Traffic Control Signal Needs and Studies, the FHWA received one general comment from a traffic engineering consultant that public transit interests be incorporated when determining the need for installing a traffic control signal. The commenter suggested that either a ninth warrant be added to recognize the special needs associated with bus operations, or one of the current eight warrants be modified to recognize public transit needs. This goes beyond the scope of this rulemaking. Research has just started regarding this issue,[34] and this topic may be suitable for a future rulemaking action.

173. In Section 4C.01 Studies and Factors for Justifying Traffic Control Signals, the FHWA received two comments from Caltrans and the Minnesota DOT opposed to the recommendation in the GUIDANCE statement, which states that a traffic control signal installed under projected conditions should be studied again within one year after placing it in stop-and-go operation to determine if it is still justified and, if it is not justified, it should be taken out of stop-and-go operation or removed. Both commenters stated that conducting these follow-up studies would take additional manpower and could be politically sensitive. Additionally, the Minnesota DOT suggested that Section 4B.02 Basis of Installation or Removal of Traffic Control Signals already contains information related to removing traffic control signals. The Minnesota DOT also noted that the one-year requirement would conflict with Warrant 8, which states that one can use projected volumes five years out. The FHWA revises the language to add, ''Except for locations where the engineering study uses the satisfaction of Warrant 8 to justify a signal'' at the beginning of the second sentence, in order to correct the stated conflict of the proposed language with Warrant 8. In terms of the additional manpower that could potentially be required to conduct studies, the FHWA believes that the number of follow-up studies that would need to be conducted would be few and that, in many cases, the jurisdiction could require the studies to be completed by the developer's traffic engineer. The FHWA adopts the language as proposed in the NPA with the above-mentioned modification to avoid conflict with Warrant 8.

[34] ''Improving Pedestrian Safety at Unsignalized Roadway Crossings'' is a research study that is currently in progress. This is a joint effort between the National Cooperative Highway Research Program (NCHRP) and the Transportation Cooperative Research Program (TCRP). The study is numbered NCHRP Project 3–71 and TCRF D–08. Information is available at the following URL: *http://rip.trb.org.*

The FHWA received one comment from Caltrans opposed to the proposal to allow the OPTION of using the left-turn volume on the major-street as the minor-street volume and the corresponding single direction of opposing traffic as the major street volume. The commenter felt that this would allow signals to be installed at non-intersection locations. The FHWA disagrees with the commenter because this is an OPTION statement and need not be applied. There are many locations, such as left turns onto freeway ramps, where the left turn versus opposing through movement conflict creates the need for a signal. The FHWA adopts the language as proposed in the NPA.

The FHWA received four comments from Caltrans, the Kansas DOT, the Association of Pedestrian and Bicycle Professionals, and a traffic engineering consultant in general agreement with adding item H to the OPTION statement, which indicates that bicyclists may be counted as either vehicles or pedestrians when studying the need for a traffic control signal. To add clarity and consistency for how this is applied, as suggested by the Kansas DOT, the FHWA revises this section and includes this information as a new paragraph within the OPTION and adds a new SUPPORT statement indicating that bicyclists are usually considered as vehicles when they are riding in the street, and as pedestrians when they are clearly using pedestrian facilities.

174. In Section 4C.02 Warrant 1, Eight-Hour Vehicular Volume, the FHWA received several comments regarding the proposal to add a new OPTION statement to explain the use of 56 percent traffic volumes under certain conditions and modify Table 4C–1 to include additional criteria for a combination of Conditions A and B as reflected in the text. Three commenters, including the NCUTCD, the Ohio DOT, and the City of Tucson, Arizona, agreed with the use of the 56 percent traffic volumes. However, six commenters, including Caltrans, the Kansas and North Carolina DOTs, the City of Kennewick, Washington, and a private citizen, were opposed to the use of the 56 percent volumes, stating that the reduced volume allows signals to be installed at locations with low volumes. The FHWA believes that the use of the 56 percent volumes has been successfully applied in the past by many jurisdictions and should be allowed. Because it is an OPTION, jurisdictions have the ability to decide whether or not this option will be used. The FHWA adopts the 56 percent column in the table as proposed.

175. In Section 4C.05 Warrant 4, Pedestrian Volume, based on a comment from the NCUTCD, the FHWA removes the second sentence under item A of the GUIDANCE statement. The NCUTCD suggested that it is not necessary to describe the type of actuated operation that should be used at a traffic control signal, if this warrant is met. The FHWA agrees that the sentence is unnecessary and duplicative of the first sentence and makes this minor editorial change to remove this sentence in this final rule.

176. In Section 4C.06 Warrant 5, School Crossing, based on a comment from the NCUTCD similar to its comment on Section 4C.05 suggesting that it is not necessary to describe the type of actuated operation that should be used at a traffic control signal, if this warrant is met, the FHWA removes the second sentence under item A of the GUIDANCE statement.

177. In Section 4C.08 Warrant 7, Crash Experience, the FHWA received several comments from the NCUTCD, Caltrans, the City of Kennewick, Washington, and a private citizen regarding the proposed OPTION explaining the use of 56 percent traffic volumes. The comments were similar to those received regarding similar proposed wording in Section 4C.02 Warrant 1, Eight-Hour Vehicular Volume. The FHWA adopts the 56 percent column in the table as discussed in Section 4C.02.

178. In Section 4D.01 General, the FHWA removes from the STANDARD statement the requirement that a traffic control signal be operated in either a steady (stop-and-go) mode or a flashing mode at all times. That former requirement was in conflict with other STANDARD statements in Chapter 4E that require flashing indications (flashing UPRAISED HAND pedestrian signal indications) to be displayed during an otherwise steady mode of traffic control signal operation. This change allows practitioners the flexibility to use flashing indications along with steady indications where appropriate in a signal sequence to improve the efficiency or safety of the intersection. The FHWA received comments from the NCUTCD and the U.S. Access Board supporting the removal of this requirement, and the FHWA adopts it.

The FHWA received two comments from the NCUTCD and the Wisconsin DOT opposed to the removal of ''within or'' from item B of the STANDARD statement describing exceptions to locations where STOP signs shall not be placed in conjunction with any traffic control signal operation. The FHWA agrees with the commenters who suggested that these words need to be retained to cover situations where minor driveways or extremely low-volume roadways intersect within the controlled area. The FHWA withdraws this proposal and retains the existing language in the 2000 MUTCD.

The FHWA adds a STANDARD statement prior to the GUIDANCE reiterating text that also appears in Chapter 4C Traffic Control Signal Needs Studies, that restricts signalization of midblock crosswalks if they are located within 90 m (300 ft) from the nearest traffic control signal, unless the proposed traffic control signal will not restrict the progressive movement of traffic. The FHWA believes that repeating the STANDARD found elsewhere in Part 4 will improve the chances of readers properly applying this restriction. The FHWA adds this statement based on a comment received from the NCUTCD recommending this change.

The FHWA also received three comments regarding the GUIDANCE statement that the location of signalized midblock crosswalks should be at least 30 m (100 ft) away from adjacent stop or yield controlled driveways or streets. The NCUTCD suggested revised wording to clarify that midblock crosswalks should not be signalized if they are located within 30 m (100 ft) from adjacent stop or yield controlled driveways or streets. The FHWA agrees with this recommendation and adopts this in this final rule. One commenter from the City of Tucson, Arizona, suggested that there are some situations where a signalized midblock crossing would be less than 30 m (100 ft), and therefore the wording should be changed to allow flexibility. The FHWA disagrees with the commenter because the suggested wording will diminish the text to the point where it is meaningless. Because this is a GUIDANCE, conditions where there is a good engineering reason to deviate would still be able to be accommodated without violating the MUTCD. A traffic engineering consultant questioned the five-year phase-in target compliance date, stating that it would be a burden for jurisdictions to address existing locations where signalized midblock crosswalks did not meet the new criteria within a five-year timeframe. Accordingly, the FHWA changes the phase-in target compliance date from five years to 10 years from the effective date of this final rule.

However, the FHWA clarifies that the December 31, 1996, compliance date established in Official Ruling IV–8 (Sg–44) [35] issued in 1987 is not affected by this ''new'' 10-year phase-in target compliance date. The 1987 ruling was that all ''half-signals'' (signalized pedestrian crossings where only the major street and the pedestrian crosswalk are provided with signal indications, and the minor street is stop-sign controlled) located ''at'' intersections had to be either relocated to a midblock location or modified to include signalization of the minor street approaches by December 31, 1996. That date still applies to such non-conforming signals that were in place as of the 1987 ruling. (Some of the ''half-signals'' still have not been relocated or modified.) The new 10-year date is intended to apply only to ''half-signals'' installed after 1987 that may not be immediately at the intersection but are within 100 feet of a side street or driveway controlled by stop or yield signs.

179. In Section 4D.03 Provisions for Pedestrians, the FHWA received one comment from a traffic engineering consultant suggesting that consideration of accessible pedestrian signals be an OPTION, rather than GUIDANCE. The FHWA strongly disagrees because this GUIDANCE merely recommends accessible pedestrian signals ''where appropriate'' and refers to Sections 4E.06 Accessible Pedestrian Signals and 4E.09 Accessible Pedestrian Signal Detectors. In those sections, there is guidance on what conditions should prompt a study and what factors should be considered, but the decision to use the device is optional. The FHWA strongly supports provisions in the MUTCD that provide accommodations for all pedestrians and road users. In addition, the FHWA feels that by including this as a GUIDANCE, it will encourage more traffic engineers to consider issues involving pedestrians with disabilities. The FHWA adopts the changes to this section as proposed in the NPA.

180. In Section 4D.04 Meaning of Vehicular Signal Indications, the FHWA received several comments from the NCUTCD, State DOTs, and a private citizen regarding the proposal to remove the phrase ''unless otherwise determined by law'' from the beginning of the STANDARD statement. While the NCUTCD and a private citizen were in favor of the change, the Ohio, North Carolina, Florida, and Oregon DOTs were opposed to it. Those opposed were concerned that the removal of the

[35] Official Ruling IV–8 (Sg.–44) is described on page OR–IV–4 of the 1988 edition of the MUTCD. This ruling was published in a final rule in 1987 in the **Federal Register** at 52 FR 7126.

phrase would cause legal issues within their respective States. The FHWA adopts the changes as specified in the NPA, because the intent of this change is to enhance traffic safety by encouraging national uniformity between States in the meaning of traffic signal indications.

The FHWA received several comments from Caltrans, the Minnesota DOT, the U.S. Access Board and the Association of Pedestrian and Bicycle Professionals regarding the addition to item A.3 that the pedestrian does not automatically have the right of way when starting to cross at the time that a green signal is first shown. The commenters generally opposed this addition, thinking that it was actually in conflict with State laws that require vehicles to yield to pedestrians. Some slower drivers who enter the intersection during the last moments of the yellow change interval or red clearance interval may not clear the intersection before the start of the next movement's green interval. Pedestrians should have a legal requirement to let this traffic exit the intersection before stepping into the path of an oncoming vehicle. The FHWA adopts the text as proposed in the NPA, which corresponds to recent changes in the Uniform Vehicle Code.[36]

The FHWA received one comment from the North Carolina DOT opposing the addition to item C.2 that a turn on a RED ARROW signal indication after stopping is allowed only when a sign is in place permitting the turn on red arrow (to conform to the Uniform Vehicle Code) and the corresponding removal of the existing OPTION statement at the end of the section dealing with right-turn on a red arrow. The commenter felt that the meaning and application of red signal indications should be the same for red balls and arrows. FHWA disagrees because it believes that national uniformity and traffic safety will be best served by the text as proposed in the NPA. The FHWA adopts the proposed text.

181. In Section 4D.05 Application of Steady Signal Indications, the FHWA received several comments from the NCUTCD, State and local DOTs, regarding additions and revisions to item B.4 of the STANDARD statement. This item lists conditions under which a steady circular yellow signal indication may be displayed to an approach from which drivers are turning left. The commenters were particularly concerned with signal displays that result in what is referred to as the ''yellow trap.'' A ''yellow trap'' occurs when drivers in the opposing direction are not simultaneously being shown a circular yellow indication. This can lead to drivers who are attempting to make a permissive left turn falsely thinking that the opposing traffic is coming to a stop. The Minnesota and Oregon DOTs are opposed to allowing any situations in which the ''yellow trap'' can occur. The FHWA recognizes that there are some locations where no other signal sequence other than one that includes a yellow trap is reasonably feasible due to unique combinations of intersection geometrics and traffic volumes. Accordingly, the FHWA revises item B.4(c) to account for such conditions. Additionally, based on changes in Section 2C.39 Traffic Signal Signs, the FHWA revises the legend of the W25–1 and W25–2 signs item B.4(c) and (d) to clarify their message, and to be consistent with Section 2C.39.

The FHWA received comments from the NCUTCD, Caltrans, the North Carolina DOT, and the City of Kennewick, Washington, opposed to adding to item F.2 of the STANDARD statement that would require the use of a ''U Turn Yield to Right Turn'' sign when U-turns on a green arrow signal conflict with right turns on a green arrow signal. While the North Carolina DOT agreed with the proposed change to advise U-turn motorists to yield, the remaining commenters felt that drivers would not understand the proposed wording on the sign and that additional research is necessary. The FHWA concurs and, because there is no data to support or refute those concerns, the FHWA changes this to an OPTION statement, allowing the use of the sign but not requiring it. This OPTION statement is located at the end of the section. The FHWA also modifies Section 2B.45 Traffic Signal Signs accordingly.

182. In Section 4D.06 Application of Steady Signal Indications for Left Turns, the FHWA received several comments from the NCUTCD, Caltrans, and the Oregon and Minnesota DOTs suggesting clarifying language to item A in the STANDARD statement that provides for the use of separate or shared left turn signal faces and separate signal face sequences for ''permissive only'' mode of operation. The FHWA agrees and includes additional clarifying language in this final rule.

183. In Section 4D.09 Unexpected Conflicts During Green or Yellow Intervals, the FHWA received comments from the NCUTCD and the City of Tucson, Arizona, regarding the revision to item A of the STANDARD statement. These commenters were concerned about the proposal to add an exception for the situation regarding U-turns as described in item F.2 of Section 4D.05 Application of Steady Signal Indications to the prohibition of displaying a steady GREEN ARROW or YELLOW ARROW signal indication to vehicular movements that conflict with other vehicles moving on a green or yellow signal indication. (*See* the discussion regarding Section 4D.05) Accordingly, the FHWA revises item A to be consistent with the changes in Section 4D.05 that change the text to an OPTION.

184. In Section 4D.10 Yellow Change and Red Clearance Intervals, the FHWA received several comments from Caltrans, AAA, and a private citizen proposing changes to how the yellow change interval and the red clearance interval are calculated. These comments go beyond the scope of this rulemaking, and would need to be addressed in a future rulemaking.

185. In Section 4D.12 Flashing Operation of Traffic Control Signals, the FHWA received two comments from the cities of Tucson, Arizona, and Kennewick, Washington, in agreement and two comments from Caltrans and the Wisconsin DOT opposed to revising the GUIDANCE statement to eliminate the word ''maximum'' in describing the duration of six seconds for a steady red clearance interval in the change from red-red flashing mode to steady (stop and go) mode. Caltrans felt that the time duration should not be fixed at a specific number of seconds because of difficulties in timing the interval exactly. The FHWA disagrees with the opposing comments because less than six seconds is not enough time to recognize that the signal has stopped flashing, and more than six seconds is too long, creating unnecessary congestion at the intersection. Also, modern traffic signal control equipment provides accurate digital timing of an interval such as this. The FHWA adopts the language as proposed in the NPA.

186. In Section 4D.15 Size, Number, and Location of Signal Faces by Approach, the FHWA received two comments from AAA and Caltrans suggesting stronger language to require the use of 300 mm (12 inch) signal heads, rather than 200 mm (8 inch) signal heads in order to improve visibility and safety. Because there were no changes to this wording proposed in

[36] The ''Uniform Vehicle Code and Model Traffic Ordinance,'' 2000 edition, is published by the National Committee on Uniform Traffic Laws and Ordinances (NCUTLO), 107 S. West Street, #110, Alexandria, Virginia 22314. It is available for inspection at the FHWA Office of Transportation Operations, 400 7th Street, SW., Room 3408, Washington, DC 20590, as prescribed at 49 CFR part 7. Purchase information is available on the Web site for NCUTLO at *http://www.ncutlo.org*.

the NPA, such a change is outside the scope of this rulemaking and would need to be addressed in a future rulemaking.

The FHWA received eleven comments from the NCUTCD, State and local DOTs and a private citizen regarding the proposal to increase the maximum allowable distance for 300 mm (12 inch) far side signal heads (without a supplemental near-side signal head) from the stop line to 55 m (180 ft) based on local engineering judgment. Eight commenters, representing the North Carolina DOT, Palm Beach, Pinellas, Miami-Dade, Sarasota, and Broward counties in Florida, the City of Boca Raton, Florida, and a private citizen strongly supported the change. Three commenters from the NCUTCD, the Minnesota DOT, and the City of Plano, Texas, were opposed to it, stating concerns about older drivers, poor weather conditions, and need for additional research data. The FHWA disagrees with those opposed because experience has shown that 12 inch signals are adequately visible from 180 feet away in most circumstances, and this change will provide considerable cost savings for State and local agencies. If an agency does not want to place signal heads more than the previous 150-foot distance, they are not required to do so. The FHWA adopts the language as proposed in the NPA.

187. In Section 4D.18 Design, Illumination, and Color of Signal Sections, the FHWA removes the GUIDANCE statement concerning the color of signal housings because there is no consensus that yellow signal housings are universally best in all of the various environments. In actual practice, far fewer than 50 percent of the signal heads in the United States are highway yellow. California, New York, and many other very large jurisdictions require signal heads to be other colors, such as green, black, gray, or brown. Some states require the front surfaces of the housings to be black while painting the back surfaces of the housing yellow. The FHWA received one comment from the City of Tucson, Arizona, supporting the removal of this GUIDANCE. The FHWA adopts the removal in the final rule.

188. In Section 4E.02 Meaning of Pedestrian Signal Head Indications, the FHWA received several comments from the U.S. Access Board and organizations representing the blind community opposed to the revision of item A of the STANDARD statement to indicate that a pedestrian does not automatically have the right of way when starting to cross when a WALK signal is first shown. These comments were identical to those received for Section 4D.04 Meaning of Vehicular Signal Indications suggesting that the change was in conflict with State laws that require vehicles to yield to pedestrians. Some slower drivers who enter the intersection during the last moments of the yellow change interval or red clearance interval may not clear the intersection before the start of the next movement's green interval. Pedestrians should let this traffic exit the intersection before stepping into the path of an oncoming vehicle. The FHWA received one comment from the City of Tucson, Arizona, in support of the proposed change. The FHWA adopts the text as proposed in the NPA, which corresponds with recent changes in the Uniform Vehicle Code.

189. In Section 4E.03 Application of Pedestrian Signal Heads, the FHWA received one comment from Caltrans opposing the proposal to delete item D of the STANDARD statement. The commenter cited potential safety reasons for objecting to the change in this section. The FHWA agrees and revises the statement to clarify that that pedestrian signal heads are required at locations where engineering judgment determines that multiphase signal indications would confuse pedestrians using a crosswalk guided only by vehicular signal indications. The language in the 2000 MUTCD implied that all multiphase signals needed pedestrian signals, even in the absence of any pedestrian activity.

190. In Section 4E.04 Size, Design, and Illumination of Pedestrian Signal Head Indications, the FHWA received several comments from NCUTCD, organizations representing the blind community as well as State and local DOTs regarding the proposal in the first paragraph of the STANDARD statement that symbolized messages for pedestrian signal heads are required to be solid and not allowing the use of ''outline style'' symbols. Five commenters representing NCUTCD and organizations associated with the blind were in favor of the proposed language, while four commenters representing the New York DOT, the cities of Kennewick, Washington, Salt Lake City, Utah, and Tucson, Arizona, and a private citizen opposed the language. Those opposed to the language expressed concern that countdown style pedestrian signals would not be permitted, because many of those that are currently available commercially are of the outline style, and that new light emitting diode (LED) style outline symbol pedestrian signal heads that have recently been installed in cities such as Salt Lake City, Utah have been favorably received. To address these comments, the FHWA revises the language to state that all new pedestrian signal head installations shall consist of solid symbolized messages and that existing pedestrian signal head indications with lettered or outline style symbol messages may be retained for the remainder of their useful service life.

The FHWA received several comments from representatives of the blind community requesting the addition of a new statement indicating that the intensity of LED pedestrian signal indications should respond to ambient light. The concern is that during daytime conditions, persons with low vision benefit from pedestrian signal indications displayed at their maximum intensity, and at night signals at maximum intensity create glare conditions for people with low vision, making it difficult for them to see crosswalk lines and other features that aid crossing. The addition of a statement regarding ambient light could have potentially significant impacts on agencies and thus must be addressed in a future rulemaking. This would require inclusion in a future NPA for public review and comment. Accordingly, the FHWA declines to address this comment at this time.

The FHWA adds a seventh paragraph to the STANDARD statement to specify the flash rate for the flashing upraised hand pedestrian signal head indication to be consistent with flash rates specified in other sections of Part 4. There were no comments on this change and the FHWA adopts this change.

Additionally, the FHWA adds an OPTION statement and a STANDARD statement at the end of the section to allow and describe the use of an animated eyes symbol on pedestrian signal heads. Three commenters from the Kansas and Minnesota DOTs opposed these additions, stating that the animated eyes might be confusing to pedestrians and questioning their effectiveness. The FHWA disagrees with the comments because research [37, 38] has documented benefits to alerting pedestrians to look both ways for approaching vehicles. Because use of these symbols in an option, jurisdictions can decide not to use this device.

[37] *Use of Animation in LED Pedestrian Signals to Improve Pedestrian Safety,* Ron VanHouten, *et al.,* ITE Journal, February 1999. This issue of ITE Journal is available for purchase from the Institute of Transportation Engineers at *http://www.ite.org* and click on ''Bookstore''.

[38] *Use of Animated LED 'Eyes' Pedestrian Signals to Improve Pedestrian Safety,* Florida Department of Transportation, January 2000. It is available at the following URL: *http://www11.myflorida.com/safety/ped_bike/handbooks_and_research/research/led_eyes.pdf.*

191. In Section 4E.06 Accessible Pedestrian Signals, there were several comments from the Minnesota DOT and representatives of the blind community regarding the proposed addition to the second paragraph of the fourth GUIDANCE statement on how sound pressure levels of the accessible walk signal tone should be measured. Based on those comments, the FHWA revises the statement to indicate that the sound pressure level should conform to the requirements of ISO 1996–1:1982 and ISO 1996–2:1987,[39] rather than explicitly stating the method to be used when measuring sound pressure levels.

192. The FHWA received several comments from NCUTCD, State and local DOTs, representatives of the blind community and private citizens regarding the proposal to add a new section numbered and titled ''Section 4E.07 Countdown Pedestrian Signals'' containing OPTION, STANDARD, and GUIDANCE statements on the design, use, and operation of countdown pedestrian signals. Countdown pedestrian signals have been shown by research and experimentation in a variety of cities, such as San Jose, California,[40] to be beneficial to pedestrians by providing additional information to help pedestrians judge the time remaining to cross the street. Uniformity in the design and operation of countdown pedestrian signals is needed to minimize pedestrian confusion. Many commenters, including the NCUTCD, the City of Tucson, Arizona, Lake County, Illinois, and the Association of Pedestrian and Bicycle Professionals were in agreement with adding the new section, and the NCUTCD had comments and suggestions regarding the specific wording. Based on the comments received, the FHWA clarifies the OPTION statement to indicate that the countdown display informs pedestrians of the number of seconds remaining in the pedestrian change interval (rather than the number of seconds remaining to cross the street, as proposed in the NPA). Additionally, the FHWA clarifies the second STANDARD statement to reflect that after the countdown displays zero, the display shall remain dark until the beginning of the next countdown. The FHWA also clarifies the third STANDARD statement to indicate that countdown displays shall not be used during the walk interval nor during the yellow change interval of a concurrent vehicular phase.

The FHWA clarifies the first GUIDANCE statement to reflect the way that the countdown timing is controlled as compared to the timing of the flashing DON'T WALK interval. Most countdown devices manufactured today contain timers external to the signal controller and they ''learn'' how long the flashing DON'T WALK is and adjust themselves to time out so that the zero will be reached at the end of the flashing DON'T WALK. This creates a logistical problem for signalized midblock crosswalks or exclusive ''scramble'' pedestrian phases. The countdown timer of most existing devices will not be able to make the zero occur four seconds prior to the end of flashing DON'T WALK, which is timed by the controller. The solution for the midblock pedestrian signal situation is to set the flashing DON'T WALK interval to be 4 seconds less than the calculated required ''pedestrian crossing time'' and to also include a 4 second ''red clearance'' interval for the controller phase that times the pedestrian WALK—DON'T WALK. During the red clearance interval, a steady DON'T WALK is displayed to the crosswalk while vehicular traffic continues to have red signals. The pedestrian clearance time is thus the sum of the flashing DON'T WALK time plus the 4 second red clearance. This method will produce a display for the pedestrian that is identical to what he/she would see with a countdown at a crosswalk that has concurrent vehicular movements. Accordingly, the FHWA clarifies the GUIDANCE statement to read:

> If used with a pedestrian signal head that does not have a concurrent vehicular phase, the pedestrian change interval (flashing UPRAISED HAND) should be set to be approximately four seconds less than the required pedestrian crossing time (see Section 4E.10) and an additional clearance interval (during which steady UPRAISED HAND is displayed) should be provided prior to the start of the conflicting vehicular phase. In this case, the countdown display of the number of remaining seconds should be displayed only during the display of the flashing UPRAISED HAND, should display zero at the time when the flashing UPRAISED HAND changes to steady UPRAISED HAND, and be dark during the additional clearance interval prior to the conflicting vehicular phase.

The FHWA adopts this new Section 4E.07 with changes and renumbers the remaining sections in Chapter 4E accordingly. To minimize any impact on State or local governments, the FHWA establishes phase-in target compliance dates of 10 years for the hardware and three years for the operational requirements (sequence of display, timing, etc.) for existing countdown pedestrian signals in good condition.

193. In Section 4E.08 Pedestrian Detectors, (numbered as Section 4E.07 in the 2000 MUTCD), the FHWA removes from the last STANDARD statement the sentence that instructional signs are not required if special purpose pushbuttons are used. The current design of special purpose pushbuttons does not require a sign to make users aware of their intended purpose. Additionally, the FHWA adds to the third GUIDANCE statement comparable text that the special purpose pushbuttons do not need an instructional sign. One commenter from the City of Tucson, Arizona, was in support of all proposed changes to the section.

The FHWA received several comments from the U.S. Access Board and from organizations representing the blind community regarding the proposal to add an OPTION statement at the end of the section to allow the use of special pedestrian detectors to provide additional crossing time for pedestrians with special needs. Those comments indicated that an extended pushbutton press is the preferred method of calling for extra pedestrian time. Based on the comments, the FHWA revises the wording to state, ''At signalized locations with a demonstrated need and subject to equipment capabilities, pedestrians with special needs may be provided with additional crossing time by means of an extended pushbutton press.''

194. In Section 4E.09 Accessible Pedestrian Signal Detectors, (numbered as Section 4E.08 in the 2000 MUTCD), the FHWA changes the SUPPORT statement to a STANDARD statement for consistency because other definitions in the MUTCD are standards. Additionally, the FHWA relocates the existing first STANDARD statement to become part of the new first STANDARD statement at the beginning of the section. There were no comments on these changes, and the FHWA adopts these changes.

The FHWA received several comments from organizations representing the blind community opposed to the proposal to retitle Figure 4E–2 from ''Recommended Pushbutton Locations for Accessible Pedestrian Signals'' to ''Typical Locations for Accessible Pedestrian Signals,'' because these locations for accessible pedestrian

[39] These standards are available from the International Organization for Standardization web site at the following URL: *http://www.iso.ch/iso/en/CatalogueListPage.CatalogueList.*

[40] Pedestrian Countdown Signals: An Experimental Evaluation, Volume 1, by Jan L. Botha, Aleksaner A. Zabyshy, and Jennifer E. Day—San Jose State University, Department of Civil and Environmental Engineering, and by Ron L. Northhouse, Jaime O. Rodriguez, and Tamara L. Nix—City of San Jose Department of Transportation, May, 2002. A copy is available on the docket.

signals are not common or typical at this point in time. The FHWA agrees with these comments and withdraws this proposal. Because the figure illustrates how to apply the GUIDANCE, the title of ''Recommended * * *'' is more accurate than ''Typical * * *'' Three commenters from associations representing the blind community commented that the FHWA's arrows symbolizing push buttons in Figure 4E–2 were incorrectly revised in the NPA. The pushbuttons and arrows are shown correctly on this figure in the NPA. They were shown incorrectly in the 2000 MUTCD. The FHWA adopts this change as shown in the NPA.

195. In Section 4E.10 Pedestrian Intervals and Signal Phases, (numbered as Section 4E.09 in the 2000 MUTCD), the FHWA removes from the first OPTION statement the desire to favor the length of an opposing signal phase as a condition for using walk intervals as short as 4 seconds. Three commenters representing associations for the blind community agreed, and the FHWA adopts this revision.

The FHWA received over 15 comments from State and local DOTs, the U.S. Access Board, and private citizens regarding the proposal to increase the pedestrian clearance time so that it is sufficient to allow the pedestrian to clear the full width of the traveled portion of the roadway in the second GUIDANCE statement. Six commenters, representing the U.S. Access Board and associations for pedestrians, bicyclists, and the blind, were in agreement with the change.

Eight commenters, representing Caltrans, the North Carolina, Oregon, and Missouri DOTs, the Cities of Campbell, California, and Dallas, Texas, and a traffic engineering consultant opposed the change, stating cost of retiming, lack of need, increased cycle lengths, and difficulty with signal progression as the basis for their opposition. While the FHWA realizes that this is an issue for which there is significant interest and diverging opinions, the FHWA adopts the language as proposed in the NPA. Despite some potential impacts on agencies, the FHWA believes that it is appropriate to better address pedestrian timing needs and requiring calculation to the far side of the traveled portion of the roadway is now appropriate for adequate pedestrian safety. With the increases in the number of coordinated signal systems, with platoons of vehicles potentially arriving at the intersection at the start of the green indication, and with more prevalent aggressive driving behavior, it is a significant safety concern for pedestrians to be given only enough clearance time that they are in the middle of a travel lane when the platoon arrives at the start of green. This change will result in only a very small increase in the pedestrian clearance time but will significantly enhance pedestrian safety. The FHWA establishes a phase-in target compliance date of five years for this GUIDANCE, for existing traffic control signals in good condition to minimize any impact on State or local governments.

Additionally, the FHWA adds to the first paragraph of the last OPTION statement the option of containing the pedestrian clearance time within the vehicular green and yellow change intervals. The North Carolina DOT agreed with this change. The FHWA adopts this change as proposed in the NPA. However in a directly related issue, the NCUTCD commented that, in the second paragraph of the STANDARD statement, revisions should be made to prohibit the flashing of the UPRAISED HAND (symbolizing DON'T WALK) indication during the yellow change or red clearance intervals of the concurrent vehicular phase. The NCUTCD stated that this would give pedestrians approximately 4 to 5 seconds of extra time to get to the curb or edge of traveled way prior to the release of opposing traffic, similar to the red clearance interval to which drivers have become accustomed. The FHWA disagrees with this comment because to make the prohibition of flashing UPRAISED HAND extending into the yellow interval apply to all locations without the countdowns would require the opportunity for additional public notice and comment in a future rulemaking action due to the potentially large cost impacts to some jurisdictions that currently have all their controllers set up to display flashing UPRAISED HAND through the yellow interval. However, because of the need for consistency, safety, and uniformity of operation of all countdown pedestrian signal displays, the FHWA adds a new STANDARD statement in this section stating: ''If countdown pedestrian signals are used, a steady UPRAISED HAND (symbolizing DON'T WALK) signal indication shall be displayed during the yellow change interval and any red clearance interval (prior to a conflicting green being displayed.) (See Section 4E.07).'' This is for consistency with requirements for countdown pedestrian signal displays adopted in Section 4E.07.

196. In Section 4F.01 Applications of Emergency-Vehicle Traffic Control Signals, the FHWA proposed adding to the OPTION statement the choice of installing an Emergency Beacon instead of an emergency vehicle traffic control signal. This corresponded to the proposed new Section 4F.04 in the NPA that proposed adding Emergency Beacons as an alternative to Emergency Vehicle Traffic Control Signals. Based on comments on Section 4F.04, the FHWA is not adopting that section. (See also the discussion of Section 4F.04). Therefore, the FHWA withdraws the proposed addition to the OPTION statement in Section 4F.01.

Additionally, the FHWA revises the GUIDANCE statement to recommend following the provisions of Chapter 4D Traffic Control Signal Features not only if a numerical signal warrant is met, but also if a decision is made to install a signal after an engineering study, for consistency with Chapter 4C Traffic Control Signal Needs Study. There was one comment from the City of Tucson, Arizona, in support of this change, and the FHWA adopts this change.

197. In Section 4F.02 Design of Emergency-Vehicle Traffic Control Signals, the FHWA revises the GUIDANCE statement to indicate that two signal faces are required for each major street approach, and that at least one of those two signal faces should be located over the roadway. This change is for consistency with Chapter 4D Traffic Control Signal Features. There was one comment from the City of Tucson, Arizona, in support of this change. The FHWA adopts this change.

198. The NPA included a proposal by the FHWA to add a new section following Section 4F.03 Operation of Emergency-Vehicle Traffic Control Signals. This proposed new section was numbered and titled ''Section 4F.04 Emergency Beacon'' and contained STANDARDS, SUPPORT, GUIDANCE, and OPTIONS concerning the design, use, and application of Emergency Beacons. Five public agencies, the Caltrans and the Minnesota, North Carolina, Oregon, and Wisconsin DOTs, commented in opposition to the addition of this section, citing many concerns with the Emergency Beacon. Most commenters stated that the proposed new section included non-standard operations and signal displays that are in conflict with driver expectation. Concerns expressed included:

(1) The proposed arrangement of colors of indications within the signal face for an Emergency Beacon is different from all other signal faces. People with red/green color blindness may perceive it to be flashing red and green alternately based on indication location within the signal face;

(2) Under normal traffic signal operation, signal faces must always have at least one indication illuminated while the proposed language requires the signal face to be dark;

(3) Because this is a traffic control signal requiring the motorist to stop, the requirement for two signal faces per approach should still hold. A car driving behind a truck may not be able to see the single indication; and

(4) It is better to keep the operation of this type of a signal uniform with other traffic control signals.

The public agencies also cited concerns about the validity of the studies [41] that were conducted to show that it was a good device. There was only one comment in favor of the Emergency Beacon and that was from a traffic control device manufacturer. Due to overwhelming opposition and valid concerns, the FHWA withdraws this section from this final rule. While the manufacturer of the device has indicated some potential benefits to public agencies, including cost savings compared to a normal Emergency Vehicle Traffic Signal, the serious issues raised by the commenting public agencies indicate that further research is needed before the Emergency Beacon could be considered again in the future.

199. In Section 4G.02 Design of Traffic Control Signals for One-Lane, Two-Way Facilities, the FHWA changes the GUIDANCE statement, concerning the applicability of provisions of Chapter 4D Traffic Control Signal Features to traffic control signals for one-lane two-way facilities and exceptions to these provisions, to a STANDARD statement. One commenter from the City of Tucson, Arizona, agreed with this change. The FHWA adopts this change.

200. In Section 4I.02 Design and Location of Movable Bridge Signals and Gates, the FHWA removes from item A of the STANDARD statement the explanation that three-section signal faces with red, yellow and green signal lenses are generally used if movable bridge operation is quite frequent. In the NPA, the FHWA also proposed adding comparable text in a proposed SUPPORT statement, which would follow the third paragraph of the STANDARD statement. The FHWA received one comment on this change from the NCUTCD, recommending that the proposed SUPPORT be changed to GUIDANCE, to make it more in line with the intent of the previous text in the 2000 MUTCD and to clarify the language. The FHWA incorporates the NCUTCD's recommended changes in this final rule. In the 2000 MUTCD, the applicable text was in a STANDARD, so it is inappropriate to change it to SUPPORT. A recommendation to consider the use of three-section signal faces when moveable bridge operation is frequent is appropriate, for safety reasons.

Additionally, the FHWA removes the phrase ''on long bridges or causeways'' from the last paragraph of the second STANDARD statement because two sets of gates may be used on bridges or causeways of any length and what constitutes a long bridge or causeway is not and cannot be readily defined. There were no comments on this change. The FHWA adopts this change.

201. In Section 4J.03 Design of Lane-Use Control Signals, the FHWA adds to the OPTION statement to allow the use of smaller size lane-use control signal faces for one-way and two-way left turn arrows in areas with minimal visual clutter and low speeds. The FHWA changes the definition of low speeds from ''70 km/h (45 mph) or less'' to ''less than 70 km/h or less than 40 mph'' to be consistent with similar criteria regarding signal lens sizes in Chapter 4D Traffic Control Signal Features. There were two comments from the NCUTCD and the City of Tucson, Arizona, in support of this change. The FHWA adopts this change with minor editorial revisions in this final rule.

202. In Section 4K.04 Speed Limit Sign Beacon, the FHWA adds to the STANDARD statement a requirement that a Speed Limit Beacon be used only to supplement a Speed Limit sign. One commenter from the City of Tucson, Arizona, agreed with this change. The FHWA adopts this change.

203. In Section 4L.01 Application of In-Roadway Lights, the FHWA revises the SUPPORT statement to include marked crosswalks in advance of roundabout intersections as additional situations for possible use of in-roadway lights. In the NPA, highway-rail grade crossings and highway-light transit rail grade crossings were also included in the statement, however the FHWA removes those elements due to opposition expressed by seven commenters from the NCUTCD, railroad agencies, associations representing railroads, the City of Tucson, Arizona, and a private citizen as well as the lack of sufficient research supporting its use. One commenter from the City of Plano, Texas, specifically agreed with adding the use of in-roadway lights at crosswalks in advance of roundabout intersections.

204. The FHWA received one general comment and two specific comments regarding Section 4L.02 In-Roadway Warning Lights at Crosswalks. A traffic engineering consultant suggested a SUPPORT statement be added to discuss possible trip and fall hazards of lights in crosswalk lines, because they are not readily detected by a blind person's cane. The U.S. Access Board made two suggestions regarding the flash rate for in-roadway warning lights and the use of audible and vibrotactile cues at crossings with in-roadway lights. These comments are beyond the scope of this rulemaking and may be addressed in a future rulemaking.

205. In the NPA, the FHWA proposed to add a new section following Section 4L.02 In-Roadway Warning Lights at Crosswalks. The proposed new section was numbered and titled ''ion 4L.03 In-Roadway Lights at Highway-Rail Grade Crossings and Highway-Light Rail Grade Crossings' and contained STANDARD, GUIDANCE, and OPTION statements describing the design, application, and operation of in-roadway warning lights and in-roadway stop line lights at highway-rail and highway-light rail transit grade crossings. Based on the comments received from the NCUTCD, railroad owners, associations representing the railroad industry, the State DOTs of Wisconsin, Ohio, Nevada, and Oregon, the Cities of Plano, Texas, and Tucson, Arizona, the FHWA determines that the proposed addition of this section was premature. Although the concept of using in-roadway flashing lights at grade crossings logically makes sense as a means of increasing driver observance of the crossing, the details of colors, locations, and specific applications of in-roadway lights for grade crossings has not been sufficiently researched to draw supportable conclusions. Such research is underway in California and Michigan, but results will not be available for several years. The commenters in opposition to adding this section make strong arguments and cite some valid concerns. Therefore, the FHWA withdraws the proposed section in its entirety in this final rule and will await research results, prior to consideration of a possible rulemaking on this subject in the future.

Discussion of Adopted Amendments to Part 5—Traffic Control Devices for Low-Volume Roads

206. In Section 5A.03 Design, the FHWA revises the second paragraph of the STANDARD statement to refer to sign sizes on low speed, low volume roads by adding a sentence to this paragraph stating that the minimum

[41] ''Special Use Emergency Flashing signals Report'', Archie Burnham & Associates, prepared for Richard D. Jones, Right-of-Way, Inc., 1995. This report is available on the docket.

sign sizes shall only be used on low-volume roads where the 85th percentile or posted speed is less than 60 km/h (35 mph). This additional text was recommended in comments received from the NCUTCD indicating that the FHWA should provide clarification about the use of minimum sign sizes on low-volume rural roads. The FHWA believes that it is necessary to clarify the intent of the minimum sign size, to provide adequate safety by preventing signs that are too small to be read at higher speeds from being used on higher speed, low-volume rural roads.

The FHWA received five comments from the NCUTCD, the Oregon and Minnesota DOTs, and a traffic engineering consultant regarding Table 5A–1 Sign Sizes on Low-Volume Roads (titled ''Minimum Sign Sizes on Low-Volume Roads'' in the NPA and 2000 MUTCD). The NCUTCD suggested a revised table that includes separate columns for Minimum, Typical, and Oversized sizes to provide more information to agencies. The FHWA agrees with this comment and incorporates this revised table into this final rule. The NPA included a proposal to reduce the minimum size of the W20–1, W20–7a, W20–7b, W21–1a, and W21–6 signs from 900 x 900 mm (36 x 36 in) to 600 x 600 mm (24 x 24 in) to be consistent with minimum sizes of other signs of comparable design. The Minnesota and Oregon DOTs opposed the reduction in these sign sizes on grounds of worker safety. The revised table in this final rule includes the 900 x 900 mm (36 x 36 in) as the typical size and 750 x 750 mm (30 x 30 in) as the minimum size for the W20–1, W3–4, W20–7b, and W21–1a signs, and shows 750 x 750 mm (30 x 30 in) as the typical size and 600 x 600 mm (24 x 24 in) as the minimum size for the W21–6 sign. Accordingly, this revised table addresses comments from the DOTs regarding specific sign sizes by providing three possible sizes, rather than just one size, for all of the signs. The FHWA also deletes the NO CENTER STRIPE (W8–12) sign from Table 5A–1 in this final rule, because this sign has little if any application to low volume roads, and adds the PASS WITH CARE (R4–2) and the Two-Direction Large Arrow (W1–7) signs.

207. In Section 5B.03 Speed Limit Signs (R2 Series), the FHWA received five comments from the NCUTCD, the Minnesota, Oregon, and Ohio DOTs, as well as the City of Tucson, Arizona, regarding the proposal to revise the illustration of the R2–1 metric speed limit sign in Figure 5B–1 Regulatory Signs on Low-Volume Roads to correspond to a similar proposed revision in Chapter 2B Regulatory Signs. In the NPA, the proposed design of the metric speed limit sign included the metric speed value within a red circle with the legend ''km/h'' below it. Two commenters agreed with the proposal and three opposed it. See discussion regarding Chapter 2B Regulatory Signs where FHWA changes the color of the circle to black.

208. In Section 5B.04 Traffic Movement and Prohibition Signs (R3, R4, R5, R6, R9, R10, R11, R12, R13, and R14), the FHWA adds an illustration of the PASS WITH CARE, (R4–2), sign to accompany the DO NOT PASS (R4–1) sign in Figure 5B–1 Regulatory Signs on Low-Volume Roads because agencies commonly use this sign. The FHWA received one comment from the City of Tucson, Arizona, in support of this change.

209. In Section 5C.05, the FHWA retitles the section from ''Narrow Bridge Sign (W5–2a)'' to ''NARROW BRIDGE Sign (W5–2)'' because in Chapter 2C Warning Signs, the FHWA removes the symbol version of this sign and requires the use of only the word version of the sign. There were four comments from the NCUTCD, the Ohio DOT, and the City of Tucson, Arizona, in support of this change, and the FHWA adopts this change. Related to this, the FHWA adds a phase-in target compliance date of 10 years from the effective date of this final rule for the replacement of Narrow Bridge symbol signs, consistent with the phase-in target compliance date for Section 2C.16 NARROW BRIDGE Sign (W5–2).

210. In Section 5C.09 Vehicular Traffic and Nonvehicular Signs (W11 Series and W8–6), the FHWA received two comments from the Arizona and Ohio DOTs regarding the proposal in the NPA to change the section title to ''Motorized Traffic and Nonvehicular Signs (W11 Series and W8–6).'' The commenters suggested that the terms should be changed to better accommodate bicycles. The FHWA agrees and revises the title by changing ''Motorized'' to ''Vehicular,'' consistent with changes made in Chapter 2C.

211. In Section 5C.10 Advisory Speed Plaque (W13–1), the FHWA revises the illustration of the metric advisory speed plaque to correspond to a similar revision in Chapter 2C. The design of the metric advisory speed plaque includes the metric speed value within a black circle with the legend ''km/h'' below it. The FHWA received two comments supporting the change, and two opposed to it. See discussion regarding Chapter 2C where FHWA adopts the use of the metric speed value within a black circle with the legend ''km/h'' below it. That discussion also applies to this section.

212. In Section 5C.12 NO TRAFFIC SIGNS Sign (W18–1), the FHWA changes the sign number code in the title and elsewhere in this section and elsewhere in the MUTCD from ''W16–2'' to ''W18–1''. The W16–2 code is already assigned to the Distance Ahead Plaque, thus this duplication is corrected by reassigning the NO TRAFFIC SIGNS Sign code to W18–1.

213. In Section 5F.02 Highway-Rail Grade Crossing (Crossbuck) Sign (R15–1, R15–2), the FHWA revises the last paragraph of the STANDARD statement to create two new paragraphs, which are duplicates of text contained in the second standard statement in Section 8B.03 regarding the use of retroreflective strips. The FHWA incorporates this minor editorial change for consistency with other sections of the MUTCD.

214. In Section 5F.04, STOP and YIELD Signs, the FHWA removes the words ''State or local'' from the OPTION statement, to reflect that jurisdictions responsible for grade crossings may be any level of government or may be quasi-governmental or non-governmental. One commenter from the City of Tucson, Arizona, supported this change. However, another comment from the Wisconsin DOT suggested that if the words ''State and local'' are removed from this section that this section would then be inconsistent with Section 8B.08 STOP (R1–1) or YIELD (R1–2) Signs at Highway-Rail Grade Crossings, which still refers to State or local highway agencies. The commenter suggested that this section contain similar criteria and guidance to that contained in Section 8B.08. The FHWA agrees in principle; however, it is Sections 2B.04 to 2B.10 that contain the appropriate criteria that should be referenced. The FHWA adopts the changes as proposed in the NPA and includes a cross-reference to Sections 2B.04 to 2B.10.

215. In Section 5G.03 Channelization Devices, the FHWA replaces the second occurrence of the phrase ''temporary traffic control zone'' with ''work space'' in the OPTION statement to correspond with the appropriate terminology in Part 6 Temporary Traffic Control. There was one comment from the City of Tucson, Arizona, in support of this change, and the FHWA adopts this change.

216. In Section 5G.05 Other Traffic Control Devices, the FHWA adds a SUPPORT statement referring to Figure 5G–1 for some of the signs that might be applicable in a temporary traffic control zone on a low-volume road. There were two comments in support of this change from the NCUTCD and the City of

Tucson, Arizona, and the FHWA adopts this change.

The FHWA also revises Figure 5G–1 Temporary Traffic Control Signs on Low-Volume Roads, to change the W20–7a Flagger sign to conform with the correctly designed sign in Section 6F.29 Flagger Sign (W20–7a, W20–7). There was one comment from the NCUTCD in support of this change. The FHWA also changes the metric version of the W13–1 Advisory Speed Plaque to conform to the use of the black circle for metric speed values as adopted in Chapter 2C. Two commenters from the Minnesota and Ohio DOTs were opposed to this change, suggesting that the use of the color black and the circle symbol are non-standard, and motorists in the U.S. will not understand. Similar to previous discussions in Chapter 2C, the FHWA disagrees and adopts the change as proposed in the NPA. The NCUTCD suggested that the NO CENTER STRIPE (W8–12) sign be deleted from this figure. The FHWA agrees and deletes the NO CENTER STRIPE sign from the figure, as well as from Table 5A–1, because this sign has little if any application to low volume roads.

Discussion of Adopted Amendments to Part 6—Temporary Traffic Control

217. In the NPA, the FHWA proposed to add to a number of places in sections throughout Part 6, references to ensure that temporary traffic controls involving or affecting pedestrian walkways and paths account for the needs of pedestrians with disabilities. These proposed additions followed the accessibility requirements of the Americans with Disabilities Act of 1990 (ADA) (Pub. L. 101–336, 104 Stat. 327, July 26, 1990. 42 U.S.C. 12101–12213 (as amended)). While the U.S. Access Board, many private citizens and associations representing the blind generally agreed with including the accessibility requirements, there were many comments from private citizens and from the Ohio and Kansas DOTs suggesting that the multiple references were unnecessarily repetitive, and should be handled in a different manner in this final rule. In addition, the Virginia and Oregon DOTs suggested that requirements based on the proposed ADA Accessibility Guidelines for Buildings and Facilities (ADAAG)[42] rulings on accessibility of public rights-of-way should not be incorporated until the new guidelines are adopted by the U.S. Access Board. The FHWA notes that the requirements in the MUTCD are not based on the proposed ADAAG ruling, rather they are based on existing laws, such as the Americans with Disabilities Act (ADA).

Based on general comments and a suggestion by the NCUTCD, the FHWA places a common introductory STANDARD statement at the beginning of Sections 6A.01, 6B.01, 6C.01, 6D.01, 6F.01, 6G.01, 6H.01, and 6I.01 to emphasize accessibility provisions. The FHWA revises the reference as the ''Americans with Disabilities Act of 1990 (ADA), title II, Paragraph 35.130'' to provide a more specific legal reference.

The FHWA also adds a SUPPORT at the beginning of each chapter in Part 6 that the acronym ''TTC'' refers to ''temporary traffic control'' and replaces the words with the acronym in many places throughout Part 6. This is in response to a comment from a traffic engineering consultant suggesting that this acronym is well understood and would reduce unnecessary text.

Additionally, the FHWA received comments from the NCUTCD and the Ohio DOT suggesting that the parenthetical reference ''(drivers, bicyclists, and pedestrians)'' after ''road users'' be removed, because the term ''road users'' is already defined as including these entities. There were also arguments from the Florida DOT, the City and County of Denver, Colorado, and many private citizens to retain the text as proposed throughout Part 6 to remind readers of the importance of considering bicyclists and pedestrians. The FHWA includes the parenthetical reference the first time it appears in each chapter, and removes it from many of the remaining occurrences. The FHWA also revises the parenthetical reference to change ''drivers'' to ''motorists'' and to include pedestrians with disabilities, to reflect changes to the definition of ''road user'' that FHWA makes in Part 1 and elsewhere in the MUTCD. Additionally, the FHWA adds, in a number of sections in Part 6, references to the needs of bicyclists through temporary traffic control zones, as many temporary traffic control plans affect a substantial amount of bicycle activity. The FHWA received eight comments from private citizens in support of these changes, and adopts these changes.

218. In Section 6A.01 General, the FHWA received two comments from a traffic engineering consultant opposed to the existing second STANDARD statement regarding the responsibility for temporary traffic control plans and devices as being that of the public body or official having jurisdiction for guiding road users. There were no significant changes to this statement proposed in the NPA, therefore these comments are outside the scope of this rulemaking.

Additionally, the FHWA adds to a number of places in this section and a number of sections in Part 6, statements that temporary traffic control principles are applicable to managing traffic incidents along the roadway because incidents are temporary road or lane closures and are one of the major causes of congestion. In this regard, the FHWA adds a new chapter titled ''Chapter 6I Control of Traffic Through Traffic Incident Management Areas.'' There were no specific comments regarding the inclusion of traffic incidents in Chapter 6A, and individual comments regarding Chapter 6I are addressed in the discussion for that chapter.

219. In Section 6B.01 Fundamental Principles of Temporary Traffic Control, the FHWA adds to a number of places in this section references about accounting for the needs of pedestrians with disabilities, bicyclists, and traffic incident management responders.

The FHWA received three comments from the NCUTCD, the City of Charlotte, North Carolina, and a private citizen suggesting that the last paragraph of the second SUPPORT be restored to contain the text in the 2000 MUTCD, which included the sentence, ''While these principles provide guidance for good temporary traffic control for the practitioner, they do not establish standards and warrants.'' The commenters felt that removing this sentence would change the emphasis of the section to mean that it contains STANDARDs. The FHWA disagrees and does not include this sentence because it is a generic statement in reference to fundamental principles. Only the second and last paragraphs of the section are STANDARDs, the rest are GUIDANCE and SUPPORT.

The FHWA withdraws the proposal to add to the first and second GUIDANCE statements that the needs of pedestrians with disabilities should be considered when planning, designing and establishing a temporary traffic control zone, because this information is now contained in a new STANDARD statement at the beginning of the section.

Additionally, the FHWA adds to the second GUIDANCE statement that the needs of commercial vehicle operators should be assessed and appropriate accommodations made when

[42] ''Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities,'' as amended through January 1998, is published by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board), 1331 F Street, NW., Suite 1000, Washington, DC 20004–1111. It may be obtained from the Access Board, or viewed electronically at the following URL: *http://www.access-board.gov/adaag/html/adaag.htm.*

developing a public relations plan for a temporary traffic control zone. The FHWA received two comments from the National Institute for Occupational Safety and Health (NIOSH) and a private citizen supporting this change, and the FHWA adopts this change.

220. In Section 6C.01 Temporary Traffic Control Plans, the FHWA adds to the first GUIDANCE statement that planning for all road users should be part of the planning and design of the temporary traffic control plan. The FHWA also adds a fourth paragraph to the first GUIDANCE statement that provisions for effective continuity of accessible circulation paths for pedestrians should be incorporated into the temporary traffic control process. Several commenters suggested editorial revisions for clarity, which the FHWA agrees with and adopts in this final rule.

221. In Section 6C.02 Temporary Traffic Control Zones, the FHWA proposed to add a sentence at the end of the SUPPORT statement that the incident area begins at the first warning sign or vehicle with a rotating/strobe light and extends to the last temporary traffic control device or to a point where road users are allowed to return to the original lane alignment. The FHWA received two comments from ATSSA and the City of Tucson, Arizona, in support of this change, and one comment from the National Institute for Occupational Safety & Health (NIOSH) suggesting that ''warning sign or rotating strobe/lights'' may be too specific because flares, cones, or other devices might also be used to warn of an incident ahead. The FHWA agrees that the first responder to an incident might appropriately use other devices, and revises the text in this final rule to indicate that the incident management area begins at the first warning device (such as a sign, light, or cone).

222. In Section 6C.03 Components of Temporary Traffic Control Zones, the FHWA received several comments from the NCUTCD, the City of Charlotte, North Carolina, the Illinois DOT, and a private citizen regarding proposed changes to Figure 6C–1 Component Parts of a Temporary Traffic Control Zone. The FHWA modifies the drawing to show a shoulder taper as one of the potential components of a temporary traffic control zone. The NCUTCD suggested that the shoulder taper should be removed because no other tapers are shown and a shoulder taper is not required in the situation pictured. The City of Charlotte, North Carolina, and a private citizen indicated that the advance warning area was referenced incorrectly to the beginning of the shoulder taper, rather than the beginning of the merge taper. The FHWA believes that the intent of the figure is to show all of the potential components of a temporary traffic control zone, rather than a specific example, and the shoulder taper should be included in the figure. However, the FHWA revises the figure to more accurately show the shoulder taper in advance of the merge taper, and dimensions the Advance Warning Area to the start of the merge taper, as suggested by the two commenters. The FHWA also includes advance warning signs on both sides of the one-way roadway as suggested by the City of Charlotte, North Carolina, and a private citizen. The FHWA labels the area above the Work Space as a Buffer Space (longitudinal). The City of Charlotte, North Carolina, and a private citizen stated that this area is not considered a buffer space because it is downstream of the Work Space. The FHWA disagrees with the commenters because the OPTION statement in Section 6C.06 Activity Area indicates that buffer spaces may be positioned either longitudinally or laterally with respect to the direction of road user flow, and that the activity area may contain one or more lateral or longitudinal buffer spaces.

223. In Section 6C.04 Advance Warning Area, the FHWA received several comments from the City of Charlotte, North Carolina, and private citizens about the sign spacings shown in Table 6C–1 Suggested Advance Warning Sign Spacing. There were no changes proposed to this table in the NPA, therefore the comments regarding the distances shown in this table are outside the scope of this rulemaking and such changes would need to be addressed in a future rulemaking. The FHWA notes that these are suggested sign spacings and actual placement may be adjusted in order to improve sign visibility due to roadway geometry, intersections or driveways, or other factors, based on engineering judgment.

224. In Section 6C.06 Activity Area, the FHWA adds a new table numbered and titled ''Table 6C–2 Stopping Sight Distance as a Function of Speed.'' This table is identical to Table 6E–1. The current Table 6C–2 is renumbered as Table 6C–3, Taper Length Criteria for Temporary Traffic Control Zones. The FHWA received two comments from the Wisconsin DOT and the City of Tucson, Arizona, in support of this new table, two comments from the City of Charlotte, North Carolina, and a private citizen suggesting that this table be titled ''Guidelines for Longitudinal Buffer Lengths,'' and three comments from the City of Charlotte, North Carolina, and private citizens opposed to the values in the new table. The commenters who opposed the values in the table suggested that the values from Table 6E–1 of the 2000 MUTCD should be used because they represent a buffer length based upon the braking distance that would provide adequate opportunity to stop before entering a workspace. These commenters also suggested that the proposed longer lengths would result in inordinately and unnecessarily long buffers, which will encourage misuse and potentially lack of use, particularly in urban areas. The FHWA disagrees because this table is referenced in an OPTION statement, and practitioners may use discretion in determining the lengths of longitudinal buffer spaces. The FHWA adopts the table, as proposed in the NPA.

The FHWA adds a reference to new Table 6C–2 to the second OPTION statement, as these distances may be used to determine the length of the longitudinal buffer space. The FHWA received two comments from the Illinois DOT and a private citizen suggesting this change, and the FHWA revises the statement slightly in this final rule to add clarity.

In the third SUPPORT statement, the FHWA proposed to remove the phrase ''formidable device'' as well as the reference to arrow panels as they relate to determining buffer spaces. The FHWA received one comment from a private citizen in support of this change, and three comments from the NCUTCD, the City of Charlotte, North Carolina, and a private citizen opposed it. Those commenters who opposed the change suggested restoring the 2000 MUTCD wording, or offered alternate wording. They also suggested that this SUPPORT statement be combined with the second SUPPORT statement. The FHWA agrees to reword the sentence in the SUPPORT statement to state, ''When a shadow vehicle, arrow panel, or changeable message sign is placed in a closed lane in advance of a work space, only the area upstream of the vehicle, arrow panel or changeable message sign constitutes the buffer space.'' The FHWA does not combine the second and third SUPPORT statements in this final rule.

In the last GUIDANCE statement, the FHWA adds that incident response storage areas should not extend into any portion of the buffer space. The FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen suggesting that this GUIDANCE should be a STANDARD. The FHWA disagrees because of the flexibility that is needed to respond to unplanned

incidents therefore, this statement remains a GUIDANCE in this final rule.

225. In Section 6C.07 Termination Area, the FHWA clarifies the STANDARD statement to indicate that temporary traffic control devices other than END ROAD WORK signs can be used to signify the end of a termination area. The FHWA received one comment from the City of Tucson, Arizona, in support of this change, and one comment from a private citizen opposed to it. The opposing commenter suggested that the STANDARD statement be deleted or changed to an OPTION because the many work zones have no deviation from the normal path. The FHWA disagrees with changing the STANDARD statement because it is clear that if road users have not been diverted from their normal path, then a termination area would not be needed, and this section would not apply. The FHWA adopts the change as proposed in the NPA.

To provide flexibility to jurisdictions, the FHWA adds to the OPTION statement that a longitudinal buffer space may be used between the work space and the beginning of the downstream taper. The FHWA received one comment from the NCUTCD opposed to this change, stating that the paragraph should be deleted because the area between the work space and the beginning of the downstream taper is not a buffer space. The FHWA disagrees because such a buffer space could be used in a variety of locations, such as for a center lane closure on a multi-lane undivided highway or on a two-lane, one-way operation. The FHWA adopts this change as proposed in the NPA.

The FHWA also received two comments from the City of Charlotte, North Carolina, and a private citizen suggesting that an additional paragraph be added to the OPTION stating that the use of END ROAD WORK signs is optional for most daytime maintenance and utility operations. The FHWA disagrees that this sentence is needed because there are several terms within the section to indicate that use of an END ROAD WORK sign is not mandated for termination areas.

226. In Section 6C.08 Tapers, the FHWA revises the first GUIDANCE statement to indicate that the appropriate taper length should be determined using the criteria in Tables 6C–3 and 6C–4 to address a comment from a private citizen stating that the word ''minimum'' does not accurately describe the taper lengths in the table. The FHWA agrees that the change is needed to correct the error, and revises the GUIDANCE statement in this final rule. The same commenter suggested that the FHWA also revise the second paragraph of the GUIDANCE statement, to remove the word ''maximum'' when referring to the distances between devices in a taper. The FHWA disagrees because it would not be acceptable to have longer spacing unless there is a good engineering reason to do so. The FHWA also inserts a new table numbered and titled, ''Table 6C–4 Formulas for Determining Taper Lengths'' immediately following Table 6C–3. This table contains the formulas that were included as notes to Table 6C–3 in the NPA, except that they are included in a tabular format for clarity. This table is also identical to Table 6H–4.

In the fifth GUIDANCE statement, the FHWA deletes the word ''minimum'' from the description of the length of a downstream taper in this final rule. The FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen suggesting the word ''minimum'' be replaced with the word ''maximum,'' however the FHWA disagrees. Criteria for downstream tapers, as shown in Table 6C–3 indicate a set distance, not a minimum or maximum length.

The FHWA received three comments from the Ohio DOT, the City of Charlotte, North Carolina, and a private citizen suggesting changes to the shifting and downstream taper entries in Table 6C–3. Because there were no changes proposed to this table (other than the table number), these comments are outside the scope of the NPA. Such changes would need to be proposed in a future rulemaking.

The FHWA revises Figure 6C–3 Example of a One-Lane, Two-Way Traffic Taper to illustrate a downstream longitudinal buffer space (between the work space and traffic from the open-lane approach); a downstream taper, noted ''100 ft MAXIMUM;'' shifts the flagger and warning sign symbols on the open-lane approach accordingly so that the flagger is stationed well beyond the last cone in the downstream taper; and on both approaches, shift the END ROAD WORK symbols so that they are opposite the last warning signs.

227. In Section 6C.10 One-Lane, Two-Way Traffic Control, the FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen suggesting that an OPTION be added after the STANDARD statement to indicate that where traffic speeds and volumes are low, and where the work area is short and sight distance is good, vehicular traffic may be self-regulating. The FHWA disagrees with adding this language at this time because similar text is already included in the SUPPORT statement. Changing that SUPPORT to an OPTION may be considered in a future rulemaking.

The FHWA received two comments from the same commenters suggesting that the last paragraph of the GUIDANCE be revised to delete pilot cars as one of the means for controlling opposing traffic flows on a one-lane roadway where affected traffic is not visible from one end to the other because a pilot car alone cannot coordinate traffic movements at both ends of the operation. The FHWA agrees with the commenter and, rather than deleting the option to use a pilot car, the FHWA clarifies that a pilot car uses a flagger as defined in Section 6F.54 PILOT CAR FOLLOW ME Sign (G20–4).

228. In Section 6D.01 Pedestrian Considerations, the FHWA proposed adding a new GUIDANCE statement at the beginning of the section to indicate that pedestrians of all ages and abilities should be provided a detectable and usable travel path. The FHWA received one comment from the NCUTCD opposed to the new GUIDANCE, suggesting that the text be reworded and classified as a SUPPORT statement. The FHWA disagrees and adds the introductory STANDARD statement at the beginning of this section to emphasize accessibility provisions, as discussed above at the start of the Part 6 discussion.

In the NPA, the FHWA proposed modifying the second SUPPORT statement to include information on other publications that can provide useful data for assisting the planning for, and the design of, pedestrian facilities. The FHWA received one comment from the NCUTCD opposing this language and suggesting that a new Section 6D.02 Accessibility Considerations be added. The FHWA also received three comments from commenters representing the visually disabled community suggesting additional wording to clarify that speech messages provided by an audible information device are more helpful to pedestrians with disabilities than Braille and raised character signs. The FHWA agrees with the commenters and withdraws the proposed language. In this final rule, the FHWA adds Section 6D.02 Accessibility Considerations and revises Section 6D.01 by adding two paragraphs to the SUPPORT with more detailed information describing how to provide information to pedestrians with visual disabilities via audible messages, and adds a GUIDANCE statement recommending locator tones be used with pushbuttons, to be consistent with Part 4 of the MUTCD.

Additionally, the FHWA proposed adding to the second STANDARD statement that in addition to visual signage, equivalent information in alternate formats for pedestrians who have visual disabilities shall be provided so that they are not trapped on a closed facility. The FHWA received four comments from the NCUTCD, the Wisconsin DOT, the City of Charlotte, North Carolina, and a private citizen opposed to the new text, stating that it is an unreasonable requirement for all sidewalks, or that it should be a GUIDANCE, rather than a STANDARD. The NCUTCD, the City of Charlotte, North Carolina, and a private citizen suggested that the text be revised to explicitly state that where pedestrians with visual disabilities normally use the closed crosswalk, a barrier detectable by a person with a visual disability traveling with the aid of a long cane shall be placed across the full width of the closed crosswalk. The FHWA agrees with the suggested text and adopts that text in this final rule. The FHWA also received two comments from the City of Charlotte, North Carolina, and a private citizen suggesting that the existing first sentence, requiring advance notification of sidewalk closures by the entity conducting the work was vague. The FHWA agrees and expands the sentence in this final rule to indicate that advance notification of sidewalk closures shall be provided to the maintaining agency.

The FHWA adds to the second SUPPORT statement that pedestrians are reluctant to add distance or out-of-the-way travel to a destination. The NCUTCD opposed this new text and three commenters representing associations for the blind community suggested including additional text regarding the types of barriers that are detectable by a person with visual disability. The additional information regarding barrier types goes beyond the scope of this rulemaking and the FHWA adopts the changes as proposed in the NPA.

In the second GUIDANCE, the FHWA proposed adding information about the general needs of pedestrians with disabilities. The NCUTCD opposed the additional information, the City of Charlotte, North Carolina, and a private citizen requested more information, and three commenters representing associations for the blind community opposed the text as written in the NPA, but suggested new text. The FHWA agrees with the suggested text from the associations for the blind community, which provides additional information regarding how to communicate with pedestrians with visual disabilities in order to alert them to blocked routes, alternate crossings, and sign and signal information. The FHWA adopts this text in this final rule.

The FHWA proposed to revise item C of the second GUIDANCE statement to include accessible paths as well as provisions for pedestrians who have visual disabilities in planning for pedestrians in temporary traffic control zones. The NCUTCD opposed the revision, suggesting that this information be included in a new Section 6D.02 Accessibility Considerations. The City of Charlotte, North Carolina, and a private citizen requested additional information regarding how to provide audible warnings, and three commenters representing associations for the blind community suggested new wording to incorporate the need to provide pedestrians with visual disabilities with instructions, as well as a reference to accessible pedestrian signals. The FHWA agrees with the suggested text from associations representing the blind community, and adopts the revised language with the additional information in this final rule.

The FHWA also adds to the second GUIDANCE statement that a pedestrian route should not be severed and/or moved for nonconstruction activities such as parking for vehicles and equipment. The FHWA received one comment from the Florida DOT in support of this change, and one comment from the NCUTCD opposed, stating redundancy. The FHWA adopts the change as proposed in the NPA.

The FHWA proposed expanding the third GUIDANCE statement to include additional information regarding how to delineate a pedestrian footpath through or around a work site. The NCUTCD opposed the revision, suggesting a new Section 6D.02 Accessibility Considerations be added. A commenter from the City of Charlotte, North Carolina, and a private citizen requested additional clarification, and three commenters representing associations for the blind community suggested rewording to reference Section 6F.65 Temporary Traffic Barriers as Channelizing Devices for a description of detectable barriers. To address the comments, the FHWA clarifies the wording to indicate that if the previous pedestrian facility was accessible to pedestrians with disabilities, then the footpath provided during temporary traffic control should also be accessible, and to denote additional information regarding grades and use of barriers and channelizing devices.

The FHWA also adds an OPTION statement that wherever it is feasible, closing off the work site from pedestrian intrusion may be preferable to channelizing pedestrian traffic along the site with temporary traffic control devices.

The FHWA adds a new SUPPORT statement following the third GUIDANCE to provide information on how to communicate pedestrian routes to pedestrians with disabilities. The FHWA received one comment from the NCUTCD opposed to this new statement, two comments from the City of Charlotte, North Carolina, and a private citizen requesting additional clarification and three comments from associations representing the blind community suggesting rewording of the statement to clarify the use of audible instructions, which the FHWA adopts in this final rule.

In the NPA, the FHWA proposed to expand the third GUIDANCE statement to indicate that fencing should be continuous and detectable. The FHWA withdraws this proposal because this information is included in new Section 6D.02 Accessibility Considerations in this final rule.

In the NPA, the FHWA proposed to expand the first paragraph of the fourth GUIDANCE statement to indicate that ballast and other elements should not intrude into the accessible passage. The FHWA withdraws this proposal, because this information is included in new Section 6D.02 Accessibility Considerations in this final rule.

The FHWA expands the last paragraph of the fifth GUIDANCE statement to clarify that access to work space by equipment as well as workers across pedestrian walkways should be minimized. The FHWA received one comment from the NCUTCD opposed to this change, citing disagreement with the wording regarding accessibility. The FHWA disagrees with the commenter and adopts the change in this final rule.

In the NPA, the FHWA proposed to expand the third paragraph of the fifth GUIDANCE statement to include information about pedestrian accessibility and to add a paragraph at the end of the fifth GUIDANCE statement to indicate that audible information be provided at locations where a temporary pedestrian crossing is implemented. The FHWA received one comment from the NCUTCD opposed to these changes, suggesting that this information is repetitive. The FHWA withdraws these proposals, because this information is included in new Section 6D.02 Accessibility Considerations in this final rule.

The FHWA removes the second sentence from the sixth SUPPORT statement regarding the use of tape,

rope, and other devices along a designated pathway. The FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen opposed to the removal of the sentence. The commenters did not provide a justification for their opposition, and the FHWA removes the sentence in this final rule, because these devices should not be used where persons with visual disabilities are expected and because use of these devices is strongly discouraged in any case.

In the NPA, the FHWA proposed to add a paragraph at the beginning of the last GUIDANCE statement to indicate that tape, rope, and other devices are not detectable and should not be used as a control for pedestrian movements. The FHWA received one comment from the NCUTCD opposed to this change. The FHWA believes that this information is important to provide safe passage for persons with visual disabilities and adopts this text, as proposed in the NPA, in this final rule. The FHWA also expands the (new) second paragraph of this GUIDANCE to emphasize that pedestrian routes should be preserved in urban and commercial suburban areas and that alternate routing should be discouraged. The FHWA received one comment from the NCUTCD opposed to this language; however, to emphasize the importance of pedestrian routes in these areas, the FHWA adopts this language in this final rule.

In the NPA, the FHWA proposed to add a SUPPORT statement at the end of Section 6D.01 to state that the absence of a continuous passage, including accessible features, might preclude the use of the facility by pedestrians with disabilities. The FHWA received one comment from the NCUTCD opposed to this new paragraph, and the FHWA withdraws this proposal, because this information is included in new Section 6D.02 Accessibility Considerations in this final rule.

The FHWA establishes a phase-in target compliance date of five years from the effective date of this final rule for the changes in this section, which in turn affects many other sections in Part 6. However, this does not affect the obligations placed on governments by the ADA laws and regulations.

229. The FHWA adds a new section numbered and titled, ''Section 6D.02 Accessibility Considerations.'' This new section contains SUPPORT, GUIDANCE, and STANDARD statements specific to pedestrian accessibility, including pedestrians with visual disabilities, in temporary traffic control zones. The FHWA received several comments suggesting that the accessibility information that was repeated throughout Part 6 in the NPA should be consolidated into one location. While the FHWA includes some accessibility information in each chapter of Part 6 in this final rule, the FHWA includes this new section to provide all of the necessary information in one place. The dual provisions provide the practitioner with the necessary emphasis to ensure that there is consideration of the accessibility needs for persons with disabilities in the planning, design, implementation and operation of temporary traffic control zones. The FHWA strongly supports provisions in the MUTCD that provide accommodations for all pedestrians and road users. The FHWA establishes a five year phase-in target compliance date from the effective date of this final rule for accessibility considerations in temporary traffic control zones, which in turn affects many other sections in Part 6.

230. In Section 6D.03 Worker Safety Considerations (numbered and titled Section 6D.02 Worker Considerations in the NPA), the FHWA changes the title as suggested by NIOSH, because the first SUPPORT statement in this section rightly indicates that worker safety is equally as important as road user safety. The FHWA also adds to the SUPPORT statement information on the need to separate workers on foot from moving construction vehicles. The FHWA received one comment from the NCUTCD opposed to this new language, suggesting that the issues covered in the new text are covered by the Occupational Safety and Health Administration (OSHA) regulations and should not be included in the MUTCD. The Laborers' Health and Safety Fund of North America and NIOSH expressed support for the new language, stating that including this language in the MUTCD is very important, because it emphasizes the hazards to workers on foot created by moving construction vehicles and equipment within the work zone. Comments from the Kansas DOT and NIOSH suggested editorial revisions, which the FHWA adopts in this final rule.

In the NPA, the FHWA proposed adding to the GUIDANCE statement that workers exposed to the risks of moving roadway traffic or construction equipment should wear high visibility apparel meeting the requirements of the American National Standard for High Visibility Safety Apparel [43] and labeled as meeting ANSI 107–1999 Standard Performance for Class 1, 2, or 3 risk exposure. The FHWA received seven comments from the North American Association of Transportation Safety and Health Officials (NAATHSO), ATSSA, the Virginia DOT, Caltrans, the Laborers' Health and Safety Fund of North America, NIOSH, and a traffic control device manufacturer in support of this change, three of which suggested stronger language to change this to a STANDARD. The FHWA received thirteen comments from the NCUTCD, contractors, and State and local highway agencies opposed to the proposed safety apparel recommendations. The FHWA adopts the wording, as proposed in the NPA, but makes changes in Section 6E.02 High Visibility Safety Apparel to address issues regarding high-visibility flagger safety apparel.

While NIOSH supported the proposed wording that a ''competent person'' be responsible for the worker safety plan within the activity area, several commenters representing State and local highway agencies and contractors opposed the language, stating that the phrase was vague. The FHWA believes that this language is not vague and that it is specific enough to be reasonably applied by jurisdictions. The FHWA adopts the text as proposed in the NPA.

In the NPA, the FHWA proposed a phase-in target compliance date of five years from the effective date of this final rule for this change. The FHWA received comment from the International Safety Equipment Association (ISEA) and the Laborers' Health and Safety Fund of North America, indicating that worker clothing is an expendable item that wears out quickly and must be replaced much sooner than five years and therefore no special phase-in target compliance date is needed. Other commenters suggested that a shorter phase-in target compliance date is advisable because of the important safety benefits of high visibility safety apparel. The FHWA believes that high-visibility safety apparel for all workers, including supervisors, is very important for safety in temporary traffic control areas. Not all worker clothing wears out and is replaced quickly, especially the safety apparel worn on the job site by supervisors and managers. To provide for a reasonably rapid implementation of this important change while

[43] ''American National Standard for High Visibility Safety Apparel,'' ANSI/ISEA 107–1999, 1999 Edition, or equivalent revision, is available for purchase from ISEA—The Safety Equipment Association, by telephone (703) 525–1695, facsimile (703) 528–2148, mail ISEA, 1901 North Moore Street, Suite 808, Arlington, VA 22209. Also, a summary of information about the three classes of apparel in the standard is available at the following URL: *http://www.safetyequipment.org/hivisstd.htm.*

minimizing impacts on State and local governments, the FHWA establishes a three-year phase-in target compliance date from the effective date of this final rule for the changes regarding worker safety apparel.

Additionally, in the same GUIDANCE statement, the FHWA adds ''Activity Area'' to the list of key elements of worker safety and temporary traffic control management that should be considered to improve worker safety. The FHWA received two comments from Laborers' Health and Safety Fund of North America and NIOSH in support of this new text, and one comment from the NCUTCD opposed to it. The NCUTCD suggested that this text is already covered in Chapter 6B. The FHWA disagrees because worker safety is very important and early planning is where many significant worker safety improvements can be made. The FHWA adopts the new text in this final rule, with minor editorial changes.

The FHWA includes ''Worker Safety Planning'' to the list of key elements of worker safety and temporary traffic control management that should be considered to improve worker safety. The worker safety plan should be in accordance with the Occupational Safety and Health Act of 1970, ''General Duty Clause'' Section 5 (a)(1)—Public Law 91–596, 84 Stat. 1590, December 29, 1970, as amended, and with the requirement to assess worker risk exposures for each job site and job classification in accordance with the Occupational Safety and Health Administration (OSHA) Regulations as found in 29 CFR 1926.20(b)(2). While NIOSH supported this new language, there were comments from the NCUTCD, the Virginia, Kansas, California, and North Carolina DOTs, the City of Charlotte, North Carolina, and a private citizen opposed to it. The opposing commenters suggested that the information in this paragraph is beyond what would be typical MUTCD material. The FHWA disagrees with the opposing commenters because this is GUIDANCE rather than a STANDARD, and the FHWA adopts this text to emphasize the importance of worker safety and to assure that the applicable laws and regulations are referenced.

The FHWA adds a new SUPPORT statement at the end of the section that contains information previously included in item E of the GUIDANCE statement regarding the judicious use of special devices to maintain their effectiveness. The FHWA received one comment from NIOSH opposing this change, stating that the statement merits continued emphasis in order to prevent misuse. The FHWA disagrees because the original placement of this statement in item E made it erroneously appear to be an OPTION, when in fact it was a SUPPORT. The FHWA adopts the change as proposed in the NPA.

231. In Section 6E.01 Qualifications for Flaggers, the FHWA rewrites the GUIDANCE statement in its entirety to describe in terms more appropriate to a temporary traffic control zone environment the recommended skills and abilities for a flagger. This change reflects the state of the practice in flagger selection and training. The FHWA received no comments regarding this change, and adopts this change.

232. In Section 6E.02 High-Visibility Safety Apparel (titled High-Visibility Clothing in the NPA), the FHWA proposed to add to the first STANDARD statement the requirement that flaggers wear safety apparel meeting the requirements of the American National Standard for High Visibility Apparel and labeled as meeting ANSI 107–1999 Standard Performance for Class 3 risk exposure, to improve worker visibility to approaching road users. While the FHWA received six comments from ATSSA, the Virginia DOT, the City of Tucson, Arizona, the International Safety Equipment Association, the Laborers' Health and Safety Fund of North America, and NIOSH in support of using Class 3 high visibility safety apparel for flaggers under all conditions, there were sixteen comments from the NCUTCD, ATSSA, NAATSHO, the South Carolina, North Carolina, Wisconsin, and Oregon DOTs, contractors, and a private citizen opposed to it, at least for daytime activity. Several commenters stated that with the extreme heat conditions in the South, Midwest, and Western States that their workers endure in the summer, wearing the required uniform jacket and pants or jumpsuit would create more health problems. Based on all of the docket comments, the FHWA agrees that Class 3 high visibility safety apparel for flagger activity should not be a requirement. Instead, the FHWA establishes that, for both day and night time activity, Class 2 high visibility safety apparel shall be required. The FHWA also concludes that for nighttime flagger activity, Class 3 high visibility safety apparel should be considered for flagger wear rather than Class 2. Even with the requirements for flagger stations to be illuminated for night activity that the FHWA establishes in Section 6E.05 Flagger Stations, Class 3 safety apparel should at least be considered for nighttime flagger wear because of its increased retroreflective surface area. The FHWA revises the STANDARD statement and adds a GUIDANCE statement accordingly.

In the NPA, the FHWA proposed a phase-in target compliance date of five years for this change. The FHWA received comments from ATSSA and the Virginia DOT indicating that flagger clothing is considered expendable because it wears out and must be replaced much sooner than five years and therefore no special phase-in target compliance date is needed. Other commenters suggested that a shorter phase-in target compliance date is advisable because of the important safety benefits of high visibility safety apparel. The FHWA believes that high-visibility safety apparel for all flaggers, including supervisors who sometimes perform this duty, is very important for safety in temporary traffic control areas. Not all worker clothing wears out and is replaced quickly, especially the safety apparel worn on the job site by supervisors and managers. To provide for a reasonably rapid implementation of this important change while minimizing impacts on State and local governments, the FHWA establishes a three-year phase-in target compliance date from the effective date of this final rule for the changes regarding flagger safety apparel.

233. In Section 6E.03 Hand-Signaling Devices, the FHWA proposed in the NPA to add to the OPTION statement other design configurations for adding white lights to the STOP/SLOW paddle to improve visibility and conspicuity. The FHWA received two comments from the City of Tucson, Arizona, and the Laborers' Health and Safety Fund of North America in support of the proposed changes and nine comments from NCUTCD, the Arizona DOT, Caltrans, private citizens, and traffic control device manufacturers opposed to it. The opposing commenters suggested that red and yellow lights should also be permitted, and that the information regarding the design configurations needed more detail. The FHWA agrees that these other colors of lights will be helpful to road users at night, as determined by a New York State study.[44] Therefore, the FHWA revises the OPTION statement in this final rule to include the use of red and yellow lights, as appropriate. The FHWA also adds two new paragraphs to the following STANDARD statement to provide appropriate restrictions on the mixing of colors of lights on the STOP

[44] A copy of ''Effectiveness of STOP/SLOW Paddles Equipped With Flashing Red and Flashing Yellow Lights,'' Experiment VI–117(E) STOP SLOW PADDLE, by Daniel Paddick, P.E., New York State Department of Transportation, is available on the docket.

and SLOW paddles, and well as additional information regarding the arrangement of lights on the paddles.

The FHWA adds to the second STANDARD statement requirements for the performance of flashing lights that are used on the STOP/SLOW paddle. These flashing rate values are identical to the flashing rate used in other parts of the MUTCD. Five commenters representing the New York State Assembly, traffic control device manufacturers, and a private citizen suggest that ''triple'' flash modes be allowed; however, the FHWA disagrees because such high flash rates would appear more like a flicker than a flash and those rates would be close to the flash rates that may cause epileptic seizures.[45] The FHWA adopts the change, as proposed in the NPA.

234. In Section 6E.05 Flagger Stations, the FHWA revises the first STANDARD statement to indicate that flagger stations shall be located such that approaching road users will have sufficient distance to stop at an intended stopping point. The FHWA received one comment from the City of Tucson, Arizona, in support of this change, and two comments from the City of Charlotte, North Carolina, and a private citizen opposed to it. Those who opposed the change suggested that it should be changed to a GUIDANCE. The FHWA disagrees because it is important that flagger stations be located where approaching road users can safely stop, and adopts the change in this final rule.

To enhance worker safety, the FHWA adds a GUIDANCE statement following the first OPTION statement to indicate that flagger stations should be located so that an errant vehicle has space to stop without entering the work space. The FHWA received one comment from the Laborers' Health and Safety Fund of North America specifically in support of this new statement. In the NPA, the FHWA proposed that this statement appear after the first STANDARD statement; however, a commenter from the City of Charlotte, North Carolina, and a private citizen suggested moving it further back in the section to tie in better with the adjacent statements. The FHWA agrees and adopts this new GUIDANCE statement in this final rule.

In the NPA, the FHWA proposed changing the first SUPPORT statement to indicate that the Table 6E–1 provides information regarding the stopping sight distance as a function of speed. The FHWA received one comment from the Illinois DOT opposed to this change, stating that the use of Table 6E–1 is currently clear in the text and title of the table in the 2000 MUTCD. The FHWA disagrees because the revised SUPPORT statement matches the new title of the table, which provides the stopping sight distances for various speeds. The FHWA adopts the change; however, the FHWA incorporates the text into the following OPTION statement in this final rule.

The FHWA revises the first OPTION statement to indicate that the distances shown in Table 6E–1 may be used for the location of a flagger station. The FHWA received one comment from NIOSH in support of this change; however, two commenters from Caltrans and the City of Charlotte, North Carolina, and a private citizen opposed to it. The opposing commenters suggested that the FHWA retain the language from the 2000 MUTCD indicating that the distances may be increased for downgrades and other conditions that affect stopping distance. The FHWA agrees and modifies the OPTION statement to include this additional information in this final rule.

The FHWA changes the title of Table 6E–1 from ''Distance of Flagger Stations in Advance of the Work Space'' to ''Stopping Sight Distance as a Function of Speed'' and changes the distance values to be in agreement with AASHTO's ''A Policy on Geometric Design of Highways and Streets.''[46] The FHWA received three comments from the Laborers' Health and Safety Fund of North America, NIOSH, and the City of Tucson, Arizona, in support of this change, and adopts this change.

Additionally, the FHWA changes the GUIDANCE statement (in the 2000 MUTCD) to a STANDARD statement to indicate that, except in emergency situations, flagger stations shall be preceded by an advance warning sign or signs and that, except in emergency situations, flagger stations shall be illuminated at night. The FHWA believes that anytime a flagger is active at night, illumination of the flagger station is important to make the flagger more visible to approaching road users. The FHWA received one comment from a private citizen suggesting that more detail be provided to specify the meaning of ''illumination,'' and five comments from the Kansas and Wisconsin DOTs, the City of Charlotte, North Carolina, and a private citizen suggesting that this statement remain a GUIDANCE because during emergencies, where flagging is needed at night, portable lighting units are not always available. The FHWA agrees that lighting and/or advance warning signs are not always available for emergency situations, and revises the STANDARD statement to exclude emergency situations.

235. In Section 6F.01 Types of Devices, the FHWA adds a SUPPORT at the beginning of this chapter defining the acronym ''TTC'' as discussed above at the start of the Part 6 discussion. The FHWA also adds a new SUPPORT statement that includes a reference to the FHWA's policy[47] requiring that all roadside appurtenances on the National Highway System meet crashworthy performance criteria and referring to and repeating the definition of crashworthy as stated in Section 1A.13 Definitions of Words and Phrases in this Manual. The FHWA adds these statements to consolidate information, to emphasize FHWA policies regarding accessibility and crashworthiness, and to be consistent with crashworthiness provisions in Section 6F.03, 6F.58, 6F.53, 6F.66, and 6F.82.

The FHWA also relocates the final OPTION and SUPPORT statements from this section, and places them in Section 6F.02 General Characteristics of Signs, because this information regarding sign colors is more appropriate in that section. The FHWA makes this minor editorial change to move these statements for clarity and consolidation with other text regarding sign colors.

236. In Section 6F.02 General Characteristics of Signs, following the first STANDARD statement, the FHWA inserts OPTION and SUPPORT statements regarding the color of warning signs in temporary traffic control zones. These statements were in Section 6F.01 in the NPA and 2000 MUTCD, however the FHWA moves them to this section in this final rule where they are more appropriate.

[45] The website of the National Society for Epilepsy, a professional society in the United Kingdom that specializes in epilspsy, states that a flash rate of 5 to 30 hertz (flashes per second) can cause seizures in some people. This information is available at the following URL: *http://www.epilepsynse.org.uk/pages/info/leaflets/photo.cfm*. A variety of websites of U.S. organizations also refer to the problem of photosensitivity (triggering of seizures by flickering lights) among epileptic persons.

[46] ''A Policy on Geometric Design of Highways and Streets,'' 4th Edition, 2001, in both hardcopy and CD–ROM, is available from the American Association of State Highway and Transportation Officials (AASHTO) by telephone (800) 231–3475, facsimile (800) 525–5562, mail AASHTO, P.O. Box 96716, Washington, DC 20090–6716, or at its Web site *http://www.transportation.org* and click on Bookstore. This document is a guide, based on established practices and supplemented by research, to provide guidance to the highway designer to provide for the needs of highway users while maintaining the integrity of the environment. It is incorporated by reference into the CFR at 23 CFR 625.4.

[47] Information on the FHWA policy is available at the following URL: *http://safety.fhwa.dot.gov/programs/roadside_hardware.htm*

The FHWA adds to the second OPTION statement that warning and guide signs used for temporary traffic control of incident management situations may have a black legend and border on a fluorescent pink (referred to as coral in the NPA) background. The FHWA received one comment from the Virginia DOT in support of this change, and one from a traffic control device manufacturer opposed to it. The opposing commenter, representing the sign manufacturing industry, suggested that stronger language changing this to a GUIDANCE would help define the use of the color for this application and reduce confusion, resulting in increased recognition and association with incidents on the part of the road user. The FHWA disagrees because of the unplanned nature of incidents and the varied agencies and capabilities of first responders, agencies should have the ability to continue to use orange signs in incident management situations. Use and experience with the fluorescent pink color over time will increase awareness. The FHWA adopts the optional color fluorescent pink in this final rule.

The FHWA adds a new table, numbered and titled, ''Table 6F–1 Sizes of Temporary Traffic Control Signs'' showing the sizes of temporary traffic control warning signs to facilitate the proper use of signs in temporary traffic control zones. This table contains the sizes that were illustrated with the individual signs in the figures in Chapter 6F in the NPA. This table consolidates the information in one location for clarity and easy reference. The FHWA references this table in the second STANDARD statement. The FHWA also revises the third OPTION statement to indicate that the dimensions of signs shown in Table 6F–1 may be increased wherever necessary for greater legibility or emphasis. The FHWA adds this table and makes these changes to respond to a comment from Caltrans suggesting that a table of sign sizes in Part 6 would better serve users than having the information spread throughout the part, and to clarify dimensions related to the class of highway on which the various sizes are recommended. The FHWA also removes sign sizes from the pages of sign images throughout this chapter, because this table consolidates all information regarding sign sizes in one location.

The FHWA revises the wording and changes the last SUPPORT statement, regarding external sign illumination, to a STANDARD because of the need for consistency with requirements throughout other areas of the MUTCD. The FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen noting this inconsistency and suggesting that it be corrected, and the FHWA agrees that it is important to be consistent.

237. In Section 6F.03 Sign Placement, in the first STANDARD statement, the FHWA adds ''bicycle movements'' to the list of reasons why in urban areas the distance between the bottom of the sign and the top of the near edge of the traveled way shall be at least 2.1 m (7 ft), to enhance safety for bicyclists. The FHWA received seven comments from the City and County of Denver and private citizens in support of this change, and two comments from the Ohio DOT and a private citizen opposed to it. The Ohio DOT questioned the relationship between the presence of a bicycle and sign height. The FHWA believes that because bicyclists do ride on sidewalks in urban areas, they will have an effect on signs, especially when riding in a standing position, thus higher mounting heights are needed. A private citizen felt that this should not be a STANDARD statement if obvious exceptions exist, unless they are specifically listed. The FHWA believes that this STANDARD is consistent with the first paragraph of Section 2A.18 Mounting Height, which is also a STANDARD. The FHWA adds a new SUPPORT statement (consistent with Section 2A.18) that the mounting heights apply except as otherwise provided elsewhere in the MUTCD.

Additionally, the FHWA adds language to the STANDARD requiring signs to be mounted and placed in accordance with Section 4.4 of the ''Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG).''[48] The FHWA received three comments from the City of Tucson, Arizona, and associations representing the blind community in support of this new text, and comments from the NCUTCD, the Ohio DOT, and Lake County, Illinois, opposed to it. The opposing commenters stated several reasons, including that this statement is repetitive throughout Part 6, that agencies need the flexibility to use engineering judgment on a case-by-case basis to determine the appropriate measures in a temporary traffic control plan, and that the guidelines should be specifically stated in the MUTCD, rather than referenced. The FHWA disagrees because the ADAAG guidelines are too voluminous to include directly in the MUTCD and because ADAAG provides flexibility to determine the need for accommodation of pedestrians with disabilities and the actual applications that will be used when necessary. The FHWA adopts the text, as proposed in the NPA with a modification to address the issue of need for accommodation. Repetition is important to elevate the practitioners' awareness on the accommodation of pedestrians with disabilities and there are specific details in this and other sections of Part 6 on the installation of devices to satisfy accommodation.

Additionally, the FHWA adds to the second GUIDANCE statement that signs mounted lower than 2.1 m (7 ft) should not project more than 100 mm (4 in) into pedestrian facilities. This is in accordance with the ''Americans With Disabilities Act Accessibility Guidelines For Buildings And Facilities (ADAAG).'' The FHWA received two comments from associations representing the blind community supporting this change, and comments from the NCUTCD and a traffic engineering consultant opposed to it. The NCUTCD felt that this information was repetitive and the traffic engineering consultant suggested that ''sidewalk'' be removed from the GUIDANCE statement to better accommodate urban settings where paved sidewalks extend from the curb face to the building line. The FHWA disagrees and adopts the text as proposed in the NPA.

In the NPA, the FHWA proposed adding a SUPPORT statement indicating that the design and placement of work zone signs is described elsewhere in Chapter 6F of the Manual. The FHWA received one comment from the NCUTCD opposed this, suggesting that this statement is not necessary. The FHWA agrees and deletes this statement from this final rule.

Additionally, in the 2000 MUTCD, the FHWA established a new requirement in this section that sign supports for temporary traffic control devices shall be crashworthy, but no special phase-in target compliance date was established at that time. Based on comments that agencies are encountering difficulties and economic impacts given the extensive testing of devices that has to occur in accordance with NCHRP Report 350[49] in order to determine and

[48] ''Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG),'' as amended through January 1998, is published by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board), 1331 F Street, NW., Suite 1000, Washington, DC 2004–111. It may be obtained from the Access Board, or viewed electronically at the following URL: *http://www.access-board.gov/adaag/html/adaag.htm.*

[49] NCHRP Report 350, ''Recommended Procedures for the Safety Performance Evaluation of Highway Features,'' 1993, is available for downloading from the Transportation Research Board at the following URL: *http://gulliver.trb.org/publications/nchrp/nchrp_rpt_350-a.pdf.*

certify crashworthiness, the FHWA determines that a special phase-in target compliance date is required for the crashworthiness provision in this section. In this final rule, the FHWA establishes a phase-in target compliance date of January 17, 2005 for sign supports for temporary traffic control devices to be crashworthy. This is consistent with guidance previously communicated informally to jurisdictions in training and presentations by the FHWA Office of Safety regarding roadside safety and countermeasures for run-off-the-road crashes, and is a reasonable phase-in target date for achieving compliance.

Additionally, the FHWA adds a GUIDANCE statement regarding the type of sign post to be used in the clear zone. The FHWA received three comments from the NCUTCD, the City of Charlotte, North Carolina, and a private citizen opposed to the new GUIDANCE. The City of Charlotte, North Carolina, and a private citizen suggested that the statement be strengthened to a STANDARD, in order to require that sign posts placed in the clear zone be yielding or breakaway. The FHWA disagrees that this should be a STANDARD because jurisdictions need the flexibility to address unusual situations, but the FHWA revises the wording of the GUIDANCE in this final rule to be consistent with other references.

The FHWA also adds a SUPPORT statement regarding crashworthiness of sign supports. The FHWA received three comments from the NCUTCD, the City of Charlotte, North Carolina, and a private citizen suggesting that this statement is not necessary. The FHWA disagrees because this statement conveys important information about crashworthiness of sign supports. The FHWA revises the statement slightly in this final rule to clarify the language and add a reference to NCHRP Report 350.

In the NPA, the FHWA proposed adding OPTION, GUIDANCE, and OPTION statements at the end of the section regarding sign supports for long-term and short-term use. Based on comments, the FHWA removes these statements from this final rule, because this information is contained in Section 6F.01 Types of Devices and it is not necessary to repeat it in this section.

In Figure 6F–2, the FHWA adds the phrase, ''above the traveled way,'' to the mounting height notes in the figure to be consistent with the corresponding standard statements in this section.

238. In Section 6F.06 Regulatory Sign Design, the FHWA changes the first sentence of the SUPPORT statement (in the 2000 MUTCD) to become a new STANDARD statement at the beginning of the section, stating that temporary traffic control regulatory signs shall conform to the standards for regulatory signs presented in Part 2 and in the FHWA's ''Standard Highway Signs'' book. In the 2000 MUTCD, this sentence contains the word ''shall'' but was inadvertently included in the SUPPORT statement. This will make this statement consistent with the remainder of the MUTCD. The remainder of the SUPPORT statement remains a SUPPORT statement. The FHWA received two comments from ATSSA and the City of Tucson, Arizona, in support of this change, and incorporates this change in this final rule.

Additionally, the FHWA identifies the three page images of regulatory signs that follow page 6F–7 (as numbered in the 2000 MUTCD) as ''Figure 6F–3 Regulatory Signs in Temporary Traffic Control Zones,'' and numbers them Sheets 1 and 2. In the NPA, the FHWA proposed that each page of sign images have a distinct figure number and title; however, several commenters suggested that the various titles were confusing. Additionally the FHWA removes all of the sign sizes from the pages of sign images, because sign sizes are now included in Table 6F–1.

In the NPA, the FHWA proposed increasing the size of the following signs in Table 6F–1: PEDESTRIAN CROSSWALK, SIDEWALK CLOSED, SIDEWALK CLOSED USE OTHER SIDE, SIDEWALK CLOSED CROSS HERE, and SIDEWALK CLOSED AHEAD CROSS HERE to make it easier for a pedestrian to read these signs from across a wide street. The FHWA received comments from the NCUTCD, the City of Charlotte, North Carolina, and a private citizen opposed to the larger sign sizes, and one comment from the Connecticut DOT questioning why the larger signs were needed. The reason for increasing the size of the signs was to make them more readable from across the street, and to make them more readable by pedestrians with visual disabilities. Based on the comments, and FHWA's judgment that 48-inch-wide signs would be too wide, thus in some cases blocking the sidewalk, the FHWA restores the size of these signs to 600 x 300 mm (24 x 12 in) in this final rule. Jurisdictions may use larger sizes when needed and where feasible.

239. In Section 6F.12 PEDESTRIAN CROSSWALK Sign (R9–8), the FHWA adds a STANDARD statement following the OPTION statement that if a temporary crosswalk is established, it shall be accessible to pedestrians with disabilities. The FHWA received eight comments from the City of Tucson, Arizona, the City and County of Denver, and private citizens in support of this new statement, and one from the NCUTCD opposed to it. The NCUTCD indicated that the statement was repetitious. The FHWA agrees; however, repetition is necessary in this case to elevate awareness, and the FHWA adopts the statement, with an added reference to the new Section 6D.02 Accessibility Considerations, which provides additional information about pedestrian accessibility.

240. In Section 6F.13, SIDEWALK CLOSED Signs (R9–9, R9–10, R9–11, R9–11a), to provide adequate route guidance information to pedestrians, the FHWA proposed to add to the first GUIDANCE statement that Bicycle/Pedestrian Detour (M4–9a) or Pedestrian Detour (M4–9b) signs should be used where pedestrian flow is rerouted. The FHWA received one comment from the NCUTCD opposed to this new text, suggesting that reference to these signs is not necessary in this section. The FHWA disagrees and adopts the references to the M4–9a and M4–9b signs in this final rule. The SIDEWALK CLOSED signs are used in situations where the normal pedestrian traffic is rerouted.

Additionally, the FHWA adds to the SUPPORT statement that printed signs are not useful to pedestrians with visual disabilities. In the NPA, the FHWA proposed to add that accessible pedestrian signals can provide audible information about closures and alternate routes. The FHWA received one comment from the NCUTCD opposed to this additional text, stating that it was repetitive. The FHWA received three comments from associations representing the blind community suggesting that the statement be expanded to provide more useful information about how to communicate sidewalk closure information to pedestrians with visual disabilities. The FHWA agrees and incorporates additional information regarding the use of barriers, detectable barricades, accessible signage, and audible information.

241. In Section 6F.14 Special Regulatory Signs, the FHWA adds a SUPPORT statement referencing Section 2B.17 FINES HIGHER PLAQUE for information regarding the use of the FINES HIGHER sign, because this sign can be useful in enhancing speed enforcement in temporary traffic control zones. The FHWA received three comments from ATSSA, the City of Tucson, Arizona, and the Associated General Contractors of America in support of this new statement, and one from the NCUTCD opposed to it. The

NCUTCD suggested that reference to this sign is not necessary in this section. The FHWA disagrees and adopts this new statement in this final rule. Practitioners may not otherwise find that such a sign exists without the reference in Part 6 where they would typically look for temporary traffic control signs and the related text.

242. In Section 6F.15 Warning Sign Function, Design, and Application, the FHWA adds to the first OPTION statement that warning signs used for temporary traffic control incident management situations may have a black legend and border on a fluorescent pink (referred to as coral in the NPA) background, as an alternative to black on orange. This is consistent with changes in Section 6F.02 General Characteristics of Signs and the new Chapter 6I. The FHWA received one comment from Lake County, Illinois, opposed to the use of fluorescent pink, suggesting that highway incident management signing needs to be consistent with emergency management signing. The FHWA disagrees because these are two different situations and there is no reason why these signs need to be the same color. The FHWA adopts the change as proposed in the NPA.

Additionally, in the NPA, the FHWA proposed to add to the GUIDANCE statement that where road users include pedestrians, the provision of supplemental audible or tactile warning information should be considered for people with visual disabilities. The FHWA received one comment from the City of Tucson, Arizona, in support of this statement, and four from associations representing the blind community opposed to it. The NCUTCD suggested that this statement is repetitive. Three comments from associations representing the blind community suggested that the statement be revised to provide for supplemental audible information or detectable barriers or barricades, rather than tactile information, for pedestrians with visual disabilities. The FHWA agrees and incorporates these revisions in this final rule. The FHWA also inserts a SUPPORT statement following the GUIDANCE to clarify how detectable barriers and barricades assist pedestrians with visual disabilities.

Additionally, the FHWA identifies the six page images of warning signs that follow page 6F–13 (as numbered in the 2000 MUTCD) as ''Figure 6F–4 Warning Signs in Temporary Traffic Control Zones,'' and numbers them Sheets 1 through 4. In the NPA, the FHWA proposed that each page of sign images have a distinct figure number, however in this final rule the FHWA numbers these pages similar to the illustrations of regulatory signs. The FHWA identifies the following page of sign images ''Figure 6F–5 Exit Open and Closed and Detour Signs.''

Similar to comments in Section 2C.30 Speed Reduction Signs, the FHWA received two comments from the Missouri DOT and Lake County, Illinois, opposed to changing the Reduced Speed Ahead sign from a regulatory sign to a warning sign. Consistent with the decision in Part 2, the FHWA changes the Reduced Speed Ahead sign to a warning sign with sign designations W3–5 and W3–5a.

The FHWA received three comments from the Ohio DOT, the City of Charlotte, North Carolina, and a private citizen suggesting additional information regarding the use of the new dump truck symbol warning sign (W11–10a) to clarify where the sign should be used. Consistent with Chapter 2C, the FHWA withdraws the proposed new dump truck symbol warning sign (W11–10a) and instead illustrates the W11–10 truck warning symbol sign. The FHWA also adds a new section numbered and titled, ''Section 6F.34 Motorized Traffic Signs (W8–6, W11–10),'' to clarify sign use.

The FHWA received two comments from the Ohio DOT regarding the NO CENTER STRIPE (W8–12) sign. First, the Ohio DOT suggested that a sign be added to address the situation when the edge line has been obliterated. The FHWA believes that this is not usually a situation that requires warning, because there are many roads that do not have edge lines, however there is nothing that would prohibit an agency from developing a special word message warning sign with the legend NO EDGE LINE that would be similar to the W8–12 sign. Second, the Ohio DOT opposed the NO CENTER STRIPE sign, suggesting that the legend should read NO CENTER LINE. The FHWA disagrees because ''centerline'' is a single word, and to be technically correct would need to be on the same line. The FHWA believes that the public understands both ''centerline'' and ''center stripe'' equally well, so it adopts the NO CENTER STRIPE legend on the W8–12 sign in this final rule.

The FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen regarding the BE PREPARED TO STOP (designated W20–7b in the NPA) sign. Both commenters suggested that a larger size be used. The FHWA revises the designation for this sign to be W3–4 throughout Part 6 to maintain consistency with Chapter 2C. The W3 Series in Chapter 2C has a conventional size of 900 x 900 mm (36 x 36 in), however agencies may choose to use larger sizes where they feel it is appropriate.

A traffic engineering consultant suggested that the FHWA add a new section to allow for Special Warning Signs similar to the provision for Special Regulatory Signs in 6F.14. The FHWA agrees and has included a new Section 6F.47 Special Warning Signs.

243. In Section 6F.17 ROAD (STREET) WORK Sign (W20–1), in the NPA, the FHWA proposed adding an OPTION statement indicating that, where traffic can enter a temporary traffic control zone from a crossroad or a major (high volume) driveway, an advance warning sign may be used on the crossroad or major driveway to alert road users. The FHWA received comments from ATSSA, the City of Tucson, Arizona, and a private citizen in support of this change, and one comment from the NCUTCD suggesting that this statement be strengthened to a GUIDANCE. The FHWA agrees that use of the sign on the crossroad is important for safety and changes this statement to a GUIDANCE in this final rule.

244. In Section 6F.24 the FHWA changes the title of the section from ''Lane Reduction Sign (W4–2)'' to ''Lane Ends Sign (W4–2)'' to reflect the sign's name change and to be consistent with Part 2. The FHWA received one comment from the City of Tucson, Arizona, in support of this change, and adopts this change. The FHWA received three comments from the Minnesota DOT, the City of Charlotte, North Carolina, and a private citizen opposed to the new sign design for the W4–2 sign, which depicts a lane ending. Please refer to the discussion regarding this sign in Section 2C.33 Lane Ends Signs (W4–2, W9–1, W9–2) above.

245. In Section 6F.27 SLOW TRAFFIC AHEAD Sign (W23–1), the FHWA proposed changing the sign shape from a rectangle to a diamond. The FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen opposed to it to the change in sign shape, stating that the rectangular sign fits better than a diamond sign on the back of a moving truck, which is where this sign is primarily used. The FHWA agrees and illustrates a rectangular shaped W23–1 sign in Figure 6F–4.

246. In Section 6F.28 EXIT OPEN, EXIT CLOSED, EXIT ONLY Signs (E5–2, E5–2a, E5–3) (titled EXIT OPEN, EXIT CLOSED Signs (E5–2, E5–2a) in the NPA), the FHWA adds a GUIDANCE statement indicating that when an exit ramp is closed, a black on orange EXIT CLOSED panel should be placed

diagonally across the interchange/intersection guide signs to enhance the information provided to road users. The FHWA received one comment from the City of Tucson, Arizona, in support of this new GUIDANCE statement, and five comments from the NCUTCD, the Wisconsin DOT, Caltrans, the City of Charlotte, North Carolina, and a private citizen opposed to it. The NCUTCD suggested that the GUIDANCE be changed to an OPTION, because ramp closures may occur for only a short period of time, and installing EXIT CLOSED panels on freeway guide signs involves significant effort.

Caltrans and the Wisconsin DOT suggested that the diagonal orientation of the sign would be especially confusing on guide signs with more than one exit, because a portion of the street name would be covered and unreadable for road users desiring to use the exit that is open. The City of Charlotte, North Carolina, and a private citizen suggested that the size of the panel be changed to better cover the sign. The FHWA disagrees with the opposing comments because it is very important, particularly for unfamiliar road users, to know that an exit is closed, and covering only a portion of the message by using the diagonal placement of the sign gives road users a visual clue as to what exit is closed. Because this sign may be used for other applications, the sign size, as proposed in the NPA, is appropriate.

The FHWA adds the EXIT ONLY sign (E5–3) to Figure 6F–5, and changes the title of the figure to ''Exit Open and Closed and Detour Signs.'' The EXIT ONLY sign has been in the ''Standard Highway Signs'' book for many years and is used in some applications, so the FHWA determines that it is to be included in this section to correct an earlier omission.

247. The FHWA adds a new section numbered and titled, ''Section 6F.34 Motorized Traffic Signs (W8–6, W11–10).'' The FHWA adds this section in this final rule for consistency with Section 2C.36 Motorized Traffic Signs (W8–6, W11–10) and to address comments received in Section 6F.15 Warning Sign Function, Design, and Application. This new section mirrors text in Section 2C.36 Motorized Traffic Signs (W8–6, W11–10) and includes OPTION and SUPPORT statements clarifying the use of the Motorized Traffic (W8–6, W11–10) signs to alert road users to locations where unexpected use of the roadway by construction vehicles might occur. The FHWA renumbers the subsequent sections accordingly.

248. In Section 6F.38 Signs for Blasting Areas (numbered Section 6F.37 in the NPA), the FHWA removes the GUIDANCE statement from this section. The GUIDANCE statement included a minimum safe distance of 300 m (1000 ft) for placing warning signs, however this information is stated as a STANDARD in Sections 6F.40 and 6F.41 (numbered 6F.38 to 6F.40 in the NPA). The FHWA received comments from the City of Charlotte, North Carolina, and a private citizen requesting that this inconsistency be resolved. The FHWA agrees that the STANDARD should take precedence and removes the GUIDANCE from Section 6F.38.

249. In Section 6F.40 TURN OFF 2-WAY RADIO AND CELL PHONE Sign (W22–2) (numbered Section 6F.39 in the NPA), the FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen opposed to adding the word ''CELL'' to the legend of the W22–2a sign. The commenters suggested that other mobile phones have the same risk of causing premature firing of detonators. These commenters also suggested that the sign needed to be more readable with larger letter sizes and only three lines of text. The FHWA believes that the sign, as proposed in the NPA with the word ''CELL'', is appropriate. The Temporary Traffic Controls Committee of the NCUTCD supported the sign proposed in the NPA based on information received from representatives of the blasting industry and the Federal Communication Commission. Even though there are some other types of mobile phones and radios that can potentially cause premature firing of detonators, two-way radios and cell phones constitute the bulk of the devices in use in vehicles today, and the FHWA believes the terminology is best understood by the public. The FHWA changes the sign designation from W22–2a to W22–2 in this final rule, because there is no sign currently designated W22–2.

250. In the NPA, the FHWA proposed combining Sections 6F.41 and 6F.42 (as numbered in the 2000 MUTCD) into one section numbered and titled, ''Section 6F.41 Shoulder and UNEVEN LANES Signs (W8–4, W8–9, W8–9a, and W8–11).'' Although the FHWA received comments from a private citizen and the Motorcycle Safety Foundation in support of combining these sections, the NCUTCD suggested that these two sections should not be combined because they each describe unique applications and having two separate sections enhances practitioners' understanding. The FHWA agrees and separates these sections in this final rule into Section 6F.42 Shoulder Signs (W8–4, W8–9, W8–9a) and Section 6F.43 UNEVEN LANES Sign (W8–11).

In Section 6F.42 Shoulder Signs (W8–4, W8–9, W8–9a), the FHWA includes an OPTION statement to allow the use of the SOFT SHOULDER sign to warn of a soft shoulder condition and the LOW SHOULDER sign to warn of a shoulder condition where there is an elevation difference of less than 75 mm (3 in) between the shoulder and the travel lane. The FHWA received two comments in support of these changes from a private citizen and the Motorcycle Safety Foundation, and adopts these changes.

The FHWA received two comments from the Illinois DOT and a traffic engineering consultant opposed to mandating the use of SHOULDER DROP OFF signs. Those opposed expressed that the text should be a GUIDANCE, because requiring the use of SHOULDER DROP OFF signs at all locations that meet the criteria would be a considerable hardship on agencies to properly identify all locations and sign them at all times. The FHWA agrees and revises this as to a GUIDANCE and adds clarifying text consistent with Chapter 2C in this final rule.

In Section 6F.43 UNEVEN LANES Sign (W8–11) (numbered Section 6F.42 in the 2000 MUTCD), the FHWA maintains the GUIDANCE statement from the 2000 MUTCD text, and adds the phrase ''that are open to travel'' at the end of the sentence to address a comment received in Section 2C.26 Shoulder Signs suggesting additional information be included regarding the use of the UNEVEN LANES sign. In the NPA, the FHWA proposed including the word ''substantial'' in the description of the difference in elevation between adjacent lanes. The FHWA received four comments from the NCUTCD, the Illinois DOT, the City of Charlotte, North Carolina, and a private citizen suggesting that the word ''substantial'' be removed, because it is vague. The FHWA agrees and adopts the GUIDANCE with modifications in this final rule.

251. The FHWA adds a new section numbered and titled, ''Section 6F.45 Double Reverse Curve Signs (W24 Series).'' (This section was numbered Section 6F.43 in the NPA.) This section contains an OPTION statement regarding the use of the Double Reverse Curve sign when the tangent distance between two reverse curves is insufficient for a second Reverse Curve sign to be placed between the curves. The FHWA received two comments from ATSSA and the City of Tucson,

Arizona, in support of this new statement, and one from the NCUTCD suggesting that the word ''insufficient'' be defined as ''less than 180 m (600 feet).'' The FHWA agrees and clarifies the OPTION statement in this final rule.

This section also contains a STANDARD statement that if a Double Reverse Curve sign is used, the number of lanes illustrated on the sign shall be the same as the number of through lanes available to road users, and the direction of the double reverse curve shall be appropriately illustrated. The FHWA received two comments from ATSSA and the City of Tucson, Arizona, in support of this new statement, and three comments from Caltrans, the City of Charlotte, North Carolina, and a private citizen suggesting that illustrating the number of lanes on the sign may be complex for multi-lane applications. The FHWA adopts the text in this final rule, because it is important to convey to road users that all of the lanes continue. Two commenters from City of Charlotte, North Carolina, and a private citizen suggested that the size of the W24 series signs be 1200 x 1200 mm (48 x 48 in). The FHWA believes that for one and two lane Double Reverse Curve signs, the 900 x 900 mm (36 x 36 in) signs as proposed in the NPA are appropriate, but that for three or more lanes, larger sizes may be desirable, and there is nothing preventing agencies from using larger sign sizes.

252. In Section 6F.46 Other Warning Signs (numbered 6F.44 in the NPA), the FHWA revises the STANDARD statement to reference Section 6F.02 for exceptions to using black legends and borders on orange backgrounds for warning signs. The FHWA includes this change in this final rule because it is necessary to be consistent with other sections of the MUTCD.

253. The FHWA adds a new section numbered and titled, ''Section 6F.47 Special Warning signs.'' This section contains OPTION and GUIDANCE statements with information regarding the design of special warning signs. The FHWA adds this section to this final rule to remind readers that special word message warning signs may be used. This section parallels a similar section in Part 2 that allows the use of special word signs, and adding the section to Part 6 is necessary for consistency.

254. In Section 6F.48 Advisory Speed Plaque (W13–1) (numbered Section 6F.45 in the NPA), the FHWA received comments from the Ohio DOT opposed to the design of the sign—both the black circle around the numerals on the metric sign and the use of periods between the letters for the acronym ''M.P.H.'' on the English-units sign. The FHWA disagrees that the black circle around the numerals is confusing, because it is necessary that this sign look different from the English-unit sign in order to avoid confusion. The FHWA adopts the black circle on the sign in this final rule. The FHWA agrees that periods are not necessary in the acronym MPH and removes the periods from the sign images and from the listing in Table 1A–1, to reflect common practice.

255. In Section 6F.50 Guide Signs (numbered Section 6F.47 in the NPA), the FHWA adds to the OPTION statement that guide signs used for temporary traffic control incident management situations may have a black legend and border on a fluorescent pink (referred to as coral in the NPA) background as an alternative to black on orange, to correspond with the change in Section 6F.02 General Characteristics of Signs. The FHWA received one comment from the City of Tucson, Arizona, in support of this change, and three comments from the City of Charlotte, North Carolina, a private citizen, and a traffic engineering consultant suggesting that wording of the STANDARD and the GUIDANCE relating to the color of additional guide signs in temporary traffic control zones was inconsistent and confusing. To clarify, the FHWA revises the STANDARD statement in this final rule to specify that if additional temporary guide signs are used in temporary traffic control zones, they shall have a black legend and border on an orange background. The FHWA also adds a paragraph to the OPTION stating that when permanent directional or street name signs are used with detour signing, they may have a white legend on a green background. This will clarify that street name signs do not need to be on an orange background.

256. In Section 6F.52 END ROAD WORK Sign (G20–2) (numbered Section 6F.49 in the NPA), the FHWA changes the GUIDANCE statement to indicate that the END ROAD WORK sign should be placed near the end of the termination area, rather than specify a distance beyond the end of the temporary traffic control zone as in the 2000 MUTCD. The FHWA received two comments from the NCUTCD and the Wisconsin DOT opposed to this change. The NCUTCD suggested that the wording be changed to indicate that this sign is not always necessary, and the Wisconsin DOT suggested that a placement distance be included. The FHWA agrees with the NCUTCD and adds the phrase ''when used'' at the start of the GUIDANCE. Rather than specifying a distance, the FHWA further clarifies that the END ROAD WORK sign should be placed near the end of the termination area, as determined by engineering judgment.

257. In Section 6F.53 Detour Signs and Markers (M4–8, M4–8a, M4–8b, M4–9, M4–9a, M4–9b, M4–9c, and M4–10) (numbered Section 6F.50 in the NPA), the FHWA changes the title to include signs specifically for detouring pedestrians and bicyclists.

Additionally, the FHWA adds to the first OPTION statement that signs used for temporary traffic control of incident management situations may have a black legend and border on a fluorescent pink (referred to as coral in the NPA) background, as an alternative to black on orange, to correspond to changes in Section 6F.02 General Characteristics of Signs. The FHWA received one comment from the City of Tucson, Arizona, supporting this change, and incorporates this change.

Additionally, at the end of the second GUIDANCE statement, the FHWA adds that the Pedestrian/Bicycle Detour (M4–9a) sign should be used where a pedestrian/bicycle detour route has been established because of the closing of a pedestrian/bicycle facility to through traffic. In the NPA, the FHWA proposed that this be a STANDARD, rather than GUIDANCE; however, the FHWA believes that GUIDANCE is more appropriate and is consistent with Section 6F.13 Sidewalk Closed Signs. The FHWA adds a STANDARD statement that if used, the Pedestrian/Bicycle Detour sign shall have an arrow pointing in the appropriate direction.

Additionally, the FHWA adds an OPTION statement at the end of the section that an arrow may be on the sign face or on a supplemental plaque. The Pedestrian/Bicycle Detour (M4–9a) sign or Bicycle Detour (M4–9c) sign may be used where a pedestrian or bicycle detour route (not both) has been established because of the closing of that particular facility to through traffic.

The FHWA received eleven comments from the Florida DOT, the City and County of Denver, Colorado, the City of Tucson, Arizona, the Association of Pedestrian and Bicycle Professionals, and private citizens in support of the changes to include signs specifically for detouring pedestrians and bicyclists.

258. In Section 6F.55 Portable Changeable Message Signs (numbered Section 6F.52 in the NPA), the FHWA adds a sentence at the end of the first STANDARD statement that each character module shall use at least a five wide and seven high pixel matrix, based on research regarding visibility and

legibility of changeable message signs.[50] The FHWA received one comment from the NCUTCD opposing this change, stating that other units are in use. The FHWA believes that this is a minimum requirement, and the FHWA includes this sentence in this final rule.

Additionally, the FHWA adds to the first GUIDANCE statement that for a trailer or large truck mounted sign, the letter height should be a minimum of 450 mm (18 in). For a service patrol truck mounted sign, the letter height should be a minimum of 250 mm (10 in). The message panel should have adjustable display rates (minimum of 3 seconds per phase) so that the entire message can be read at least twice at the posted speed, the off-peak 85th percentile prior to work starting, or the anticipated operating speed. Because the FHWA is retaining the current guidance that road users should be able to read the entire message twice, there may be a need in some temporary traffic control zones to use more than one Portable Changeable Message sign. The FHWA incorporates these changes in response to research addressing the needs of older road users.[51]

The FHWA received one opposing comment from a traffic engineering consultant suggesting that legibility depends on several factors and that, at a minimum, letter heights on trailer or large truck mounted signs and changeable message signs mounted on service patrol trucks should be the same, at 450 mm (18 in). The Virginia DOT agreed with allowing smaller letter heights for service patrol trucks and also suggested that letter heights for signs used on work vehicles in moving operations could also be smaller. The FHWA received one opposing comment from a traffic control device manufacturer suggesting that letter heights for changeable message signs should be consistent with the size of lettering on static signs. The FHWA disagrees because the sign types are entirely different and need to be treated separately. The FHWA adopts the letter heights as proposed in the NPA.

The FHWA received one comment from the NCUTCD opposed to the minimum three second per phase recommendation for the adjustable display rates, stating that there was no documentation indicating that three seconds was appropriate. The FHWA disagrees because a minimum display time needs to be specified for each message phase to give road users a reasonable chance to read the message before it goes away and, based on the previously-cited research addressing the needs of older drivers, believes three seconds is sufficient.

Additionally, for clarity, the FHWA moves the GUIDANCE information regarding the factors that agencies should take into account when designing changeable messages from the end of the section to the end of the first GUIDANCE statement.

Additionally, the FHWA changes and relocates from the first GUIDANCE statement to the following OPTION statement (based on the 2000 MUTCD) that smaller letter sizes may be used on a sign mounted on a trailer or large truck provided that the message is legible from a minimum distance of 200 m (650 ft), or a sign mounted on a service patrol truck provided that the message is legible from a minimum distance of 100 m (330 ft). The FHWA received one comment from the NCUTCD opposed to this paragraph, stating that there is not sufficient documentation to justify smaller letter sizes. The FHWA adopts the OPTION as proposed in the NPA, because service patrol trucks are typically small pick-up trucks on which it is not practical to mount large signs.

Additionally, the FHWA adds a fourth paragraph to the second STANDARD statement to clarify that the mounting of Portable Changeable Message signs on a trailer, a large truck, or a service patrol truck shall be such that the bottom of the message sign panel shall be a minimum or 2.1 m (7 ft) above the roadway in urban areas and 1.5 m (5 ft) in rural areas when it is in the operating mode, to correspond with mounting heights for ground-mounted signs. The FHWA received one comment from a traffic engineering consultant opposed to these mounting heights, stating that it is sometimes not practical or necessary to mount the large, heavy signs this high. The commenter suggested that this be changed to a GUIDANCE to give more flexibility. The FHWA retains this as a STANDARD, because the only change from the 2000 MUTCD is to add that these signs may be mounted lower in rural areas, thereby giving agencies additional flexibility. Any further changes would require notice and public comment in a future rulemaking.

The FHWA also consolidates all of the SUPPORT statements in this section under one heading at the beginning of the section. The FHWA makes this minor editorial change to better organize the section, based on a suggestion from a traffic engineering consultant.

259. In Section 6F.56 Arrow Panels (numbered Section 6F.53 in the NPA), the FHWA adds to the first GUIDANCE statement that an arrow panel in the arrow mode should be used to advise approaching road users of a lane closure along major multi-lane roadways in situations involving heavy traffic volumes, high speeds, and/or limited sight distances, or at other locations and under other conditions where road users are less likely to expect such lane closures. The FHWA received one comment from the City of Tucson, Arizona, in support of this change. The NCUTCD opposed this change suggesting that ''Sequential Chevron mode'' be added, because chevron mode is also permitted for arrow panels in this case. The FHWA agrees and incorporates this change.

The FHWA also revises the last paragraph of this GUIDANCE statement to clarify that if it is not removed, an arrow panel within the clear zone should be delineated with retroreflective temporary traffic control devices if it is not feasible to shield it with a barrier or crash cushion when it is not in use. The FHWA received one comment from a private citizen opposed to this change, stating that shielding the arrow panel with a barrier or crash cushion is impractical. The FHWA notes that the change proposed in the NPA actually clarified that the shielding only pertains to arrow panels not in use, and that retroreflective delineation is acceptable. The FHWA adopts the change as proposed in the NPA.

The FHWA revises the last paragraph of the sixth STANDARD statement to clarify the language. The FHWA received no comments regarding this change, and adopts this change. However, the FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen regarding the fifth GUIDANCE statement and the last paragraph of the last STANDARD statement concerning the use of the word ''shift'' as it relates to moving traffic over laterally. Because the intent throughout the MUTCD is that arrow panels are to be used only in merging operations, not to shift traffic laterally, the FHWA revises these statements accordingly. The FHWA makes these changes in the final rule,

[50] ''Changeable Message Sign Visibility,'' Federal Highway Administration publication number FHWA–RD–94–077, by P.M. Garvey and D.J. Mace, 1994, is available from FHWA, Turner-Fairbank Highway Research Center, 6300 Georgetown Pike, McLean, Virginia 22101. It is also available for purchase from The National Technical Information Service, Springfield, Virginia 22161, (703) 605–6000. Internet Web site address at *http://www.ntis.gov*.

[51] Information about this research is summarized on pages 253–263 of the ''Highway Design Handbook for Older Drivers and Pedestrians,'' Report number FHWA–RD–01–103, published by the FHWA Office of Safety Research and Development, 2001. It is available for purchase from The National Technical Information Service, Springfield, Virginia 22161, (703) 605–6000. Internet Web site address at *http://www.ntis.gov*.

due to the comments received and the need to clarify the proper use of arrow panels.

The FHWA also adds an OPTION at the end of the section to indicate that a portable changeable message sign may be used to simulate an arrow panel display. The FHWA received one comment from the Illinois DOT opposed to this new OPTION, stating that it should be deleted because portable changeable message signs are not nearly as conspicuous as arrow panels. The FHWA disagrees because portable changeable message signs are often used as a supplement to arrow panels well in advance of the arrow panels where long queues are expected. The FHWA adopts this new OPTION in this final rule.

260. In Section 6F.58 Channelizing Devices (numbered Section 6F.55 in the NPA), following the first SUPPORT statement, the FHWA proposed adding a STANDARD statement, GUIDANCE statement, and another STANDARD statement defining the use of channelizing devices to channelize pedestrians and that they need to be detectable to users of long canes. While there were eight comments from the City and County of Denver, Colorado, and private citizens in support of these new statements, the City of Charlotte, North Carolina, and a private citizen suggested that use of these devices should only be necessary at locations that are likely to be used by pedestrians with visual disabilities. Lake County, Illinois, opposed this change, stating that the individual highway agencies should have more flexibility in meeting the ADA Guidelines. Several representatives of the blind community recommended rewording to include that the devices should be detectable not only to users of long canes, but also visible to persons having low vision, because many persons who are severely visually impaired do not travel with the aid of a long cane or a guide dog, but rely on their diminished vision for travel information. Channelizing devices that are made highly visible by strong contrast are accessible to pedestrians with low vision. The FHWA agrees and revises the STANDARD statement accordingly. The FHWA changes the proposed GUIDANCE to an OPTION, because it was inadvertently classified as a GUIDANCE in the NPA. The FHWA also modifies this statement, increasing the maximum gap size between the bottom rail and the ground to 150 mm (6 in) (proposed as 38 mm, 1.5 inches in the NPA) to facilitate drainage.

The FHWA revises the first GUIDANCE statement by removing the phrase ''in the immediate area'' from the last sentence regarding fragments or other debris from channeling devices or ballast. The NCUTCD disagreed with removing this phrase, but did not cite a reason. The FHWA adopts the sentence as proposed in the NPA because debris and fragments pose a hazard to road users and workers, even if not in the immediate area. The City of Charlotte, North Carolina, and a private citizen suggested that this statement should be a STANDARD and that all channelizing devices shall be crashworthy. The FHWA disagrees because not every channelizing device is required to be crashworthy. The FHWA adopts the language of this statement as proposed in the NPA.

Additionally, the FHWA adds a note to Figure 6F–7 (numbered 6F–14 in the NPA), (Sheet 1 of 2) that if drums, cones, or tubular markers are used to channelize pedestrians, they shall be located such that there are no gaps between the bases of the devices, in order to create a continuous bottom, and the height of each individual drum, cone, or tubular marker shall be no less than 915 mm (36 in) to be detectable to users of long canes. The FHWA received three comments from the NCUTCD, the City of Charlotte, North Carolina, and a private citizen opposed to this new note, suggesting that it be revised to indicate that criteria apply only at locations where the presence of disabled pedestrians is likely. The FHWA addresses this comment by beginning this note with ''if'' rather than ''when'' in this final rule.

Additionally, the FHWA adds a note to Figure 6F–7 (numbered 6F–14 in the NPA), (Sheet 2 of 2) that if barricades are used to channelize pedestrians, there shall be continuous detectable bottom and top rails with no gaps between individual barricades to be detectable to users of long canes. The bottom of the bottom rail shall be no higher than 150 mm (6 in) above the ground surface. The top of the top rail shall be no lower than 915 mm (36 in) above the ground surface. The FHWA received three comments from the NCUTCD, the City of Charlotte, North Carolina, and a private citizen opposed to this new note, suggesting that it be revised to indicate that criteria apply only at locations where the presence of disabled pedestrians is likely. The FHWA addresses this comment by beginning this note with ''if'' rather than ''when'' in this final rule.

The FHWA received comments from the NCUTCD, the City of Charlotte, North Carolina, and a private citizen suggesting that the footnote regarding nominal lumber dimensions on each of the figures not be removed as was proposed in the NPA. The FHWA removes this footnote because devices constructed of lumber have not passed NCHRP 350 crashworthy criteria.

Additionally, in the 2000 MUTCD a new recommendation was established in this section that channelizing devices in temporary traffic control zones should be crashworthy. No special phase-in target compliance date was established at that time. Based on comments that agencies are encountering difficulties and economic impacts given the extensive testing of devices that has to occur in accordance with NCHRP Report 350 [52] in order to determine and certify crashworthiness, the FHWA determines that a special phase-in target compliance date is required for the crashworthiness provision in this section. Therefore, in this final rule, the FHWA establishes a special phase-in target compliance date of January 17, 2005, for when channelizing devices in temporary traffic control zones should be crashworthy. The FHWA believes this target date of four years from the effective date of the 2000 MUTCD provides agencies with a reasonable period in which to phase in the use of compliant channelizing devices in temporary traffic control zones.

In the NPA, the FHWA proposed a phase-in target compliance date of five years from the effective date of this final rule for the changes in this section regarding pedestrian accessibility (detectability by users of long canes). Because a five year phase-in target compliance date has been established for Sections 6D.01 Pedestrian Considerations and 6D.02 Accessibility Considerations, which in turn affect many other sections throughout Part 6, a special phase-in target compliance date just for Section 6F.58 is not necessary. Accordingly, the FHWA withdraws the proposed five-year phase-in target compliance date for accessibility requirements of this section.

261. In Section 6F.59 Cones (numbered Section 6F.56 in the NPA), the FHWA adds to the STANDARD statement that retroreflectorization of cones that are more than 900 mm (36 in) in height shall be provided by horizontal, circumferential, alternating orange and white retroreflective stripes that are 100 to 150 mm (4 to 6 in) wide. Each cone shall have a minimum of two orange and two white stripes with the

[52] NCHRP Report 350, ''Recommended Procedures for the Safety Performance Evaluation of Highway Features,'' 1993, is available for downloading from the Transportation Research Board at the following URL: *http://gulliver.trb.org/publications/nchrp/nchrp_rpt_350-a.pdf.*

top stripe being orange. Any non-retroreflective spaces between the orange and white stripes shall not exceed 75 mm (3 in) in width. The FHWA also adds an illustration of a cone more than 900 mm (36 in) in height to Figure 6F–7 (Sheet 1 of 2). These changes will enhance the visibility of cones at night and improve safety in temporary traffic control zones. The FHWA received three comments from the Ohio DOT, the City of Tucson, Arizona, and the Association of Pedestrian and Bicycle Professionals in support of this new paragraph, and adopts it in this final rule. The FHWA also adds an illustration of a cone that is more than 900 mm (36 in) in height to Figure 6F–7 (sheet 1 of 2), to aid in user understanding. The FHWA establishes a phase-in target compliance date of five years from the effective date of this final rule for these changes in order to minimize any impact on State or local governments.

Additionally, in the first GUIDANCE statement the FHWA adds that cones should not be used for pedestrian channelization or as pedestrian barriers in temporary traffic control zones on or along sidewalks unless they are continuous between individual devices and detectable to users of long canes. Non-continuous, non-detectable series of cones have been found to be safety problems for pedestrians with visual disabilities. The FHWA received one comment from the NCUTCD opposed to this new paragraph, suggesting that it is repetitive because accessibility is addressed elsewhere. The FHWA agrees that it is repetitive but believes that, in this instance, the repetition is necessary and the FHWA adopts this paragraph in this final rule.

262. In Section 6F.60 Tubular Markers (numbered Section 6F.57 in the NPA), the FHWA adds to the GUIDANCE statement that tubular markers should not be used for pedestrian channelization or as pedestrian barriers in temporary traffic control zones on or along sidewalks unless they are continuous between individual devices and detectable to users of long canes. Non-continuous, non-detectable series of tubular marker have been found to be safety problems for pedestrians with visual disabilities. The FHWA received comments from the Cities of Tucson, Arizona, and Charlotte, North Carolina, the Association of Pedestrian and Bicycle Professionals, and a private citizen in support of this new paragraph. The NCUTCD opposed it, suggesting that it is repetitive because accessibility is addressed elsewhere. The FHWA agrees that it is repetitive but believes that, in this instance, the repetition is necessary and the FHWA adopts this paragraph in this final rule, with minor editorial changes.

263. In Section 6F.61 Vertical Panels (numbered Section 6F.58 in the NPA), the FHWA proposed to include in the first STANDARD statement that vertical panels shall be mounted a minimum of 1050 mm (42 in) above the pedestrian travel way, so as not to interfere with pedestrians, and that vertical panels shall be mounted with the bottom no greater than 300 mm (12 in) above the ground. The FHWA received two comments from the City of Tucson, Arizona, and the Association of Pedestrian and Bicycle Professionals in support of the changes. The NCUTCD, the City of Charlotte, North Carolina, and a private citizen opposed this change stating that the text should be revised so that the requirements pertained only to those areas where disabled pedestrians were likely to be present. Because this information regarding pedestrian accessibility is now included elsewhere in Part 6 in this final rule, the FHWA withdraws this proposal and retains the text in the 2000 MUTCD.

264. In Section 6F.62 Drums (numbered Section 6F.59 in the NPA), the FHWA adds to the GUIDANCE statement that drums should not be used for pedestrian channelization or as pedestrian barriers in temporary traffic control zones on or along sidewalks unless they are continuous between individual devices and detectable to users of long canes. Non-continuous, non-detectable series of drums have been found to be safety problems for pedestrians with visual disabilities. The FHWA received two comments from the City of Tucson, Arizona, and the Association of Pedestrian and Bicycle Professionals in support of the changes. The NCUTCD opposed this change stating that the text regarding accessibility issues is repetitive. The FHWA disagrees and adopts these changes in this final rule.

The FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen suggesting that the last paragraph of the GUIDANCE statement describing the weighting of drums and need for drain holes be changed to a STANDARD. This is a topic that is outside the scope of this rulemaking and may be a subject for further discussion in a future rulemaking.

265. In Section 6F.63 Type I, II, or III Barricades (numbered Section 6F.60 in the NPA), the FHWA proposed adding a STANDARD statement following the first GUIDANCE statement that barricade supports shall not project into circulation routes more than 100 mm (4 in) from the support between 675 mm (27 in) and 2000 mm (80 in) from the surface, as described in Section 4.4.1 of the ''Americans With Disabilities Act Accessibility Guidelines For Buildings And Facilities (ADAAG).'' Additionally, supports shall not narrow the pedestrian facility to less than 1200 mm (48 in) in width, with a 1500 × 1500 mm (60 × 60 in) passing space at least every 60 m (200 ft), as described in Section 4.3.4 of ADAAG. The FHWA received three comments from the Ohio DOT, the City of Tucson, Arizona, and the Association of Pedestrian and Bicycle Professionals in support of this new STANDARD, and four comments from the NCUTCD, the Connecticut DOT, the City of Charlotte, North Carolina, and a private citizen opposed to it. The City of Charlotte, North Carolina, and a private citizen suggested that the wording be revised so that these requirements are necessary only in locations where pedestrians with disabilities are likely to be present. The Connecticut DOT suggested that this STANDARD conflicts with other sections of the MUTCD. In response to these comments, the FHWA replaces the proposed STANDARD with a two-paragraph GUIDANCE statement containing additional information regarding the width of pedestrian pathways and the mounting heights of signs in temporary facilities.

In concert with the changes outlined above, the FHWA also changes the last sentence of the following STANDARD to a GUIDANCE because it also contains information about the width of accessible passages when ballast is used. In the NPA, the FHWA proposed this sentence as a STANDARD. The change to GUIDANCE is necessary for consistency with the other GUIDANCE in this section.

Additionally, in the 2000 MUTCD the FHWA established a new recommendation in this section that barricades in temporary traffic control zones should be crashworthy. No special phase-in target compliance date was established at that time. Based on comments that agencies are encountering difficulties and economic impacts given the extensive testing of devices that has to occur in accordance with NCHRP Report 350 [53] in order to determine and certify crashworthiness, the FHWA determines that a special phase-in target compliance date is required for the crashworthiness

[53] NCHRP Report 350, ''Recommended Procedures for the Safety Performance Evaluation of Highway Features,'' 1993, is available for downloading from the Transportation Research Board at the following URL: *http://guilliver.trb.org/publications/nchrp/nchrp_rpt_350-a.pdf.*

provision in this section. In this final rule, the FHWA establishes a special phase-in target compliance date of January 17, 2005, for when barricades in temporary traffic control zones should be crashworthy. The FHWA believes this target date of four years from the effective date of the 2000 MUTCD provides agencies with a reasonable period in which to phase in the use of compliant barricades in temporary traffic control zones.

In the NPA, the FHWA proposed a phase-in target compliance date of five years from the effective date of this final rule for the changes in this section regarding pedestrian accessibility. Because a five year phase-in target compliance date has been established for Sections 6D.01 Pedestrian Considerations and 6D.02 Accessibility Considerations, which in turn affect many other sections throughout Part 6, a special phase-in target compliance date just for Section 6F.63 is not necessary. Accordingly, the FHWA withdraws the proposed five-year phase-in target compliance date for accessibility requirements of this section.

266. In Section 6F.64 Direction Indicator Barricades (numbered Section 6F.61 in the NPA), the FHWA makes editorial revisions in the STANDARD statement to properly describe the direction indicator barricade. The FHWA incorporates this change in this final rule to address comments that the term arrow panel in this section was incorrectly used in the NPA to describe what should be correctly called a One-Direction Large Arrow (W1–6) sign.

267. In Section 6F.65 Temporary Traffic Barriers as Channelizing Devices (numbered Section 6F.62 in the NPA), the FHWA adds SUPPORT and STANDARD statements related to the use of temporary traffic barriers as traffic control devices. These statements are relocated from Section 6G.04 Modifications to Fulfill Special Needs, as they are more appropriate in this section. The FHWA received two comments from the City of Tucson, Arizona, and the Association of Pedestrian and Bicycle Professionals in support of these changes, and adopts these changes. The FHWA received several editorial comments regarding the second paragraph of the first STANDARD statement, and incorporates these changes in this final rule to be consistent with other areas of the MUTCD.

268. The FHWA adds a new section, numbered and titled, Section 6F.66 Longitudinal Channelizing Barricades. (This section was numbered Section 6F.53 in the NPA.) This section consists of GUIDANCE, OPTION, and SUPPORT statements relating to the use of longitudinal channelizing barricades that are lightweight, deformable devices that can be used singly as Type I, II, or III barricades. The FHWA received two comments from the City of Tucson, Arizona, and the Association of Pedestrian and Bicycle Professionals in overall support of the text contained within this new section. The FHWA also received several comments from equipment suppliers suggesting additional uses for longitudinal channelizing barricades or modified applications from the proposed text in the NPA. The FHWA is not implementing these suggestions at this time because these are beyond the scope of this rulemaking.

The FHWA received one comment from the NCUTCD opposing the last sentence of the first SUPPORT, stating that the text was not necessary. The FHWA agrees and removes the sentence in this final rule.

The FHWA received one comment from the NCUTCD suggesting that an additional GUIDANCE statement be added between the first SUPPORT and OPTION statements to list the characteristics of a barricade. The FHWA agrees and, for consistency with other sections in Part 6, adds this new GUIDANCE statement in this final rule.

The FHWA received several comments regarding the last GUIDANCE statement as it relates to crashworthiness of longitudinal channelizing barricades. While the NCUTCD was opposed to the first paragraph, stating that it was not necessary, the City of Charlotte, North Carolina, and a private citizen felt that the GUIDANCE should be changed to a STANDARD in order to require that longitudinal channelizing barricades be crashworthy. The FHWA adopts the wording as proposed in the NPA because the information regarding crashworthiness is important and readers should understand that these barricades should not be used to shield pedestrians, including workers, from vehicle impacts or obstacles. Strengthening this statement to a STANDARD would require discussion and comment in a future rulemaking. However, for consistency with the special phase-in target compliance date that the FHWA established for crashworthiness provisions of other sections in Part 6, the FHWA establishes a phase-in target compliance date of January 17, 2005, for crashworthiness of longitudinal channelizing barricades in temporary traffic control zones. The FHWA believes this target date of four years from the effective date of the 2000 MUTCD provides agencies with a reasonable period in which to phase in the use of compliant longitudinal channelizing barricades in temporary traffic control zones.

269. The FHWA adds a new section numbered and titled, Section 6F.67 Other Channelizing Devices. This section was numbered Section 6F.64 in the NPA, and consists of an OPTION statement and a GUIDANCE statement that there may be channelizing devices other than those already described in Part 6 that may be used in special situations based on an engineering study. If used, these other channelizing devices should conform to the general size, color stripe pattern, retroreflectivity, and placement characteristics established for the devices described in Chapter 6F. This use of other channelizing devices was included in revision number 3 of the 1988 edition of the MUTCD (Section 6F–1 of that edition) but was inadvertently omitted from the 2000 MUTCD. The FHWA received one comment from the Association of Pedestrian and Bicycle Professionals in support of this new section, and adopts this new section in this final rule.

270. The FHWA adds a new section numbered and titled, ''Section 6F.68 Detectable Edging for Pedestrians.'' This section contains SUPPORT and GUIDANCE statements with information and examples regarding the use of detectable edging along the length of a facility when needed. The FHWA includes this new section in this final rule to respond to comments throughout Part 6 requesting additional information on detectable edging that is consistent with information available from the U.S. Access Board, and to consolidate the information on detectable edging into a single section for clarity.

271. In Section 6F.69 Temporary Raised Islands (numbered Section 6F.65 in the NPA), the FHWA adds a STANDARD statement at the end of the section that at pedestrian crossing locations, temporary raised islands shall have an opening or be shortened to provide at least a 1500 mm (60 in) wide pathway for pedestrians. This change is to comply with the ADA requirements and to provide for all pedestrians, including disabled pedestrians, a clear and useable facility. The FHWA received one comment from the NCUTCD opposed to this new statement, indicating that it was repetitive, and that accessibility is covered elsewhere. The FHWA disagrees because this is important information regarding the design of temporary raised islands and adopts the STANDARD as proposed in the NPA.

In the NPA, the FHWA proposed a phase-in target compliance date of five years from the effective date of this final rule for the changes in Section 6F.69 regarding pedestrian accessibility. Because a five-year phase-in target compliance date has been established for Sections 6D.01 Pedestrian Considerations and 6D.02 Accessibility Considerations, which in turn affect many other sections throughout Part 6, a special phase-in target compliance date just for Section 6F.69 is not necessary. Accordingly, the FHWA withdraws the proposed five-year phase-in target compliance date for accessibility requirements of this section.

272. In Section 6F.70 Opposing Traffic Lane Divider (numbered Section 6F.66 in the NPA), the FHWA adds to the STANDARD statement that opposing traffic lane dividers shall not be placed across pedestrian crossings, to assure that pedestrians have a clear and useable facility. The FHWA received one comment from the City of Tucson, Arizona, in support of this change, and adopts this change.

273. In Section 6F.71 Pavement Markings (numbered Section 6F.67 in the NPA), the FHWA proposed to add to the STANDARD statement that to require that delineation and channelizing devices for use by pedestrians shall be accessible and detectable to pedestrians who have disabilities and shall be continuous throughout the temporary traffic control zone. The FHWA received comments from the NCUTCD, the City of Charlotte, North Carolina, and a private citizen opposed to this new language. The City of Tucson, Arizona, expressed support if the text was reworded to apply only at locations where persons with disabilities are likely to pass. The FHWA withdraws this proposal because accessibility information is included in other sections of Part 6 and does not need to be repeated here.

In the NPA, the FHWA proposed revising the last OPTION statement to specify the amount of time that removable, nonreflective, performed tape may be used to temporarily cover markings. The FHWA received five comments from the NCUTCD, the Wisconsin DOT, the City of Charlotte, North Carolina, a private citizen, and a traffic control device manufacturer opposing this change, stating that there is not sufficient documentation to support the notion that temporary tape becomes ineffective after two weeks. The FHWA agrees and withdraws this proposal.

Additionally, in the NPA the FHWA proposed adding a SUPPORT statement at the end of the section that pavement markings alone are generally not sufficient for use by pedestrians who have visual disabilities. Tactile warnings on the roadway surface or audible devices are usually more helpful to these pedestrians. The FHWA received four comments from the NCUTCD and associations representing the blind community opposed to this new SUPPORT statement. Representatives of the blind community stated that there are currently no consistently understood tactile markings for roadway surfaces. The FHWA agrees with the commenters and withdraws this proposal.

274. In Section 6F.72 Temporary Pavement Markings (numbered Section 6F.68 in the NPA), the FHWA modifies the OPTION statement and the second GUIDANCE statement to indicate the use of DO NOT PASS and PASS WITH CARE signs is acceptable for temporary situations rather than pavement markings. In the NPA, the FHWA proposed deleting the use of the NO PASSING ZONE sign. While the FHWA received one comment from the City of Tucson, Arizona, in support of the changes, the NCUTCD was opposed to removing the NO PASSING ZONE sign because it felt that use of the sign should remain an option. The FHWA agrees and restores the use of the NO PASSING ZONE sign and includes a reference to Section 2C.35 for use of the NO PASSING ZONE sign in this final rule.

275. In Section 6F.75 Lighting Devices (numbered Section 6F.71 in the NPA), the FHWA adds to the GUIDANCE statement that the maximum spacing for warning lights should be identical to the channelizing device space requirements. The FHWA received one comment from the NCUTCD opposed to this change, suggesting that the proposed wording may cause practitioners to think that warning lights are needed on all channelizing devices. The City of Charlotte, North Carolina, and a private citizen suggested rewording the text to clarify that the statement applies only when warning lights are used to supplement channelization. The FHWA adopts the change, with editorial changes to indicate that the requirements apply when warning lights are used to supplement channelization.

Additionally, the FHWA changes the second SUPPORT statement (in the 2000 MUTCD) to an OPTION statement to more accurately reflect the uses of lighting devices. The FHWA received one comment from a traffic engineering consultant opposed to this change, suggesting that, because this sentence refers specifically to warning beacons, it belongs in another section. The FHWA disagrees because this statement is generic and is most appropriate in this section.

In the NPA, the FHWA proposed adding an OPTION statement at the end of this section stating that vehicle hazard warning signals may only supplement the rotating lights or strobe lights. The FHWA received three comments from the NCUTCD, the City of Charlotte, North Carolina, and a private citizen opposed to this statement, suggesting that the statement was repetitive because this information is contained in the previous STANDARD. The FHWA agrees and withdraws this proposal, and removes this OPTION from this final rule.

276. In Section 6F.76 Floodlights (numbered Section 6F.72 in the NPA), the FHWA revises the first GUIDANCE statement by removing ''flagger stations'' from the text and adds a new STANDARD statement, following the GUIDANCE, to indicate that, except in emergency situations, flagger stations shall be illuminated at night. The FHWA incorporates this change in this final rule to retain consistency with other sections of the MUTCD, such as in Section 6E.05 Flagger Stations, and to improve flagger visibility during nighttime operations.

The FHWA also adds to the existing STANDARD statement that floodlighting shall not produce a disabling glare condition for approaching road users, flaggers, or workers. The FHWA adds flaggers and workers to the statement based on comments from the City of Charlotte, North Carolina, and a private citizen expressing concerns about safety of flaggers and workers. The FHWA believes that it is important and necessary to protect flaggers and workers, as well as road users, from disabling floodlight glare.

In the NPA, the FHWA proposed adding a SUPPORT statement at the end of the section, that based on research,[54] 50 lux (5 foot candles) is a desirable nighttime illumination level where workers are active. The FHWA received one comment from the Laborers' Health and Safety Fund of North America in support of this new statement. The NCUTCD, the City of Charlotte, North Carolina, a private citizen, and NIOSH suggested that additional information

[54] Information on ''Illumination Guidelines for Nighttime Highway Work'', NCHRP Project 5–13, 1993, is summarized in NCHRP research Results Digest Number 216, December, 1996, which is a available for purchase from the Transportation Research Board's bookstore, at the following URL: *http://64.118.69.9/acb1/showdetl.cfm?&DID=92&Product_ID=2048&CATID=1&series=7.*

should be included regarding illumination levels for other than general activities. The FHWA agrees and includes information on illumination levels for general activities and for tasks requiring high levels of precision and extreme care.

277. In Section 6F.78 Warning Lights (numbered Section 6F.74 in the NPA), the FHWA adds Type D 360-degree warning lights, as appropriate, throughout the section to provide more flexibility in the use of lighting devices. The FHWA received one comment from ATSSA in support of these changes, and adopts these changes.

The FHWA also changes the first paragraph of the first STANDARD statement to a SUPPORT statement because it describes what warning lights are, rather than providing requirements on their use. The FHWA incorporates this minor editorial change in this final rule because the language of this statement is more appropriate as a SUPPORT, rather than a STANDARD.

278. In Section 6F.80 Temporary Traffic Control Signals (numbered Section 6F.76 in the NPA), to enhance consideration of pedestrian needs in temporary traffic control zones, the FHWA adds to the first GUIDANCE statement that, where pedestrian traffic is detoured to a temporary traffic control signal, agencies should use engineering judgment to determine if pedestrian signals or accessible pedestrian signals are needed. The FHWA received one comment from the NCUTCD opposed to this change, stating that the wording is repetitive because accessibility is already addressed elsewhere. The FHWA disagrees and includes this paragraph in this final rule.

Additionally, the FHWA proposed in the NPA to add a new STANDARD statement that indicates that the supports for temporary traffic control signals shall not encroach into a minimum required pedestrian pathway width of 1500 mm (60 in), to assure a clear pathway for all pedestrians, including disabled pedestrians. The FHWA received comments from the NCUTCD, the Cities of Tucson, Arizona, and Charlotte, North Carolina, and a private citizen opposed to this change. The NCUTCD stated that the wording is repetitive because accessibility is already addressed elsewhere. The Cities of Tucson, Arizona, and Charlotte, North Carolina, and the private citizen suggested that the text be reworded to apply only to those locations where pedestrians with disabilities are likely to be present. The FHWA agrees and revises this paragraph to state that the supports shall not encroach into the minimum width of a ''pedestrian access route'' (1200 mm/48 in) or an ''alternate circulation path'' (900 mm/36 in) to be consistent with the various requirements elsewhere in Part 6.

The FHWA also adds to the second SUPPORT statement a new item ''M. The nature of adjacent land uses (such as residential or commercial)'' to the list of factors related to the design and application of temporary traffic control signals. The FHWA received one comment from a private citizen in support of this change, and adopts this change and re-letters the remaining items.

279. In Section 6F.81 Temporary Traffic Barriers (numbered Section 6F.77 in the NPA), the FHWA modifies the first SUPPORT statement to more clearly describe the four primary functions of temporary traffic barriers, by deleting the last two sentences related to the functions of temporary traffic barriers and adding a portion of text from Section 6G.11 Work Within the Traveled Way of Urban Streets. The FHWA received one comment from the City of Tucson, Arizona, in support of the changes to this section, and adopts these changes.

280. In Section 6F.82 Crash Cushions (numbered Section 6F.78 in the NPA), the FHWA adds to the STANDARD statement that damaged crash cushions shall be promptly repaired or replaced to maintain their crashworthiness. The FHWA received one comment from the City of Tucson, Arizona, in support of this change, and adopts this change.

Additionally, in the 2000 MUTCD a new requirement was established in this section that crash cushions in temporary traffic control zones shall be crashworthy. No special phase-in target compliance date was established at that time. Based on comments that agencies are encountering difficulties and economic impacts given the extensive testing of devices that has to occur in accordance with NCHRP Report 350 [55] in order to determine and certify crashworthiness, the FHWA believes that a special phase-in target compliance date is required for the crashworthiness provision in this section. Therefore, in this final rule, the FHWA establishes a special phase-in target compliance date of January 17, 2005, for crash cushions in temporary traffic control zones to be crashworthy. The FHWA believes this target date of four years from the effective date of the 2000 MUTCD provides agencies with a reasonable period in which to phase in the use of compliant crash cushions in temporary traffic control zones.

281. In Section 6F.84 Rumble Strips (numbered Section 6F.80 in the NPA), to clarify which applications are used for travel lanes and which ones are used on the shoulder, the FHWA adds to the SUPPORT statement a description of longitudinal rumble strips, and clarifies throughout the section which statements refer specifically to longitudinal rumble strips and which statements refer specifically to transverse rumble strips. The FHWA received one comment from the City of Tucson, Arizona, in support of these changes to this section, and adopts these changes.

Additionally, the FHWA adds a STANDARD statement following the SUPPORT statement that, if it is desirable to use a color other than the color of the pavement for a longitudinal rumble strip, the color of the rumble strip shall be the same as the longitudinal line the rumble strip supplements. If the color of a transverse rumble strip used within a travel lane is not the color of the pavement, the color of the rumble strip shall be white. These changes are needed to conform to general principles for colors of pavement markings. The FHWA received two comments from the NCUTCD and the Virginia DOT opposed to this new STANDARD statement suggesting that some jurisdictions have used other colors, such as yellow and orange. The FHWA believes that white has been the traditional color used for transverse rumble strips and adopts this statement in this final rule. The use of other colors would need further research and may be considered for future rulemaking.

The FHWA also adds to the GUIDANCE statement that transverse rumble strips should not be placed through pedestrian crossings or on bicycle routes; should not be placed on roadways used by bicyclists unless a minimum clear path of 1.2 m (4 ft) is provided at each edge of the roadway or on each paved shoulder; and that longitudinal rumble strips should not be placed on the shoulder of a roadway that is used by bicyclists unless a minimum clear path of 1.2 m (4 ft) is also provided on the shoulder. These changes will minimize interference caused by rumble strips to bicyclists using the roadway or shoulder. The FHWA received one comment from the Association of Pedestrian and Bicycle Professionals in support of these changes. The Wisconsin DOT opposed them, suggesting that additional text is needed to define the clear path at the

[55] NCHRP Report 350, ''Recommended Procedures for the Safety Performance Evaluation on Highway Features,'' 1993, is available for downloading from the Transportation Research Board at the following URL: *http://gulliver.trb.org/publications/nchrp/nchrp_rpt_350-a.pdf.*

edge of the roadway. The FHWA addresses this comment by providing additional language in this final rule that references the AASHTO Guide to the Development of Bicycle Facilities, which is listed in Section 1A.11 Relation to Other Publications.

282. In Section 6G.01 Typical Applications, in the NPA the FHWA proposed adding two SUPPORT statements indicating that temporary traffic control zones are subject to all accessibility requirements for use by all types of pedestrians. The FHWA received five comments from the NCUTCD, the Ohio DOT, the Cities of Tucson, Arizona, and Charlotte, North Carolina, and a private citizen opposed to the wording of these statements suggesting that it is repetitive because accessibility issues are already covered elsewhere. To address these comments, while also stressing the importance of accessibility, the FHWA adds a new STANDARD statement to the beginning of this section emphasizing accessibility provisions as required by the Americans with Disabilities Act.

Additionally, in the NPA the FHWA proposed to add a GUIDANCE statement following the second SUPPORT statement that bicyclists and pedestrians should not be exposed to unprotected excavations, open utility access, overhanging equipment, or other hazards. The Association of Pedestrian and Bicycle Professionals supported this new statement. For enhanced clarity, the FHWA removes this paragraph from this section and moves it, with minor editorial changes, to a new section numbered and titled, ''Section 6G.05 Work Affecting Pedestrian and Bicycle Facilities.''

283. In Section 6G.02 Work Duration, the FHWA adds to the SUPPORT statement in this section (and in all other sections in Chapter 6G except 6G.01, 6G.05, and 6G.14 through 6G.19), providing references to other chapters and sections of Part 6 of the MUTCD for additional information regarding the steps to follow when pedestrian or bicycle facilities are affected by the worksite. Also, the FHWA modifies item C in the first STANDARD to clarify that short-term stationary work is defined as daytime work of more than one hour within a single daylight period. The FHWA received two comments from commenters who did not understand why the change was necessary. The change is necessary because the single period of daylight in the summertime can last more than 12 hours. The FHWA adopts the change as proposed in the NPA.

284. In Section 6G.04 Modifications to Fulfill Special Needs, the FHWA adds throughout the GUIDANCE statement additional information related to the need to take into account pedestrian and bicycle usage. The FHWA received several editorial comments suggesting changes to the wording proposed in the NPA. The FHWA incorporates many of these changes and includes additional references to other areas of the MUTCD.

Additionally, the FHWA moves the SUPPORT and STANDARD statements at the end of the section (in the 2000 MUTCD) to Section 6F.65 Temporary Traffic Barriers as Channelizing Devices because this text outlining temporary traffic barriers is more appropriately located in this section. The FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen opposed to removing these statements from this section, stating that these statements are important in this section of modifying the typical applications to fulfill special needs. The FHWA disagrees and believes that this information is best covered elsewhere, and does not need to be included in this section.

285. The FHWA adds a new section numbered and titled, Section 6G.05 Work Affecting Pedestrian and Bicycle Facilities. This new section contains SUPPORT, GUIDANCE, and STANDARD statements with provisions for maintaining accessibility for pedestrians as well as bicyclists in temporary traffic control zones. The information in this section was proposed elsewhere in the NPA. However, based on comments, the FHWA believes that this information is best consolidated into one section, rather than spread throughout all of the sections of Chapter 6G. The FHWA renumbers the remaining sections accordingly.

286. In Section 6G.06 Work Outside of Shoulder (numbered 6G.05 in the NPA), the FHWA proposed adding to the first GUIDANCE statement that pedestrians should be separated from the worksite by appropriate barriers that maintain accessibility and detectability for pedestrians with disabilities. Although one commenter from the City of Tucson, Arizona, supported this new text, the NCUTCD suggested that it was repetitive. The FHWA disagrees that it is repetitive, but removes this paragraph from this section and places it in the new section numbered and titled, ''Section 6G.05 Work Affecting Pedestrian and Bicycle Facilities.''

287. In Section 6G.07 Work on the Shoulder with No Encroachment (numbered Section 6G.06 in the NPA), the FHWA proposed adding to the first STANDARD statement that, where pedestrian routes are closed, alternate pedestrian routes shall be provided. A private citizen supported this new text. The NCUTCD suggested that the STANDARD be changed to GUIDANCE because this section involves work on the shoulder with no encroachment, and alternate pedestrian routes will not be necessary in all locations. The FHWA disagrees with changing this to a GUIDANCE, but removes this paragraph from this section and places it in the new section numbered and titled, ''Section 6G.05 Work Affecting Pedestrian and Bicycle Facilities.''

Additionally, the FHWA proposed adding a sentence to the GUIDANCE statement that, where feasible, signs should be placed so they do not narrow any existing pedestrian passage to less than 1500 mm (60 in). The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, opposed to this new sentence. The NCUTCD stated that it was repetitive, and the City of Tucson, Arizona, suggested a narrower passage be permitted. The FHWA removes the entire paragraph from this section and places it in the new section numbered and titled, ''Section 6G.05 Work Affecting Pedestrian and Bicycle Facilities.'' Based on comments and to be consistent with other sections in Part 6, the FHWA revises the last sentence of this paragraph to permit existing pedestrian passages to be narrowed to 1200 mm (48 in) rather than 1500 mm (60 in). In addition, this is consistent with the ADAAG.

288. In Section 6G.08 Work on the Shoulder with Minor Encroachment (numbered 6G.07 in the NPA), the FHWA proposed adding to the GUIDANCE statement that, where feasible, pedestrian routes should be protected or alternate accessible and detectable routes should be provided. Although the City of Tucson, Arizona, supported this new text, the NCUTCD suggested that it was repetitive. The FHWA removes this paragraph from this section, rewords it and classifies it as a STANDARD to be consistent with ADA requirements and places it in the new section numbered and titled, ''Section 6G.05 Work Affecting Pedestrian and Bicycle Facilities.''

289. In Section 6G.10 Work Within the Traveled Way of Two-Lane Highways (numbered Section 6G.09 in the NPA), the FHWA proposed adding to the GUIDANCE statement that pedestrian detours should be avoided because pedestrians rarely observe them and the cost of providing accessibility and detectability might outweigh the cost of maintaining a continuous route. Also, whenever possible, work should be done in a manner that does not create

a need to detour pedestrians from existing routes or crossings. Although the City of Tucson, Arizona, supported this new text, the NCUTCD suggested that it was repetitive. The FHWA disagrees that it is repetitive, but removes this paragraph from this section, and places it in the new section numbered and titled, ''Section 6G.05 Work Affecting Pedestrian and Bicycle Facilities.''

290. In Section 6G.11 Work Within the Traveled Way of Urban Streets (numbered 6G.10 in the NPA), the FHWA adds to the first STANDARD statement that, if the temporary traffic control zone affects an accessible and detectable pedestrian facility, the accessibility and detectability along the alternate pedestrian route shall be maintained. The FHWA received one comment from a private citizen in support of this change, and four comments from the NCUTCD, the City of Tucson, Arizona, and traffic engineering consultants opposed to it. Most of the opposing commenters suggested that this statement should be a GUIDANCE, rather than STANDARD. The FHWA disagrees because this is an existing ADA requirement. Therefore, the FHWA adopts the text as proposed in the NPA. Based on a comment from the Florida DOT and for consistency with the new Section 6D.02 Accessibility Considerations, the FHWA adds another paragraph to the STANDARD that where transit stops are affected or relocated because of work activity, agencies shall provide access to temporary transit stops.

Additionally, the FHWA adds to the GUIDANCE statement that work sites within the intersection should be protected against inadvertent pedestrian incursion by providing detectable channelizing devices. The FHWA received one comment from the NCUTCD opposed to this new paragraph, stating that it is repetitive. The FHWA disagrees and adopts the text with an editorial change.

291. In Section 6G.12 Work Within the Traveled Way of Multi-lane, Nonaccess Controlled Highways (numbered Section 6G.11 in the NPA), the FHWA proposed adding to the first SUPPORT statement that Chapter 6D contains information regarding the steps to follow when pedestrian facilities are affected by the worksite. Although the City of Tucson, Arizona, supported this new text, the NCUTCD suggested that it was repetitive. The FHWA rewords this paragraph to match the same paragraph that the FHWA places in most of the other sections within Chapter 6G and places it at the beginning of the first SUPPORT statement.

Additionally, the FHWA moves the information in the second SUPPORT statement related to the four primary functions of temporary traffic barriers to Section 6F.81 Traffic Barriers (numbered Section 6F.75 in the NPA) as they more properly belong in that section.

292. In Section 6G.13 Work Within the Traveled Way at an Intersection (numbered Section 6G.12 in the NPA), to reinforce proper contact procedures, the FHWA proposed adding language to the first STANDARD statement and to the second GUIDANCE statement regarding contact with the highway agency having jurisdiction at intersections where pedestrian accessibility problems are anticipated. The FHWA received several primarily editorial comments regarding these changes. The NCUTCD suggested that the references to accessibility were repetitive. Based on a comment from a private citizen, the FHWA changes the language in the GUIDANCE to a STANDARD to provide greater consistency by requiring rather than recommending that the entity conducting the work contact the highway agency having jurisdiction when working near any (signalized or unsignalized) intersection where operational, capacity, or pedestrian accessibility problems are anticipated. If these types of problems are anticipated, it is important that the highway agency having jurisdiction be contacted even if it does not involve a signalized intersection.

The FHWA proposed adding a STANDARD statement after the second GUIDANCE statement that pedestrian crossings shall be protected with a pedestrian barrier detectable to pedestrians with visual disabilities. The FHWA received three comments from the NCUTCD, the City of Charlotte, North Carolina, and a private citizen opposed to this change suggesting that this should only be necessary if the crossing is an accessible pedestrian crossing. The FHWA agrees and revises the statement and classifies it as a GUIDANCE rather than a STANDARD to be consistent with new Section 6G.05 Work Affecting Pedestrian and Bicycle Facilities.

Additionally, the FHWA modifies item B of the third OPTION statement to indicate that uniformed law enforcement officers, as well as flaggers, may be used to direct road users when work is within an intersection. The FHWA received two comments from the Laborers' Health and Safety Fund of North America and a private citizen in support of this change and adopts this change.

293. In Section 6G.14 Work Within the Traveled Way of Freeways and Expressways (numbered Section 6G.13 in the NPA), the FHWA revises the first SUPPORT statement to include bicycles in the listing of road vehicle mix. The FHWA received one comment from the Kansas DOT opposed to this change, suggesting that bicycles should not be allowed on freeways. The FHWA adopts this change, with an editorial change to clarify that bicycles are included in the vehicle mix only if they are permitted. In some areas of the country, Interstate Routes or other freeways offer the only access for recreational bicyclists to get between destinations, and therefore bicycles are permitted. This is a safety issue that has traditionally been left to the States to decide.

294. In Section 6G.19 Work in the Vicinity of Highway-Rail Grade Crossings (numbered Section 6G.18 in the NPA), the FHWA clarifies the second sentence of the STANDARD statement by adding the word ''uniformed'' to describe a law enforcement officer. The FHWA makes this clarification in this final rule for consistency with other requirements elsewhere in the MUTCD.

295. The FHWA moves all of the information from Section 6G.19 Control of Traffic Through Traffic Incident Management Areas, as numbered and titled in the 2000 MUTCD, to a new chapter numbered and titled ''Chapter 6I Control of Traffic Through Traffic Incident Management Areas.'' In its place, the FHWA adds a new section numbered and titled, ''Section 6G.20 Temporary Traffic Control During Nighttime Hours.'' (This section was numbered Section 6G.19 in the NPA.) This new section contains SUPPORT, GUIDANCE, OPTION, and STANDARD statements regarding the temporary traffic control measures appropriate during nighttime hours. The FHWA received comments from the City of Tucson, Arizona, the Laborers' Health and Safety Fund of North America, and NIOSH in support of the new section. Many expressed that a new section devoted to temporary traffic control during nighttime hours is needed. Several commenters suggested that more information was needed to strengthen the section, and some suggested rewording and additional text. The NCUTCD favored replacing the proposed text with modified language developed by the NCUTCD Temporary Traffic Control Technical Committee. The FHWA agrees that additional information is necessary and believes the NCUTCD's rewording will clarify the section. Accordingly, the FHWA revises the text to incorporate and be

consistent with changes made in other areas of the MUTCD in this final rule, including the requirement for illuminating flagger stations, except in emergencies, consistent with Section 6E.05 Flagger Stations, and additional information on illumination for work areas in general.

296. In Section 6H.01 Typical Applications, the FHWA changes the Typical Applications figures and their accompanying notes to add more provisions to accommodate persons with disabilities and pedestrians, and to correct inadvertent minor errors in the 2000 MUTCD and in the NPA. These changes reflect the changes to all parts of the MUTCD with particular reference to Part 6 changes and they make the drawings and text consistent with other parts of the MUTCD and elsewhere in Part 6.

Additionally, in Table 6H–1 and in the corresponding Typical Applications, the FHWA changes the titles of Figure 6H–11 from ''Lane Closure on Low-Volume Two-Lane Road'' to ''Lane Closure on Two-Lane Road with Low Traffic Volumes,'' Figure 6H–15 from ''Work in Center of Low-Volume Road'' to ''Work in Center of Road with Low Traffic Volumes,'' and Figure 6H–16 from ''Surveying Along Centerline of Low-Volume Road'' to ''Surveying Along Centerline of Road with Low Traffic Volumes.'' These changes will avoid confusion with material in Part 5 Traffic Control Devices for Low-Volume Roads. Low-volume roads, as covered in Part 5, are specifically defined in Section 5A.01 Function as, among other criteria, being outside a built-up area and having a traffic volume of less than 400 Annual Average Daily Traffic. The Typical Applications in Part 6 that refer to low volume roads are not intended to be limited only to roads meeting the limited definition of Part 5.

The FHWA inserts Table 6H–4 Formulas for Determining Taper Lengths. This information is the same information as was proposed in the NPA, except that it is included in a tabular format for clarity.

Additionally, the FHWA includes the following changes to the notes to the figures of typical applications:

a. *Notes for Figure 6H–1:* The FHWA replaces item 5 in the STANDARD statement (of the 2000 MUTCD) with a new item 5 in the OPTION statement, stating that vehicle hazard warning signals may be used to supplement high intensity rotating, flashing, oscillating, or strobe lights, and a new item 6 in the STANDARD statement, which states that vehicle hazard warning signals shall not be used instead of the vehicle's high intensity rotating, flashing, oscillating, or strobe lights. The FHWA received no comments regarding these changes. These same changes have been made in the notes for other figures in Chapter 6H as applicable and as noted below in the discussions of such figures. The FHWA did receive two comments from the City of Charlotte, North Carolina, and a private citizen suggesting that item 1 in the GUIDANCE statement be revised. The suggested change would imply that a single sign is used, whereas this statement calls for an additional sign to be used. Because operation of the work vehicles may involve crossing from the median to the shoulder, all traffic must be warned of such conditions, and thus a sign on the median lane side and on the shoulder should be used. Accordingly, the FHWA disagrees with the commenters and adopts the text as proposed in the NPA.

b. *Notes for Figure 6H–2:* The FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen objecting to the terminology for devices to be turned off in blasting zones and the letter sizes for the W22–2 sign. See discussion of this issue in Section 6F.40 TURN OFF 2-WAY RADIO AND CELL PHONE Sign (W22–2).

c. *Notes for Figure 6H–3: See* discussion of items regarding vehicle hazard warning signals in paragraph a above. That discussion applies to Figure 6H–3 also. Additionally, the FHWA adds a new item 7 to the STANDARD statement at the end of the Notes that when paved shoulders having a width of 2.4 m (8 ft) or more are closed, at least one advance warning sign shall be used. In addition, channelizing devices shall be used to close the shoulder in advance to delineate the beginning of the work space and direct motor vehicle traffic to remain within the traveled way. The FHWA received no comments regarding these changes, and adopts these changes.

d. *Notes for Figure 6H–4: See* discussion of items regarding vehicle hazard warning signals in paragraph a above. That discussion applies to Figure 6H–4 also.

e. *Notes for Figure 6H–5:* The FHWA revises item 4 from a GUIDANCE statement to a STANDARD statement to clarify that the ends of the barrier shall be treated in accordance with Section 6F.81 Temporary Traffic Barriers. The FHWA also removes the word ''(optional)'' following ''crash cushion'' in Figure 6H–5. The FHWA makes these changes to address two comments from the City of Charlotte, North Carolina, and a private citizen suggesting that item 4 as a GUIDANCE statement is misleading and it needs to be changed to a STANDARD to be consistent with mandatory safety requirements of Section 6F.81 Temporary Traffic Barriers (numbered as 6F.77 in the NPA). The FHWA agrees that this change is necessary for consistency, and revises item 4 to a STANDARD statement, with some text changes to correspond with Section 6F.81.

f. *Notes for Figure 6H–6: See* discussion of items regarding vehicle hazard warning signals in paragraph a above. That discussion also applies to Figure 6H–6.

g. *Notes for Figure 6H–7:* The FHWA changes item 1 to a SUPPORT statement. It was inadvertently given a STANDARD heading in the 2000 MUTCD and the NPA, even though it contains no mandatory language. The FHWA renumbers the remaining items accordingly. The FHWA revises items 5 and 6 (numbered items 4 and 6 in the NPA) to match the notes with the figure, which illustrates a double reverse curve situation. The FHWA makes these minor editorial changes to address two comments from the City of Charlotte, North Carolina, and a private citizen suggesting that the notes did not match the new double reverse curve illustration. The FHWA agrees and makes the changes for consistency.

h. *Notes for Figure 6H–8:* The FHWA combines items 2 and 3, as numbered in the NPA, into a single item 2 in the OPTION statement for clarity and renumbers the following items. The FHWA also adds a new item 5 to the OPTION statement that cardinal direction plaques may be used with route signs. The FHWA makes these minor changes to address two comments from the City of Charlotte, North Carolina, and a private citizen suggesting these changes, to be consistent with other sections in Part 6.

i. *Notes for Figure 6H–9:* The purpose of Figure 6H–9 is to show signing for overlapping routes with a detour. The configuration of the actual work space raised comments from the City of Charlotte, North Carolina, and a private citizen as to what is intended by the associated signing and barricades. To avoid any confusion, the FHWA eliminates any reference to an allowance for local traffic and shows the space as a full road closure between the two intersecting routes. The FHWA adjusts the barricades and ROAD CLOSED signing accordingly. The FHWA also changes the double yellow dashed pavement markings to a single yellow dash in response to a comment from a traffic engineering consultant that the double yellow dashes are incorrect. The FHWA notes that the

markings in this figure are shown for illustrative purposes only.

j. *Notes for Figure 6H–10:* The FHWA moves item 4 in the OPTION statement to become a new OPTION item 11, and renumbers the other items accordingly for improved clarity. The FHWA also replaces item 4 (item 5 in the NPA) with the note regarding buffer space that was added to the figure in the NPA. The FHWA believes that buffer space is an important application that is often ignored, and placing the note in the notes as well as on the figure is appropriate. The FWHA also changes item 5 (item 6 in the NPA) from a GUIDANCE to a STANDARD to be consistent with Section 6E.05 Flagger Stations, and rewords the statement accordingly. The flagger and advance sign series are all moved farther upstream in the figure. Additional space is needed beyond the work area to allow the traffic in the wrong lane to return to their proper lane without conflicting with stopped vehicles in the opposite direction. The FHWA makes these changes in this final rule to address comments from the City of Charlotte, North Carolina, and a private citizen suggesting these changes to be consistent with other areas of the MUTCD.

k. *Notes for Figure 6H–11:* The FHWA removes item 2 of the STANDARD statement (from the 2000 MUTCD) because this Typical Application specifically does not involve the use of flaggers. Typical Application 10 covers the temporary traffic control zone applicable to this STANDARD, using flaggers. The FHWA received no comments regarding this change, and adopts this change in this final rule. The FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen suggesting that the Type B flashing warning lights referenced in the OPTION should be changed to Type A for night work. The FHWA disagrees because there is no change from the 2000 MUTCD language elsewhere in Part 6 that would justify changing this note for Figure 6H–11.

l. *Notes for Figure 6H–12:* The FHWA adds to item 2 of the STANDARD statement that durations of red clearance intervals shall be adequate to clear the one-lane section of conflicting vehicles. Additionally, the FHWA adds a new item 5 to the STANDARD statement that safeguards shall be incorporated to avoid the possibility of conflicting signal indications at each end of the temporary traffic control zone. The FHWA proposed slightly different wording for item 5 in the NPA, however the FHWA modifies the wording based on a comment from a traffic control device manufacturer in order to maintain consistency with Section 6F.80 Temporary Traffic Control Signals of the MUTCD. The FHWA renumbers the remaining items.

m. *Notes for Figure 6H–13:* The FHWA modifies item 2 of the STANDARD statement to indicate that a flagger or uniformed law enforcement officer shall be used during a temporary road closure. Additionally, the FHWA removes item 3 of the OPTION statement (as numbered in the 2000 MUTCD) because it is not applicable. The FHWA also adds a new item 3 as a GUIDANCE statement, which states that the law enforcement officer, if used for this application, should follow the procedures of Sections 6E.04 Flagger Procedures and 6E.05 Regulatory Sign Authority. This is to encourage law enforcement officers to use proper flagging devices and procedures for a temporary road closure. The FHWA received editorial comments on these changes, which the FHWA incorporates as appropriate in this final rule.

n. *Notes for Figure 6H–14:* The FHWA adds a new item 6 under Flagging Method which states, ''At night, flagger stations shall be illuminated, except in emergencies.'' In response to concerns about the orientation of the signal heads in the figure, the two overhead traffic signal heads in each direction have been relocated to show one post mounted head and one overhead mounted traffic signal head.

o. *Notes for Figure 6H–15:* The FHWA adds a new item 2 to the GUIDANCE statement that workers in the roadway should wear high-visibility safety apparel as described in Section 6D.03 Worker Safety Considerations. See discussion of items regarding vehicle hazard warning signals in paragraph a above. The FHWA received comments from ATSSA and the Virginia DOT suggesting that all workers exposed to traffic wear high visibility safety apparel, and the statement be strengthened to a STANDARD. The City of Charlotte, North Carolina, and a private citizen felt the new text is unnecessary because it is obvious that workers should wear high visibility safety apparel. The FHWA strengthens the existing GUIDANCE statement in 6D.03 to include that the high visibility safety apparel should meet the requirements of ISEA ''American National Standard for High-Visibility Safety Apparel'' (see Section 1A.11 Relation to Other Publications) and labeled as ANSI 107–1999 standard performance for Class 1, 2, or 3 risk exposure and that a competent person, designated by the employer to be responsible for the worker safety plan within the activity area of the job site, should make the selection of the appropriate class of garment. While this is not a mandate as suggested in two of the docket comments, the emphasis is significantly heightened from the 2000 MUTCD and does allow employer flexibility on the use of the high visibility safety apparel to fit the conditions that exist. Accordingly, the FHWA adopts the text as proposed in the NPA.

p. *Notes for Figure 6H–17:* The FHWA adds a new item 3 to the STANDARD statement that if an arrow panel is used, it shall be used in the caution mode. The FHWA renumbers the remaining items. Additionally, the FHWA removes item 5 of the GUIDANCE statement (as numbered in the 2000 MUTCD) and moves it to the OPTION statement as part of item 9 that the use of a truck mounted attenuator is optional on either a shadow vehicle or a work vehicle. Several commenters suggested an optional truck mounted attenuator be retained on the work vehicle. The FHWA agrees and includes the optional attenuator in this final rule.

q. *Notes for Figure 6H–19:* The FHWA repeats the GUIDANCE items from the notes for Figure 6H–20 in the notes for Figure 6H–19 to address two comments from the City of Charlotte, North Carolina, and a private citizen suggesting that these items be added because they are applicable and necessary for proper use of the typical application. The FHWA agrees and makes the editorial change to add these notes in this final rule.

r. *Notes for Figure 6H–21:* (*See* discussion of items regarding vehicle hazard warning signals in paragraph a above.) The NCUTCD objected to the addition of ''optional'' to the flag tree in the figure, stating it should be guidance. Optional is consistent with the text in Section 6F.57 High-Level Warning Devices. Upgrading to a GUIDANCE condition goes beyond the scope of the NPA and would need to be addressed in a future rulemaking. Practitioners can choose to make its use recommended or mandatory in their jurisdictions if appropriate.

s. *Notes for Figure 6H–22:* In the NPA, the FHWA proposed removing item 5 (as numbered in the 2000 MUTCD) from the OPTION statement, regarding a right-turn island using channelizing devices. The FHWA received three comments from the NCUTCD, the City of Charlotte, North Carolina, and a private citizen opposed to this proposal, stating that the item provides useful information that is not evident from looking at the figure. The FHWA agrees and restores the text of the 2000

MUTCD, with editorial changes. The NCUTCD, the Kansas DOT, the City of Charlotte, North Carolina, and a private citizen objected to the removal of ''optional'' from the arrow panel in the figure. In Section 6F.56 Arrow Panels, the FHWA adds a new GUIDANCE statement on the use of arrow panels for certain conditions such as multi-lane, high speed, high volume, limited sight distance or unexpected locations which applies in this typical application. Accordingly, the FHWA adopts the change deleting ''optional'' from the arrow panel in this final rule.

t. *Notes for Figure 6H–24:* The NCUTCD objected to the addition of ''optional'' for the buffer space and the NCUTCD, the Wisconsin DOT, the City of Charlotte, North Carolina, and a private citizen objected to the deletion of ''optional'' from the arrow panel in the figure. The FHWA agrees with the docket comments and withdraws these proposed changes.

u. *Notes for Figure 6H–25:* The NCUTCD objected to the term ''optional'' for the flag tree, stating that for work in intersections the high-level warning device is very useful and it should not be labeled as optional. Optional is consistent with the text in Section 6F.57 High-Level Warning Devices. Upgrading to a GUIDANCE condition goes beyond the scope of the NPA, and would need to be addressed in a future rulemaking. Practitioners can choose to make its use recommended or mandatory in their jurisdictions, if appropriate. Based on additional comments from the City of Charlotte, North Carolina, and a private citizen, the FHWA relocates the southbound ROAD WORK AHEAD sign upstream and dimensions it with respect to the first channelizing device rather than the intersection.

v. *Notes for Figure 6H–26:* (*See* discussion of items regarding vehicle hazard warning signals in paragraph a above.) The NCUTCD objected to the term ''optional'' for the flag tree in the Figure. Similar to figures 6H–21 and 24, ''optional'' is consistent with the text in Section 6F.57. Practitioners can choose to make its use recommended or mandatory in their jurisdictions, if appropriate.

w. *Notes for Figure 6H–27:* (*See* discussion of items regarding vehicle hazard warning signals in paragraph a above.) The NCUTCD objected to the term ''optional'' for the flag tree in the figure. Similar to Figures 6H–12, 24, and 26, ''optional'' is consistent with the text in Section 6F.57 High-Level Warning Devices (Flag Trees). Practitioners can choose to make its use recommended or mandatory in their jurisdictions, if appropriate. In addition, consistent with Section 6E.05 Flagger Stations, the FHWA adds a new STANDARD statement which states, ''At night, flagger stations shall be illuminated, except in emergencies.''

x. *Notes for Figure 6H–28:* In the NPA, the FHWA proposed adding a new item 3 to the GUIDANCE statement that audible warnings should be considered where midblock closings and changed crosswalk areas cause inadequate communication to pedestrians who have visual disabilities. The FHWA received five comments, including comments from representatives of the blind community, opposing this new item, and suggesting rewording. The FHWA agrees and revises this item by changing the phrase ''audible warning'' to ''audible information devices.'' Additionally, the FHWA adds the use of Type D 360-degree Steady-Burn warning lights to item 7 of the OPTION statement (as numbered in the NPA), to provide consistency with other sections in Part 6. There were no comments regarding this change, and the FHWA adopts this change. The FHWA received two comments from the NCUTCD and a traffic engineering consultant regarding item 1 in the STANDARD statement, suggesting that the wording be revised for clarity. The FHWA agrees and clarifies the statement in this final rule to indicate that when crosswalks or other pedestrian facilities are closed or relocated, the temporary facilities shall be detectable and shall include accessibility features consistent with features present in the existing pedestrian facility.

y. *Notes for Figure 6H–29:* (Refer to the discussion for Figure 6H–28 regarding item 3 of the GUIDANCE statement and item 1 of the STANDARD statement). The City of Charlotte, North Carolina, and a private citizen suggested that an additional advance pedestrian crossing sign is necessary for eastbound traffic on the east leg of the intersection. The FHWA agrees and changes the figure accordingly in this final rule.

z. *Notes for Figure 6H–30:* The FHWA received comments from the NCUTCD, the Wisconsin DOT, the City of Charlotte, North Carolina, and a private citizen objecting to the removal of the term ''optional'' for the arrow panels in the figure. The FHWA modifies the new GUIDANCE statement in Section 6F.56 Arrow Panels on the placement criteria for use of arrow panels which will allow optional use in some conditions. Accordingly, the FHWA withdraws this proposed deletion of ''optional'' from the figure for this Typical Application.

aa. *Notes for Figure 6H–31:* The FHWA received one comment from Caltrans suggesting that the metric maximum spacing formula for channelizing markings, as stated in item 4 of the GUIDANCE, is not accurate, and needed to be revised to be accurate and to be consistent with Figure 6H–32. The FHWA agrees that this was a typographical error and revises this item in this final rule from ''0.1 S km'' to ''0.1 S m.'' The FHWA also adds the text ''in km/h (mph)'' following ''where S is the speed.'' The FHWA received three comments suggesting that items 7 and 9 be revised to better correlate with the illustration on Figure 6H–31. The FHWA agrees and revises the items accordingly in this final rule. In note 7, the words ''Two Lane'' are added before ''Reverse Curve'' in the first and second sentences of note 7. The FHWA deletes the first sentence in note 9. Similar to Figure 6H–30, the FHWA also received four docket comments objecting to the removal of the term ''optional'' for the arrow panels in the figure. For the reasons listed in paragraph z above, the FHWA withdraws the proposed deletion of ''optional'' from the Figure for this Typical Application.

bb. *Notes for Figure 6H–32:* In the NPA, the FHWA proposed adding a new item 2 to the STANDARD statement requiring at least one advance warning sign when paved shoulders having a width of 2.4 m (8 ft) or more are closed and that channelizing devices shall be used to close the shoulder in advance to delineate the beginning of the work space and direct motor vehicle traffic to remain within the traveled way. The FHWA received comments from the City of Charlotte, North Carolina, and a private citizen opposed to this new statement, indicating that this statement better relates to work exclusively on the shoulder. The FHWA agrees and changes this statement to a GUIDANCE and clarifies the statement to indicate that channelizing devices (rather than signs) should be used to close the shoulder in advance of the merging taper for a lane closure, to direct vehicular traffic to remain within the traveled way. The FHWA also adds a new item 4 under GUIDANCE regarding use of Reverse Curve signs rather than a Double Reverse Curve sign under certain conditions for consistency with GUIDANCE elsewhere in Part 6. The FHWA renumbers the remaining items. One docket comment from the City of Charlotte, North Carolina, suggested that item 6 be clarified with respect to the start of temporary traffic control near railroad grade crossings where queues may extend through the crossing. The FHWA agrees and revises ''transition area'' to ''merging taper.'' The FHWA

also revises notes 8 and 9 (numbered 7 and 8 in 2000 MUTCD) in response to comments from the City of Charlotte, North Carolina, and a private citizen about coordination with railroads. The FHWA believes that additional emphasis is necessary and adds the text ''When a highway-rail grade crossing exists within the activity area'' to the beginning of notes 8 and 9. The FHWA received comments from the City of Charlotte, North Carolina, and a private citizen objecting to the removal of the term ''optional'' for the arrow panels in the Figure. The FHWA deletes the term optional from the arrow panels in the figure. Although the FHWA modifies the new GUIDANCE statement in Section 6F.56 Arrow Panels on the placement criteria for use of arrow panels which will allow optional use in some conditions, in this Typical Application, the GUIDANCE conditions prevail; *i.e.* high speed, multi-lane highway. The FHWA received comments from the City of Charlotte, North Carolina, and a private citizen indicating that the distances for the RIGHT LANE CLOSED signs in the figure are in error. The FHWA agrees and revises 1500 FT and 450 m to XX FT and XX m.

cc. *Notes for Figure 6H–33:* (Refer to discussion for Figure 6H–32 regarding the new item 3 that the FHWA had proposed to add as a STANDARD.) The FHWA proposed removing item 3 of the GUIDANCE statement (as numbered in the 2000 MUTCD) because it was not applicable to the application depicted. The FHWA received three comments from the NCUTCD, the City of Charlotte, North Carolina, and a private citizen suggesting that the item be retained as a SUPPORT rather than GUIDANCE because it contains useful information suggesting that vehicles, equipment, workers, and their activities be located on one side of the pavement. The FHWA agrees and restores this statement as a SUPPORT.

dd. *Notes for Figure 6H–34:* The FHWA adds a new item to the STANDARD statement that the information from this figure shall also be used when work is being performed in the lane adjacent to the median on a divided highway, and specifies which signs to use for the specific application in this figure. This is a repeat of an item in the STANDARD statement in the notes for Figure 6H–33. The FHWA makes this change to address two comments from the City of Charlotte, North Carolina, and a private citizen suggesting that this STANDARD in Figure 6H–33 is also applicable to Figure 6H–34. The FHWA agrees that this is needed for consistency with requirements elsewhere in Part 6 and adopts this change in this final rule. The City of Charlotte, North Carolina, and a private citizen suggested that the term ''temporary,'' used to describe an edge line in note 2, be labeled ''interim'' as temporary markings are to remain in place only two weeks. The FHWA disagrees because Sections 6F.71 Pavement Markings and 6F.72. Temporary Pavement Markings provide adequate guidance for short and long term markings and there is no term ''interim'' used to describe markings. Additionally, the FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen indicating that the notes for the crash cushion in the figure are redundant. The FHWA addresses the comments and provides necessary consistency with other sections of the MUTCD by revising the notes and the figure as follows: To maintain consistency with Figure 6H–5, the FHWA revises note 3 (note 2 in the 2000 MUTCD) by deleting the last sentence. The FHWA adds a new STANDARD item 4 to clarify that the ends of the barrier shall be treated in accordance with Section 6F.81 Temporary Traffic Barriers. The FHWA also removes the word (optional) following ''crash cushion'' in Figure 6H–34 and changes the Section reference from Section 6F.78 to Section 6F.82 Temporary Traffic Barriers. Additionally, the FHWA received comments from the City of Charlotte, North Carolina, and a private citizen stating that the END ROAD WORK sign in the southbound direction should be labeled as optional. The FHWA agrees because the ROAD WORK AHEAD sign is optional in the southbound direction and revises the figure accordingly.

ee. *Notes for Figure 6H–35:* In the NPA, the FHWA proposed modifying item 4 of the GUIDANCE statement to indicate that Shadow Vehicle 2 should be equipped with an arrow panel in a caution mode if on the shoulder. The FHWA received comments from the NCUTCD, the Wisconsin DOT, the City of Charlotte, North Carolina, and a private citizen suggesting that the arrow panel should continue to be used in the arrow mode rather than the caution mode because, for this mobile operation, the distance between Shadow Vehicles 2 and 1 simulates a merging taper. The FHWA agrees and restores the text from the 2000 MUTCD, removing the phrase ''in caution mode if on the shoulder'' from this final rule. The FHWA also received one comment from Caltrans that an optional truck mounted attenuator should be shown on the work vehicle to enhance road user and worker safety. The FHWA agrees and adds an optional truck mounted attenuator in the figure in this final rule.

ff. *Notes for Figure 6H–36:* The FHWA revises item 11 of the OPTION statement to clarify that the signs to be used are ''Three Lane Reverse Curve'' signs, rather than ''Triple Lane Shift'' signs. The FHWA makes this change because it is needed for consistency and to properly identify the type of sign to be used. The FHWA also received several comments from the NCUTCD, the City of Charlotte, North Carolina, and a private citizen related to the temporary barrier and crash cushion in the figure. Consistent with Figures 6H–5 and 6H–34, the FHWA adds a new STANDARD item 4 to clarify that where installed, the ends of the barrier shall be treated in accordance with Section 6F.81 Temporary Traffic Barriers. The FHWA deletes the parenthetical phrase ''(see Section 6F.77 for end treatments)'' in item 13 as the new STANDARD item 4 covers this information.

gg. *Notes for Figure 6H–37:* The FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen objecting to the deletion of the label ''optional'' from the arrow panels. The FHWA modifies the new GUIDANCE statement in Section 6F.56 Arrow Panels on the placement criteria for use of arrow panels which will allow optional use in some conditions. In this Typical Application, however, the GUIDANCE conditions prevail; *i.e.* high speed, multi-lane highway. Accordingly, the FHWA deletes the term ''optional'' from the arrow panels in the figure.

hh. *Notes for Figure 6H–39:* The FHWA received comments from Caltrans, the City of Charlotte, North Carolina, and a private citizen related to the position and dimensions of the advance sign series in the northbound direction. To clarify the figure and allow flexibility for the practitioner, the FHWA changes the distances on the signs from 1500 FT, ½ MILE, 1 MILE to XX FT, XX MILE and XX MILE. The metric equivalents are also changed accordingly to XX m, XX m and XX km. The FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen objecting to the deletion of the label ''optional'' from the arrow panels. The FHWA deletes the ''optional'' label because of the modifications made to the new GUIDANCE statement in Section 6F.56 Arrow Panels on the placement criteria for use of arrow panels which will allow optional use in some conditions. In this Typical Application, however, the GUIDANCE conditions prevail; *i.e.* high speed, multi-lane highway.

ii. *Notes for Figure 6H–40:* The FHWA adds to item 3 that YIELD or STOP lines should be installed, if needed, across the ramp to indicate the point at which road users should YIELD or STOP. The FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen suggesting additional information should be included in the GUIDANCE regarding the placement of YIELD or STOP lines. However, the FHWA does not add additional language in this final rule because such a change would require further study and public comment. Additionally, the FHWA adds a dimension of 7.5 m (25 ft) spacing between channelizing devices shown on Figure 6H–40. The FHWA includes this additional guidance, beyond the general guidance in Section 6F.58 Channelizing Devices about channelizing device spacing, to help improve channelization specifically in the median crossover by providing a recommended device spacing to minimize the tendency of vehicles to drive between devices. The FHWA received one comment from a private citizen in support of this change, and the FHWA adopts this change.

jj. *Figure 6H–41:* (*See* discussion regarding channelizing device spacing in paragraph ii above.)

kk. *Notes for Figure 6H–42:* The FHWA removes items 6 and 7 of the OPTION statement (as numbered in the 2000 MUTCD) because they are not applicable to the specific application depicted on Figure 6H–42. In the NPA, the FHWA proposed renumbering the remaining item. The FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen suggesting that the remaining item, stating that a buffer may be used, was not clear without the two previous items, which had been removed. The FHWA agrees and deletes the remaining item (6) in this final rule because it is unlikely that a buffer will be used for this application, thus the note is not necessary. (*See* the discussion and comments for item gg above regarding the label ''optional'' for the arrow panels on the figure.)

ll. *Notes for Figure 6H–44:* The FHWA removes item 5 in the GUIDANCE statement (as numbered in the 2000 MUTCD) because it is too vague and there is no accepted practice to determine how traffic is stabilized. The FHWA renumbers the remaining items. The FHWA received no comments regarding this change. (*See* the discussion and comments for paragraph gg above regarding the label ''optional'' for the arrow panels on the figure.)

mm. *Notes for Figure 6H–45:* The FHWA adds a second sentence to items 2a and 2e to include changing the mode of the second northbound and southbound arrow panels respectively from Caution to Right Arrow and from Right Arrow to Caution. The FHWA received comments suggesting that these changes are necessary for consistency with Chapter 6F of the MUTCD. The FHWA agrees and adopts these changes in this final rule.

nn. *Notes for Figure 6H–46:* The FHWA revises item 9 from GUIDANCE to a STANDARD consistent with Section 6E.05 Flagger Stations. The standard states, ''At night, flagger stations shall be illuminated, except in emergencies.'' This change is necessary to be consistent with the new STANDARD in Section 6E.05 Flagger Stations.

297. The FHWA adds a new chapter, numbered and titled ''Chapter 6I Control of Traffic Through Traffic Incident Management Areas.'' This new chapter contains text from Section 6G.19 Control of Traffic Through Incident Areas (as numbered in the 2000 MUTCD) in its entirety with several modifications and additional information on the use of temporary traffic control devices for traffic incident management zones. The new chapter contains a general section as well as sections on major, intermediate, and minor traffic incidents, and on use of emergency-vehicle lighting (flashing or rotating beacons or strobes). This Chapter is included to recognize the importance of safely and efficiently controlling traffic through traffic incident areas and the unique characteristics of incidents and the traffic controls that should be used.

In Section 6I.01 Control of Traffic Through Traffic Incident Management Areas, the FHWA received comments from Lake County, Illinois, and the Cities of Tucson, Arizona, and Charlotte, North Carolina, and a private citizen specifically in support of this new section, several informational and editorial comments, and some comments opposed to specific language within the section.

Based on a comment from NIOSH suggesting that a distinction be made between planned and unplanned events, the FHWA makes a distinction between planned and unplanned events and removes language in this section, as well as the entire chapter, referring to planned events. With pre-planning and coordination between law enforcement and transportation agencies, most special events, such as a sporting event or a scheduled visit by a dignitary, would not require the emergency measures described in this section. This section focuses on management of emergency and other unforeseen incidents, including motor vehicle crashes, hazardous materials spills, and natural disasters. All references to special events are deleted from this chapter.

The FHWA also revises text within this section to be consistent with changes made in other areas of the MUTCD in this final rule. Such revisions include clarifying the limits of an incident management area and designating the color fluorescent pink as an optional background color for incident management signs. Some commenters felt that the special color for traffic incident management signing should be mandatory or recommended rather than an option. The FHWA agrees it would be desirable for all traffic incident management signs to be the special color but determines that this is not practical due to the unplanned nature of such incidents and the wide variety and capabilities of first responders. The reason that the FHWA establishes an optional distinctive color (fluorescent pink) for signing for incident management is to inform drivers that the temporary traffic controls have been set up for an emergency and therefore this is not a normal temporary traffic control zone. If incident management treatments, including the special sign color, are only used for unforeseen situations, drivers will realize that they need to be especially alert in incident management situations.

Consistent with Section 2C.33 of the MUTCD, the FHWA adopts the W4–2 Lane Ends symbol sign but revises its design to be consistent with the Canadian symbol. (Please refer to the discussion in Section 2C.33).

In response to comments from NIOSH, the City of Charlotte, North Carolina, and a private citizen, the FHWA also revises the third paragraph of the first GUIDANCE statement that ''first responders'' to the incident should assess the situation and set up temporary traffic control related to that assessment. First responders, however, will likely be too involved with other tasks related to the incident itself and accordingly the FHWA has deleted ''first'' from this statement. The statement now recognizes that other responders may perform this assessment and the associated tasks for temporary traffic control.

In Section 6I.02 Major Traffic Incidents, the FHWA received two comments from the City of Charlotte, North Carolina, and a private citizen opposed to the first GUIDANCE statement regarding the use of applicable procedures and devices for traffic incidents that are anticipated to

last more than 24 hours. The commenters stated that normal temporary traffic control procedures should be recommended for any incident lasting more than a few hours. The FHWA disagrees with these comments because incidents that are relatively severe can last for most of a day, and it is appropriate during these incidents to allow the use of incident management procedures and devices, rather than temporary traffic control procedures and devices.

Based on comments from NIOSH and the Iowa DOT, the FHWA revises the third paragraph of the second GUIDANCE statement to add uniformed law enforcement officers, for consistency with other sections in Part 6.

Based on comments from the NCUTCD, the City of Charlotte, North Carolina, and a private citizen, the FHWA revises the third GUIDANCE statement in this final rule to delete the recommendation that channelizing devices should be used whenever possible if a roadway is expected to be closed for more than three hours. That recommendation was inconsistent with the first GUIDANCE statement in this section, which states that other chapters of Part 6 should be used if the incident will last more than 24 hours. Finally, the FHWA revises the last paragraph of the GUIDANCE statement to address a comment from the NCUTCD suggesting that the reference to using flares for short-term temporary traffic control be deleted.

In Section 6I.03 Intermediate Traffic Incidents, the FHWA revises the SUPPORT statement to clarify the duration of intermediate traffic incidents, based on comments from the NCUTCD and to be consistent with Section 6I.01 General. The FHWA makes additional revisions to this section to be consistent with changes as discussed in Section 6I.02 Major Traffic Incidents.

In Section 6I.04 Minor Traffic Incidents, the FHWA revises the SUPPORT statement to clarify the duration of minor traffic incidents. The FHWA also removes the first paragraph of the GUIDANCE statement and adds that paragraph to Sections 6I.01, 6I.02, and 6I.03, as this recommendation for training of on-scene responders is generally applicable to all types of traffic incidents but especially major and intermediate ones.

In Section 6I.05 Use of Emergency-Vehicle Lighting, the FHWA received one comment from NIOSH opposed to the section, suggesting that the section does not provide clear, consistent advice on the use of emergency-vehicle lighting. The FHWA disagrees because the first sentence of the first paragraph points out that emergency-vehicle lighting is essential prior to establishing good traffic control and the second and third paragraphs encourage emergency-vehicle lighting to be kept to a minimum after good traffic control has been established. The FHWA adopts this section with an additional GUIDANCE paragraph stating that vehicle headlights not needed for illumination, or to provide notice to other road users of the incident response vehicle being in an unexpected location, should be turned off at night.

Discussion of Adopted Amendments to Part 7—Traffic Controls for School Areas

298. In Section 7A.01 Need for Standards, the FHWA received one comment from Caltrans suggesting that the STANDARD, which states that the types of traffic control devices used in school areas shall be related to the volumes and speed of vehicular traffic, street width, and the number and age of the students using the crossing, is not practical because the type of traffic control devices cannot be related to all of the conditions listed. The FHWA agrees that GUIDANCE, to provide recommendations rather than a requirement, is appropriate and revises this statement in the final rule to a GUIDANCE. In addition, this is consistent with the rest of the GUIDANCE statement in Section 7A.01.

299. In Section 7A.04 Scope, the FHWA received four comments from the NCUTCD, the Kansas DOT, and the Minnesota DOT opposing the removal of the second paragraph of the STANDARD restricting the use of portable school signs. The FHWA disagrees with the commenters because Arizona has extensively used portable school signs, in accordance with Arizona State laws and Arizona DOT guidelines that have been in effect for several decades.[56] The FHWA believes that, when designed and placed appropriately, portable school signs can be helpful in reducing speed, increasing road user awareness of the crossing, and enhancing school pedestrian safety. The FHWA believes that the use of these signs is a subset of overall ''in-street'' pedestrian devices that the FHWA adopts in Part 2. In addition, the State of Washington successfully experimented with in-roadway school warning signs,[57] as discussed below under Sections 7B.08 School Advance Warning Assembly (S1–1 with Supplemental Plaque) and 7B.09 School Crosswalk Warning Assembly (S1–1 with Diagonal Arrow). Accordingly, the FHWA adopts the removal of the text as specified in the NPA. For consistency with other parts of the MUTCD, the FHWA also adds an OPTION that in-roadway signs for school traffic control areas may be used consistent with the requirements of Sections 7B.08, 7B.09, and 2B.12 In-Street Pedestrian Crossing Signs.

300. In Section 7A.09 Unauthorized Devices and Messages, (titled Section 7A.09 Removal of Confusing Advertising in the 2000 MUTCD), the FHWA changes the title to provide consistency with other text in the MUTCD as well as to avoid conflicting statements to clarify the intent of this section. Two commenters from the Ohio DOT and Caltrans suggested that the title of the section be changed to clarify the intent of the section. The comment from the Ohio DOT also suggested that the SUPPORT statement be revised to reference Section 1A.01 Purpose of Traffic Control Devices in addition to Section 1A.08 Authority for Placement of Traffic Control Devices, which is already referenced. The FHWA agrees that these changes are necessary for consistency.

301. In Section 7B.01 Size of School Signs, the FHWA revises the STANDARD statement to indicate that the ''Conventional Road'' size sign shall be used on public roads, streets, and highways unless engineering judgment determines that a special sign size would be more appropriate, and that ''oversized'' sign sizes shall be used on expressways. The FHWA also revises the OPTION statement to indicate that ''oversized'' sign sizes may be used for application that require increased emphasis, improved recognition, or increased legibility.

[56] ''Traffic Safety for School Areas Guidelines'', 30–012, Arizona Department of Transportation, June 2003, includes Arizona DOT guidelines for use of portable school signs and citations of applicable Arizona State laws. This document is available at the following URL: *http://www.dot.state.az.us/ROADS/traffic/standards/School_Safety/Schoolsafety.pdf.* The longstanding use and success of these signs in Arizona is reported in ''School Zone Flashers—Do they Really Slow Traffic?'' by Benjamin E. Burritt, Richard C. Buchanan, and Eric I. Kalivoda'', an article in ITE Journal, volume 60, number 1, January, 1990, pages 29–31. A copy of this article is available on the docket. Also, this issue of ITE Journal is available for purchase from the Institute of Transportation Engineers (ITE) at the following URL: *http://ite.org* and click on ''Bookstore''.

[57] ''School Zone 'Delineator' Project: Summary of Preliminary Analysis Data'' was prepared in August 2003 by the Washington Traffic Safety Commission for the Washington State Department of Transportation, as a part of FHWA-approved experimentation number 7–16. This document is available on the docket.

The FHWA also revises the three size columns of Table 7B–1 to correspond with the text changes, so that the first column is labeled ''Conventional Road'', the second column is labeled ''Minimum'' and the third is labeled ''Oversized''. The FHWA proposed several changes to this table in the NPA to reflect additional new signs, changes in sign sizes, and deletion of signs. Based on comments from the NCUTCD, the Virginia and Oregon DOTs, Pierce County, Washington, and a traffic engineering consultant, the FHWA incorporates additional changes to these signs in this final rule. These changes in the table reflect changes throughout Part 7 and make the sizes of supplemental plaques correspond more closely with the sizes of the signs they supplement. The sign sizes in this table are also consistent with the sign sizes in Part 2.

302. In Section 7B.07 Sign Color for School Warning Signs, the FHWA changes item A in the OPTION statement to ''School Advance Warning Sign'' to be consistent with other changes in the MUTCD. The FHWA also changes item D in the OPTION statement to clarify that only the SCHOOL portion on the School Speed Limit (S5–1) sign may have a fluorescent yellow-green background. The SCHOOL portion of the sign is the warning message. The FHWA also adds item H in the OPTION statement to include the Reduced Speed School Zone Ahead (S4–5, S4–5a) sign in the list of signs that may have a fluorescent yellow-green background with a black legend and border.

303. In Section 7B.08 School Advance Warning Assembly (S1–1 with Supplemental Plaque), to respond to a comment from a traffic engineering consultant suggesting clarification, the FHWA adds to the GUIDANCE statement an exception that the School Advance Warning (S1–1) assembly does not need to be installed along a highway when a physical barrier, such as fencing, separates school children from the highway.

The FHWA also adds an OPTION statement at the end of the section to describe the use of the in-street reduced size School Advance Warning (S1–1) sign and reduced size AHEAD (W16–9p) plaque in advance of a school crossing. The Washington State DOT performed a before and after study to determine the effectiveness of this sign. Although a final report on the evaluation is not complete, a preliminary analysis of the data [58] shows that these signs can be effective in reducing speeds in school zones. Based on this experience, the FHWA determines that this is an acceptable variation of the In-Street Pedestrian Crossing sign discussed in Section 7B.09 School Crosswalk Warning Assembly (S1–1 with Diagonal Arrow). This sign will provide an additional tool to increase the safety of school crossings by enhancing the conspicuity of advance warnings.

For easier reference, the FHWA assigns the page of sign images a number and title, ''Figure 7B–1 School Area Signs''.

Also, the FHWA adds a new figure numbered and titled, ''Figure 7B–2 Examples of Signing for School Crosswalk Warning Assembly'' to illustrate the placement of these assemblies as described in Section 7B.09.

Additionally, the FHWA renumbers and retitles Figure 7B–1 (as numbered in the 2000 MUTCD) to ''Figure 7B–3 Examples of Signing for School Area Traffic Control with School Speed Limits.'' The FHWA received a comment in agreement from NCUTCD and a comment in opposition from a traffic engineering consultant regarding this figure. The traffic engineering consultant questioned the need to have an ''End SCHOOL ZONE'' sign. This sign is discussed in Section 7B.13 END SCHOOL ZONE Sign (S5–2) and its use is appropriately shown in Figure 7B–3.

The FHWA adds a new figure numbered and titled, ''Figure 7B–4 In-Street Signs in School Areas'' to illustrate the placement of these signs as described in Sections 7B.08 and 7B.09. The FHWA adds this figure in this final rule to provide clarity and to assist users in understanding the sign placement.

304. In Section 7B.09 School Crosswalk Warning Assembly (S1–1 with Diagonal Arrow), the FHWA received several comments from the NCUTCD, State DOTs, a traffic control device manufacturer, and a private citizen regarding the proposal to insert an OPTION statement allowing the use of the In-Street Pedestrian Crossing (R1–6 or R1–6a) signs at unsignalized midblock crossings. The NCUTCD and the Minnesota DOT were opposed to allowing the use of the sign, suggesting that there was not sufficient research to support of the effectiveness of the sign. The Oregon DOT, a traffic control device manufacturer, and the private citizen suggested that use of the sign be permitted at all unsignalized school crossings, not just midblock crossings. As discussed above in Section 7A.04, the FHWA believes that portable school signs, when designed and placed appropriately, can be helpful in reducing speed, enhancing road user awareness of the crossing, and enhancing school pedestrian safety. The use of these signs is a subset of overall ''in-street'' pedestrian devices that FHWA adopts in Section 2B.12 In-Street Pedestrian Crossing Signs (R1–6, R1–6a), and for consistency, the FHWA adopts their use in Section 7B.09. The FHWA deletes ''midblock'' from the OPTION in this section and adds language to the STANDARD statement regarding sign placement and breakaway requirements.

The FHWA adds to the OPTION statement to describe the use of the reduced size School Advance Warning (S1–1) sign at an unsignalized school crossing instead of the In-Street Pedestrian Crossing (R1–6 or R1–6a) sign and to describe the use of the reduced size Diagonal Arrow (W16–7p) plaque with the reduced size School Advance Warning (S1–1) sign. Based on successful experience with this in-street version of the School Crosswalk Warning Assembly in Washington State, as discussed above under Section 7B.08, the FHWA believes that this is an acceptable alternative to the In-Street Pedestrian Crossing (R1–6 or R1–6a) sign for use at a school crosswalk.

Additionally, the FHWA clarifies the STANDARD statement at the end of the section to describe the use of the In-street Pedestrian Crossing sign and the reduced-size in-street School Advance Warning (S1–1) assembly.

305. In Section 7B.11 School Speed Limit Assembly (S4–1, S4–2, S4–3, S4–4, S4–6, S5–1) (referred to as Section 7B.11 School Speed Limit Assembly (S4–1, S4–2, S4–3, S4–4, S5–1) in the NPA), the FHWA received three comments from the Ohio DOT and traffic engineering consultants regarding the location of the reduced speed zone in the vicinity of a school. While there were no proposed changes to this statement in the NPA, the FHWA changes the location of the speed zone in relation to the school property line from ''90 m (300 ft)'' to ''30 m (100 ft)'' to correct an error in the 2000 MUTCD and address the concerns of the commenters. The FHWA also changes the corresponding dimension shown in Figure 7B–3.

In the NPA, the FHWA proposed to add to the OPTION statement that changeable message signs should subscribe to the principles established in Section 2A.07 Changeable Message Signs and other sections of the MUTCD,

[58] ''School Zone 'Delineator' Project: Summary of Preliminary Analysis Data'' was prepared in August 2003 by the Washington Traffic Safety Commission for the Washington State Department of Transportation, as a part of FHWA-approved experimentation number 7–16. This document is available on the docket.

for consistency with Section 6F.55 Portable Changeable Message Signs. The NCUTCD suggested eliminating redundant references to the changeable message signs. Based on this comment, the FHWA creates a new OPTION statement after the second STANDARD and moves what was previously the first paragraph of the OPTION statement to this new OPTION and revises the wording to include references to Section 2A.07 and 6F.55. The FHWA deletes the remaining repetitious wording from the second OPTION.

The FHWA adds new paragraphs to the last OPTION statement indicating that fluorescent yellow-green pixels may be used when school-related messages are shown on a changeable message sign and that changeable message signs that display the speed of approaching drivers my be used in a school speed zone. There were no comments on this change.

The FHWA also adds information on the use of the FINES HIGHER (R2–6) sign to advise road users when increased fines are imposed for traffic violations in school zones. One commenter from the Wisconsin DOT felt that this sign was not necessary because these laws are already in the State statutes and the State generally does not make it a practice to sign all statutory requirements. Because this is an OPTION statement, any State can decide whether or not to use this sign. The FHWA adopts the language as proposed in the NPA.

306. In Section 7B.12 Reduced Speed School Zone Ahead Sign (S4–5, S4–5a) (referred to as Section 7B.12 School Reduced Speed Ahead Sign (S4–5, S4–5a) in the NPA), the FHWA received several comments from the NCUTCD and State DOTs regarding the use of S4–5 and S4–5a signs. The Illinois, Oregon, and Wisconsin DOTs and the NCUTCD opposed the use of these signs in place of the rectangular ''School/Reduced Speed Ahead'' signs, stating that these signs are not needed and do not add much benefit for the impact they would have on the States. The State DOTs stated that the S4–5 and S4–5a warning signs may not be as effective as the rectangular signs.

The FHWA disagrees and adds the S4–5 and S4–5a signs in this final rule for Part 7 to avoid conflicting sign applications within the MUTCD. The FHWA establishes a phase-in target compliance date of 15 years from the effective date of this final rule for replacement of existing regulatory signs in good condition with these warning signs to minimize any impact on State of local governments.

This is consistent with the decisions in Chapter 2C to add the W3–5 Speed Reduced Ahead signs in symbol and legend designs for English units and the legend design for metric units. In response to the NCUTCD's suggestions to enhance the perception and legibility, the FHWA modifies the design of the W3–5 symbol sign to reduce the height of the legend ''SPEED'' and ''LIMIT'' while increasing the height of the numbers of the speed limit. This will provide enhanced perception and legibility distance.

307. In Section 7C.03 Crosswalk Markings, the FHWA adds a new SUPPORT statement at the beginning of the section to provide information on the use of crosswalk markings. The FHWA received one comment from the City of Tucson supporting all of the changes to this section as proposed in the NPA.

Additionally, the FHWA revises the second paragraph of the GUIDANCE statement to include extending crosswalk lines to the edge of the intersecting crosswalk to discourage diagonal walking between crosswalks. The FHWA adds this additional wording to be consistent with changes in Section 3B.17 Crosswalk Markings, and because school children are pedestrians. To be consistent with Section 3B.17, the FHWA also adds additional text at the end of the first GUIDANCE statement to indicate that crosswalks should not be used indiscriminately and that an engineering study should be performed before placing crosswalks at locations away from traffic control signals or STOP signs.

308. In Section 7C.04 Stop and Yield Lines, the FHWA revises the title from ''Stop Line Markings'' to ''Stop and Yield Lines'' and revises the entire section to appropriately mirror the STANDARD, GUIDANCE, OPTION, and SUPPORT statements contained in Part 3. The FHWA received one comment from the City of Tucson, Arizona, in support of all of the changes. The Oregon DOT suggested adding an OPTION to allow the use of a stop line with STOP HERE FOR PEDESTRIANS signs at both intersection and midblock locations at crosswalks not controlled by a signal, stop sign, or yield sign, in order to help enforce State law requiring drivers to stop. The FHWA disagrees because STOP HERE FOR PEDESTRIAN signs with stop lines are not adopted in Section 2B.11 Yield Here to Pedestrians Signs (R1–5, R1–5a) or Part 3 Markings.

309. In Section 7E.04 Uniform of Adult Crossing Guards and Student Patrols (referred to as Section 7E.04 Uniform of Adult Guards and Student Patrols in the NPA), the FHWA adds a STANDARD statement that adult guards shall wear high-visibility safety apparel labeled as ANSI 107–1999 standard performance for Class 2, and that student patrols shall wear high-visibility safety apparel labeled as ANSI 107–1999 standard performance for Class 1. This safety apparel will make the guards and patrols (and the students they are managing) far more visible to approaching road users. The adopted language in this final rule includes a slight revision from the NPA that changes the phrase ''high-visibility retroreflective clothing'' to ''high-visibility safety apparel.'' The FHWA incorporates this change in this final rule for consistency with terminology used in Part 6 and to avoid any possible misinterpretation that all clothing worn must meet the ANSI standard. The FHWA adopts a phase-in target compliance date for these changes of five years from the effective date of this final rule in order to minimize any impact on State or local agencies.

310. In Section 7E.05 Operating Procedures for Adult Crossing Guards (referred to as Section 7E.05 Operating Procedures for Adult Guards in the NPA), the FHWA received seven comments from the NCUTCD, State and local DOTs, traffic control device manufacturers, and private citizens regarding the proposal to add an OPTION statement at the end of the section to allow the STOP paddle to be modified to enhance the conspicuity of the paddle by adding white flashing lights. All of the commenters suggested that the use of red lights also be allowed. The FHWA agrees and adds the use of red lights to the OPTION.

The FHWA also adds item E to the OPTION statement to indicate that a series of white lights forming the shapes of the letters in the legend of a STOP paddle may be used. This is consistent with adopted changes to Parts 2 and 6 of the MUTCD.

Additionally, the FHWA adds a STANDARD statement following the new OPTION statement to define the acceptable flashing rate of the optional flashing lights on STOP paddles. This change is consistent with the flashing rate in other parts of the MUTCD. A traffic control device manufacturer and private citizen suggested increasing the flash rate to three times the normal rate. The FHWA disagrees with allowing an increased flash rate because such a flash rate would be close to the range of flash rates that may cause epileptic seizures.[59] The FHWA adopts the flash

[59] The website of the National Society for Epilepsy, a professional society in the United

rate of between 50 and 60 flashes per minute as proposed in the NPA.

Discussion of Adopted Amendments to Part 8—Traffic Controls for Highway-Rail Grade Crossings

311. In Section 8A.01 Introduction, the FHWA revises the definitions in the STANDARD statement for: ''Advance Preemption and Advance Preemption Time'' (change to ''Advance Preemption'' and ''Advance Preemption Time''), ''Clear Storage Distance,'' ''Dynamic Envelope Delineation'' (change to ''Dynamic Envelope''), ''Maximum Highway Traffic Signal Preemption Time,'' ''Minimum Track Clearance Distance,'' ''Pre-signal,'' and ''Queue Clearance Time'' to reflect accepted practice and terminologies. There were a few editorial comments regarding some of these definitions that have been incorporated in this final rule as appropriate.

The FHWA also adds definitions for the following because they are referred to later in the MUTCD: ''Dynamic Exit Gate Operating Mode,'' ''Exit Gate Clearance Time,'' ''Exit Gate Operating Mode,'' ''Flashing-Light Signals,'' ''Timed Exit Gate Operating Mode,'' ''Wayside Equipment,'' and ''Vehicle Intrusion Detection Devices'' to reflect accepted practice and terminologies. There were a few editorial comments regarding some of these definitions that have been incorporated in this final rule as appropriate.

Additionally, in response to a comment from Norfolk Southern Railroad, the FHWA removes the definition for ''Monitored Interconnected Operation'' because it is not used in the MUTCD. The FHWA renumbers the remaining definitions accordingly.

312. In Section 8A.02 Use of Standard Devices, Systems, and Practices, the FHWA adds a GUIDANCE statement following the STANDARD statement. This GUIDANCE statement is identical to the second GUIDANCE statement in Section 10A.02 Use of Standard Devices, Systems, and Practices, and reinforces that Part 1 principles of design, placement, operation, maintenance, and uniformity of traffic control devices should be considered for both highway-rail and highway-light rail transit grade crossings. There was one comment from the City of Tucson, Arizona, in support of this change. The Ohio DOT suggested editorial changes to reduce redundancy in listing types of traffic. The FHWA agrees and changes the phrase ''drivers, pedestrians, and bicyclists'' to ''vehicle operators and pedestrians.'' The Virginia DOT suggested that the GUIDANCE be changed to a STANDARD. The FHWA disagrees because this statement is not specific enough to be a STANDARD.

313. In Section 8A.03 Uniform Provisions, the FHWA changes the STANDARD statement to indicate that no sign or signal shall be located in the center of an undivided highway, except in a ''raised island.'' In the 2000 MUTCD, the text used the phrase ''island with non-mountable curbs,'' however a traffic engineering consultant suggested a change to clarify that the curb should not be mountable. The FHWA agrees and modifies the text, with slight editorial changes, to be consistent with the AASHTO Green Book.[60]

314. In Section 8A.04 Highway-Rail Grade Crossing Elimination, the FHWA adds a GUIDANCE statement at the beginning of the section. This GUIDANCE statement is identical to the first GUIDANCE statement in Section 10A.04 Highway-Light Rail Transit Grade Crossing Elimination, and reinforces that both highway-rail and highway-light rail transit grade crossings are a potential source of congestion and agencies should conduct engineering studies to determine the cost and benefits of eliminating such crossings. The FHWA received one comment from the Wisconsin DOT suggesting that the statement also mention that crossings are a potential source of crashes. The FHWA agrees and adds the appropriate text in this final rule.

Additionally, the FHWA adds an OPTION statement at the end of the section. This OPTION statement is identical to the last OPTION statement in Section 10A.04 and reinforces that TRACKS OUT OF SERVICE (R8–9) signs may be temporarily installed at locations where both rail or light rail transit is eliminated at a highway-rail or highway-light rail transit grade crossing until the tracks are removed or paved over. The FHWA received one comment from the New Jersey DOT suggesting that this new OPTION be made a STANDARD. The FHWA also received a comment from the U.S. Access Board suggesting that the preceding GUIDANCE, as it relates to paving over tracks where a railroad is eliminated at a highway-rail grade crossing, be strengthened by adding a time limit by which the tracks should be paved over. The FHWA revises the OPTION statement to indicate that based on engineering judgment, the TRACKS OUT OF SERVICE sign may be temporarily installed until the tracks are removed or paved over and that the length of time that the tracks will be out of service before they are removed or paved over may be considered in making the decision as to whether to install the sign.

315. In Section 8A.05 Temporary Traffic Control Zones, the FHWA adds a SUPPORT statement at the beginning of the section. This SUPPORT statement is identical to the SUPPORT statement in Section 10A.05 Temporary Traffic Control Zones and reinforces that temporary traffic control planning provides for continuity of operations when the normal function of a roadway at both a highway-rail and a highway-light rail transit grade crossing is suspended because of temporary traffic control operations. The FHWA received one comment from the City of Tucson, Arizona, in support of this change. The FHWA adopts this change.

316. The FHWA adds a new section numbered and titled, ''Section 8B.02 Sizes of Grade Crossing Signs.'' This new section contains a STANDARD and an OPTION statement regarding sign sizes for grade crossing signs, as well as a reference to a new table numbered and titled, ''Table 8B–1 Sign Sizes for Grade Crossing Signs.'' The FHWA adds this section and table to consolidate information previously contained elsewhere in the MUTCD, make the information more readily accessible to readers, and for consistency with changes made in Part 2. The FHWA renumbers the remaining sections accordingly.

317. In Section 8B.03 Highway-Rail Grade Crossing (Crossbuck) Sign and Number of Tracks Sign (R15–2) (numbered and titled ''Section 8B.02 Highway-Rail Grade Crossing (Crossbuck) Signs (R15–1, R15–2, R15–9)'' in the NPA), the FHWA proposed to add an OPTION statement for the optional use of a new Crossbuck Shield sign. The FHWA received two

Kingdom that specializes in epilepsy, states that a flash rate fo 5 to 30 hertz (flashes per second) can cause seizures in some people. This information is available at the following URL; *http://www.epilepsynse.org.uk/pages/info/leaflets/photo.cfm*. A variety of websites of U.S. organizations also refer to the problem of photosensitivity (triggering fo seizures by flickering lights) among epileptic persons.

[60] ''A Policy on Geometric Design of Highways and Streets,'' 4th Edition, 2001, in both hardcopy and CD–ROM, is available from the American Association of State Highway and Transportation Officials (AASHTO) by telephone (800) 231–3475, facsimile (800) 525–5562, mail AASHTO, P.O. Box 96716, Washington, DC 20090–6716, or at its Web site *http://www.transportation.org* and click on Bookstore. This document is a guide, based on established practices and supplemented by research, to provide guidance to the highway designer to provide for the needs of highway users while maintaining the integrity of the environment. It is incorporated by reference into the CFR at 23 CFR 625.4.

comments from the City of Tucson, Arizona, and ATSSA in support of the Crossbuck Shield sign. Sixteen commenters representing the NCUTCD and its railroad technical committee, railroad owners and associations, State and local DOTs, and private citizens expressed opposition to the use of the Crossbuck Shield sign, suggesting that consideration of these proposed changes be deferred pending the NCUTCD's consideration of the recommendations of NCHRP Report 470 [61] regarding requiring the display of a YIELD sign or a STOP sign where appropriate, in conjunction with the Crossbuck sign. Given the strong response opposing the proposal, the FHWA believes that the proposal of the Crossbuck Shield was premature and removes all text and graphic references regarding the Crossbuck Shield sign from this final rule. States currently using the Crossbuck Shield sign under approved experimentations may request an extension in writing from the FHWA to continue experimental use.

Also, the FHWA revises the second STANDARD statement to clarify the placement of retroreflective white material on the front and back of the supports for highway-rail grade crossing Crossbuck signs, to within 0.6 m (2 ft) above the edge of the roadway, except on the side of those supports where a STOP or YIELD sign or flashing lights have been installed, or on the back side of supports for Crossbuck signs installed on one-way streets. In the NPA, the FHWA proposed a distance of 0.3 m (1 ft) from ground level, however the FHWA revises the wording in this final rule to reflect the many comments that FHWA received from the NCUTCD and its railroad technical committee, railroad owners and operators, State DOTs in regions where snowfall is common, and private citizens suggesting that 0.6 m (2 ft) was more appropriate due to potential maintenance problems in northern States associated with snow. In addition, the change from ''near ground level'' to ''above the edge of the roadway'' responds to many of the same commenters who suggested that referencing to the height of the edge of the roadway promotes a more uniform display and is more consistent with other sections of the MUTCD.

Additionally, the FHWA received one comment from the Connecticut DOT regarding the second paragraph of the GUIDANCE statement relating to minimum lateral clearance for the nearest edge of the Crossbuck sign to the shoulder or the traveled way. The Connecticut DOT indicated that the 3.7 m (12 ft) requirement seemed excessive and could affect the motorist's sight to the sign due to physical limitations in rural areas. The NPA did not propose any significant changes to this statement, rather the NPA included editorial changes to add that this GUIDANCE refers to the ''minimum'' lateral clearance and to clarify that the greater of 1.8 m (6 feet) from the edge of the shoulder or 3.7 m (12 ft) from the edge of the traveled way in rural areas (whichever is greater) should be used. Because this is a GUIDANCE, if there is a good engineering reason for placing the sign closer to the edge of the roadway, agencies may do so. The FHWA adopts the language as proposed in the NPA with one punctuation revision.

318. In Section 8B.04 Highway-Rail Grade Crossing Advance Warning Signs (W10 series) (numbered Section 8B.03 in the NPA), the FHWA revises the first STANDARD statement, item A, to better define where Highway-Rail Grade Crossing Advance Warning (W10–1) signs are not required on an approach to a crossing from a T-intersection with a parallel highway. Five commenters from the NCUTCD, the Utah Transit Authority, a traffic engineering consultant and private citizens opposed the revision, stating that the wording is repeated in the first paragraph of the second STANDARD statement. One commenter from the Nevada DOT supported the revisions. The FHWA declines deleting item A because it discusses a specific situation for which no W10–1 sign is required on an approach to a grade crossing. Item A refers only to ''T-intersections'' where W10–3 signs are used in both directions of the parallel highway. Item A covers approaches where all vehicles crossing the track have turned onto the approach from the parallel highway, whereas text in the second STANDARD statement covers all intersections including 4-way intersections and T-intersections where the track crosses the top of the intersection. The FHWA adopts the wording as proposed in the NPA.

Additionally, the FHWA revises the second STANDARD statement to clarify the proper use of the W10–2, W10–3, and W10–4 advance warning signs if the distance from the parallel highway to the railroad tracks is less than 30 m (100 feet). The FHWA received comments from the Kansas DOT and Yakima County, Washington, regarding these changes. The Kansas DOT suggested that these changes would result in the addition of too many additional railroad signs at a high cost to local jurisdictions and limited benefit to the traveling public. The FHWA believes that if the crossing is within 100 feet of the parallel highway, it is important for adequate safety that turning drivers are warned that they will encounter a crossing soon after turning.

Yakima County, Washington, suggested that these signs are a combination of railroad crossing warning and intersection warning signs, and therefore should be placed in accordance with Chapter 2A and Table 2C–4. The FHWA agrees and revises the statement in this final rule to include placing the signs in accordance with the guidelines for Intersection Warning Signs in Table 2C–4.

319. In Section 8B.06 Turn Restrictions During Preemption (numbered Section 8B.05 in the NPA), the FHWA received several comments from members of the NCUTCD Railroad and Light Rail Transit Committee stating that the committee recommended deleting the track image that appears in the center of the R3–1a and R3–2a signs, and to call these signs R3–1 and R3–2, because they would become identical to the turn prohibition signs in Chapter 2B. The committee felt that track depiction is unnecessary and clutters the signs. The FHWA acknowledges that these symbol signs involving tracks may need to be re-designed to enhance clarity and legibility, but rather than to use the R3–1 and R3–2 signs, the FHWA withdraws the R3–1a and R3–2a signs (with tracks) as proposed in the NPA and reassigns these signs as word message signs ''NO LEFT/RIGHT TURN ACROSS TRACKS'' in this final rule. The FHWA believes that it is important to use signs that clearly convey that turning across the tracks is prohibited, not necessarily all turns at a location.

320. The FHWA adds a new section titled, ''Section 8B.10 STOP HERE WHEN FLASHING Sign (R8–10)'' (numbered Section 8B.09 in the NPA), which contains an OPTION statement describing the use of the STOP HERE WHEN FLASHING (R8–10) sign as it relates to highway-rail grade crossings. The FHWA received one comment from NCUTCD in support of the new section and one comment from the Ohio DOT suggesting that the FHWA revise the arrow on the STOP HERE WHEN FLASHING (R8–10) sign from a tapered shaft arrow to a straight shaft arrow. The FHWA agrees and adopts this change.

321. The FHWA adds a new section titled, ''Section 8B.11 STOP HERE ON RED Sign (R10–6)'' (numbered Section 8B.10 in the NPA), which contains SUPPORT, OPTION, and GUIDANCE

[61] NCHRP Report 470, ''Traffic Control Devices for Passive Railroad-Highway Grade Crossings'', 2002, is available for downloading from the Transportation Research Board at the following URL: *http://gulliver.trb.org/publications/nchrp/nchrp_rpt_470-a.pdf*

statements describing the use of the STOP HERE ON RED (R10–6) sign at highway-rail grade crossings. The FHWA received comments from the Wisconsin and New Jersey DOTs suggesting that the SUPPORT statement be clarified to indicate that the STOP HERE ON RED sign be restricted to just those crossings where traffic control signals are used to control traffic, and not used at locations with flashing-light signals. The FHWA also received several comments from the NCUTCD, railroad operators, traffic engineering consultants, and private citizens suggesting that the FHWA remove the term ''traffic gates'' from the SUPPORT statement because the term is not common in the railroad industry. The FHWA agrees with both of these comments and incorporates these clarifications into this final rule. The FHWA renumbers the remaining sections accordingly.

322. In Section 8B.15 NO SIGNAL Sign (W10–10) or NO GATES OR LIGHTS Sign (W10–13) (numbered and titled ''Section 8B.12 NO SIGNAL Sign (W10–10)'' in the 2000 MUTCD), the FHWA adds to the OPTION statement that the NO GATES OR LIGHTS (W10–13) sign may be used as an alternate to the NO SIGNAL (W10–10) sign. There was one comment from the New Jersey DOT opposing this change, stating that they are not in favor of using these signs at grade crossings. Because the use of these signs is optional, States can determine whether or not they use these signs. Some States are interested in using these signs, so the FHWA adopts this change as proposed in the NPA.

323. In Section 8B.16 LOOK Sign (R15–8), (numbered Section 8B.15 in the NPA), the FHWA modifies the OPTION statement by removing the phrase, ''that do not have active warning devices'' to clarify that the LOOK (R15–8) sign may be mounted at any highway-rail grade crossing. There was one comment from the City of Tucson, Arizona, in support of the change, and two commenters from the Minnesota DOT and a traffic engineering consultant opposed the change. The traffic engineering consultant suggested that the LOOK sign should be a warning sign, rather than a regulatory sign. Because most State laws require road users to look for trains at a grade crossing, as well as the fact that this sign regulates pedestrians, the FHWA declines incorporating this suggestion. The Minnesota DOT, who opposed the change, suggested that the LOOK sign should only apply to highway-rail grade crossings with active warning devices. Because this sign is optional and may be used in areas of significant pedestrian traffic, regardless of traffic control devices at the crossing, the FHWA disagrees and adopts the changes as proposed in the NPA.

324. The FHWA adds a new section numbered and titled ''Section 8B.19 Skewed Crossing Sign (W10–12)'' (numbered Section 8B.18 in the NPA), which describes the use of the Skewed Crossing (W10–12) sign at highway-rail grade crossings when railroad tracks are not perpendicular to the highway. Four commenters, representing the NCUTCD, Caltrans, the New Jersey DOT, as well as the City of Tucson, Arizona, agreed with the changes as proposed, while two commenters from the Nevada DOT suggested that more research should be conducted regarding the effectiveness of this sign. The FHWA disagrees that any additional study is needed and adopts this section in this final rule. One commenter from the Virginia DOT suggested revisions to the GUIDANCE statement to provide more guidance on the sign design to appropriately depict the skewed crossing. The FHWA agrees with this comment and incorporates this modification into this final rule.

325. In Section 8B.20 Pavement Markings (numbered Section 8B.19 in the NPA), the FHWA revises the second paragraph of the STANDARD statement to clarify that a no-passing marking on two-lane highways is needed only in locations where centerline markings are used. The FHWA incorporates this change for consistency with changes made in Part 3 in this final rule.

326. In Section 8B.22 Dynamic Envelope Markings (numbered and titled Section 8B.18 Dynamic Envelope Delineation in the 2000 MUTCD), the FHWA retitles this section to clarify that the text refers to pavement markings.

Additionally, the FHWA adds a second paragraph to the OPTION statement to clarify that dynamic envelope markings may be installed at any highway-rail grade crossing unless a Four-Quadrant Gate system is used.

327. In Section 8C.01 Illumination of Highway-Rail Grade Crossings, the FHWA proposed to change the OPTION statement to a GUIDANCE statement to indicate that illumination should be installed at, and adjacent to, a highway-rail grade crossing when an engineering study determines such illumination is needed to improve grade crossing safety. One commenter from the City of Tucson, Arizona, agreed with the change, however seven commenters, representing the NCUTCD, State and local DOTs as well as private citizens, opposed changing the OPTION to a GUIDANCE, stating that this would be very expensive to implement and that the FHWA should consider the economic impact. The FHWA agrees with the economic concerns and to address this situation the FHWA adds an OPTION statement before the GUIDANCE, stating that illumination may be installed at or adjacent to a highway-rail grade crossing. The FHWA adopts the change proposed in the NPA to change the OPTION statement to a GUIDANCE statement; however, this GUIDANCE follows the new OPTION statement.

328. In Section 8D.01 Introduction, the FHWA revises the first OPTION statement to clarify that flashing-light signals that are post-mounted or overhead-mounted may be used separately or in combination with each other and that flashing-light signals may be used without automatic gate assemblies as determined by an engineering study. The FHWA received one comment from the Nevada DOT opposing this change, stating that this language may enable third parties to apply pressure to local authorities that approve crossings not to install automatic gates. The FHWA feels that the decision for the crossing treatment should be determined by the agency maintaining the roadway after an engineering study and adopts the change as proposed in the NPA.

Additionally, in the NPA the FHWA proposed adding to the second OPTION statement information that In-Roadway Stop Line Lights and In-Roadway Warning Lights may be installed at highway-rail grade crossings that are controlled by active grade crossing warning systems, as discussed in Chapter 4L In Roadway Lights. Eleven commenters representing the NCUTCD, State and local DOTs, railroad operators and associations, and private citizens opposed this new text. In concert with determinations made in Chapter 4L, the FHWA withdraws this proposal and retains the language in the 2000 MUTCD.

329. In Section 8D.02 Flashing-Light Signals, Post-Mounted, the FHWA modifies the GUIDANCE statement to clarify the sizes of lenses for use in highway-rail grade crossing flashing-light signals and to provide guidance for choosing the size of the background behind the lenses. The FHWA received five comments from the NCUTCD, stating that the NCUTCD Railroad and Light Rail Transit Committee opposed the proposed clarification of lens sizes for use in highway-rail grade crossing flashing-light signals because lens sizes have been understood for many years in the rail industry. The FHWA disagrees because the clarifying reference in this section is to Section 4D.15 Size, Number and Location of Signal Faces by Approach, which contains good advice

regarding lens sizes that some agencies and other individuals involved with highway-rail grade crossings may not be aware of. The FHWA adopts this change as proposed in the NPA. The FHWA received four comments, primarily from railroad companies, opposing the guidance for choosing the size of the background behind the lenses because Part 4 does not contain specified background sizes for any traffic signal. The FHWA agrees and withdraws this proposal.

330. In Section 8D.04 Automatic Gates, the FHWA received a comment from a private citizen suggesting that the second paragraph of the STANDARD statement be revised to include consideration for the unique requirements associated with constant warning time and other advanced system devices. The FHWA believes that it is appropriate to make this change because the features of constant warning time and other advanced systems do not necessarily provide for an operation of the gates exactly as described in the paragraph. The FHWA believes that requiring constant warning time and other advanced systems to have gate operations exactly as described would be an unreasonable burden on jurisdictions and is not practical or necessary. Accordingly, the FHWA revises the second paragraph of the STANDARD statement to provide an exception to the requirements of this paragraph when a constant warning time or other advanced system requires otherwise.

331. In Section 8D.05 Four-Quadrant Gate Systems, the FHWA revises and adds to the GUIDANCE statement information to describe the various operating modes of exit gates and how they should be used. The FHWA received five comments suggesting terminology changes that the NCUTCD Railroad and Light-Rail Transit Committee endorsed. The FHWA agrees and includes those terminology changes in this final rule. The Committee also suggested that the GUIDANCE statement regarding placement of exit gates to provide a safe zone be deleted because this practice is seldom used. Because Four-Quadrant Gates are a relatively new concept to grade crossings, the FHWA believes that if space is available, the exit gates should be set back at least one design vehicle length from the nearest rail in order to reduce the chances of a vehicle becoming trapped on the tracks. The FHWA adopts the changes as proposed in the NPA.

Additionally, the FHWA revises the third paragraph of the STANDARD statement to accommodate constant warning time or other advanced systems, for the same reasons as discussed above in Section 8D.04.

Based on a comment from a railroad company, the FHWA revises the third and fourth paragraphs of the GUIDANCE statement to include coordination with the affected railroad company when determining the operating mode of exit gates and the Exit Gate Clearance Time.

Additionally, the FHWA changes the title of Figure 8D–2 from ''Typical Location Plan for Flashing-Light Signals and Four-Quadrant Gates'' to ''Example of Location Plan for Flashing-Light Signals and Four-Quadrant Gates.'' There were no comments regarding this change, and the FHWA adopts this change.

332. In Section 8D.07 Traffic Control Signals at or Near Highway-Rail Grade Crossings, the FHWA received comments from a private citizen regarding text in the first OPTION and STANDARD statements related to the use of traffic control signals instead of flashing-light signals at industrial highway-rail grade crossings and mainline highway-rail grade crossings. The commenter suggested that the text include additional language specifying train speeds as part of the criteria. These comments go beyond the scope of this rulemaking and would need to be addressed in a future rulemaking.

Following the second paragraph of the second STANDARD statement, the FHWA adds additional GUIDANCE, STANDARD, GUIDANCE, and OPTION statements to better describe the use of pre-signals to improve safety at highway-rail grade crossings at locations in proximity to intersections controlled by traffic control signals. The FHWA received one comment from the City of Tucson, Arizona, supporting the overall changes to this section. One comment from the Wisconsin DOT expressed general support for the new language for preemption, but expressed concerns regarding the use of pre-signals when the crossing is within 15 m (50 ft) (or within 23 m (75 ft) for a highway that is regularly used by multi-unit vehicles) of an intersection controlled by a traffic control signal. This comment is unique to the State of Wisconsin because they use near-side signal displays at all intersections. The FHWA believes it is inappropriate to change the MUTCD in this case to accommodate the practices of one State.

Additionally, the FHWA adds to the last OPTION statement that at locations where a highway-rail grade crossing is located more than 15m (50 ft) (or more that 23 m (75 ft) for a highway regularly used by multi-unit vehicles) from an intersection controlled by a traffic control signal, a pre-signal may be used if an engineering study determines a need. The FHWA feels that this addition may improve safety for this type of highway-rail grade crossing.

The FHWA establishes a phase-in target compliance date of 10 years for existing installations to minimize any impact on State or local governments.

Discussion of Adopted Amendments to Part 9—Traffic Controls for Bicycle Facilities

333. In Section 9A.03 Definitions Relating to Bicycles, the FHWA adds to the first STANDARD statement a definition for ''Bicycle Facilities'' because the term is frequently used in Part 9. The FHWA revises the definition slightly from that proposed in the NPA to respond to comments suggesting that ''made by public agencies'' be removed because there are bicycle facilities that are operated by non-governmental agencies. The FHWA also removes the definition for ''Bicycle Path,'' and removes the remaining occurrences of ''bicycle path'' from the MUTCD because ''shared use path'' appropriately covers the term. The FHWA also revises the definition for ''Shared Use Path'' to clarify that it is outside the traveled way. The FHWA renumbers the remaining items accordingly.

334. In Section 9B.01 Application and Placement of Signs, the FHWA removes the first SUPPORT statement as it only references Figure 9B–1. The FHWA now references Figure 9B–1 in the first STANDARD statement because the sign installation standards shown in Figure 9B–1 are discussed in this STANDARD. The FHWA received two comments from the NCUTCD and the City of Tucson, Arizona, in support of the changes to this section.

Two commenters opposed the standards for sign size, mounting height and lateral clearance. The New York City DOT stated these standards are infeasible in dense urban areas, and a traffic engineering consultant stated that the minimum vertical clearance of 8 feet is less than the ITE Guidelines for Major Street Design,[62] which specifies 8.2 feet. While the FHWA recognizes the importance of these two comments, these suggestions go beyond the scope of this rulemaking and would need to be addressed in a future rulemaking.

335. In Section 9B.02 Design of Bicycle Signs, the FHWA replaces the

[62] ''Guidelines for Urban Major Street Design'', Institute of Transportation Engineers, 1984. It may be purchased from the Institute of Transportation Engineers bookstore at the Web site *http://www.ite.org.*

term ''bicycle facilities'' with the term ''shared-use path'' in the first sentence of the second paragraph of the STANDARD statement because this sentence relates only to shared-use paths and not to on-street bicycle lanes. Shared-use paths are for the use of pedestrians (with or without disabilities), skaters, joggers, and other non-motorized users in addition to bicyclists. There were comments from the NCUTCD, the Wisconsin DOT, and the City of Tucson, Arizona, in agreement with the changes. The NCUTCD suggested that the last sentence of the STANDARD should retain ''shared use paths.'' The FHWA disagrees because this sentence states that the minimum sign sizes for bicycle facilities shall not be used in locations that would apply to other vehicles, and because the minimum sign size would be too small.

Additionally, the FHWA changes the title of Table 9B–1 from ''Sign Sizes for Shared-Use Paths'' to ''Minimum Sign Sizes for Bicycle Facilities'' and separates the column headed ''Minimum Sign Size'' into two sub columns headed ''Shared-Use Path'' and ''Roadway,'' to better distinguish between the applications of signs on paths and roadways and to be consistent with sign sizes used on roadways as described in Part 2. The FHWA also revises Table 9B–1 by adding additional signs to reflect changes elsewhere in Part 9. There were several comments from the NCUTCD, local highway agencies, associations representing bicyclists, and private citizens in support of these changes. The FHWA received two editorial comments regarding the size of the R1–2 YIELD sign, and incorporates those changes in this final rule.

336. In Section 9B.03 STOP and YIELD Signs (R1–1, R1–2), the FHWA modifies the first GUIDANCE statement so that it applies to the installation of both STOP and YIELD signs, and not exclusively to STOP signs. The FHWA includes additional editorial changes in this final rule based on comments received requesting that the term ''bicyclists'' be changed to ''path users'' and ''drivers'' be changed to ''road users.'' These editorial changes provide for consistent terminology throughout the MUTCD. Several commenters were in favor of the overall changes to this section.

337. In Section 9B.04, the FHWA changes the title from ''Bicycle Lane Signs (R3–16, R3–17)'' to ''Bicycle Lane Signs (R3–17, R3–17a, R3–17b)'' to reflect the changes to the Bicycle Lane Signs.

Additionally, the FHWA removes existing text in this section in its entirety and replaces it with new text regarding the use of Bicycle Lane signs. This modification replaces the existing Bicycle LANE AHEAD (R3–16), Bicycle LANE ENDS (R3–16a), and RIGHT LANE Bicycle ONLY (R3–17) signs with a redesigned BIKE LANE (R3–17) sign to be used in conjunction with new supplemental AHEAD (R3–17a) and ENDS (R3–17b) plaques. These sign combinations will more clearly provide the information contained on the old R3–16, R3–16a, R3–17, and R3–17a signs, and will reduce road user confusion. The FHWA received five comments from the NCUTCD, ATSSA, Caltrans, the Metropolitan Planning Organization of Cincinnati, and the Association of Pedestrian and Bicycle Professionals supporting the changes, stating that the modifications and redesign of the R13–17 sign and the supplemental plaques will help reduce motorist confusion and HOV lane conflicts.

The Illinois DOT opposed the elimination of the existing R3–17a, however the NCUTCD recommended removal of the sign, stating that it was confusing to road users. Several citizens and local highway agencies sent letters supporting changes to Figure 9B–2 that include the new R3–17 BIKE LANE sign. The Association of Pedestrian and Bicycle Professionals, a traffic engineering consultant, and a private citizen expressed confusion between the text in this section and that in Section 9C.04 Markings for Bicycle Lanes regarding the use of bike lane signs in conjunction with a striped bike lane. As a result, the FHWA modifies text in Section 9C.04 to remove the discrepancy between these sections.

338. In Section 9B.05 BEGIN RIGHT TURN LANE YIELD TO BIKES Sign (R4–4), The FHWA received one comment from the NCUTCD supporting the minor changes to this section. Additionally, to respond to a comment from a private citizen suggesting clarification on the use of this sign, the FHWA adds a GUIDANCE statement to the end of the section to clarify that the R4–4 sign should not be used when bicyclists need to move left because of a right-turn lane drop situation. The FHWA believes that this GUIDANCE statement is necessary for clarity and for safety, to reinforce that when there is a right-turn lane drop, it is the bicyclists who should yield to motor vehicle traffic when moving to the left, thus the R4–4 sign should not be used in those situations.

339. The FHWA adds a new section following Section 9B.05 BEGIN RIGHT TURN LANE YIELD TO BIKES Sign (R4–4). The new section is numbered and titled ''Section 9B.06 Bicycle WRONG WAY Sign and RIDE WITH TRAFFIC Plaque (R5–1b, R9–3c)'' and provides GUIDANCE and OPTIONS regarding the design and placement of Bicycle WRONG WAY Signs. The remaining sections are renumbered accordingly. Sixteen commenters, representing the NCUTCD, State and local highway agencies as well as private citizens, supported this new section. One commenter from the City of Tucson, Arizona, opposed it, stating that WRONG WAY signs are not necessary for informing users of the normal rules of the road. The FHWA disagrees because many signs inform drivers of the normal rules of the road, and the WRONG WAY sign can provide important additional information to bicyclists. The FHWA adopts the changes as proposed in the NPA, with a minor editorial change, as suggested in a comment from the City of New York, to clarify that the RIDE WITH TRAFFIC (R9–3c) sign is actually a plaque, because it cannot be installed alone.

340. In Section 9B.08 No Bicycles Sign (R5–6) (titled ''Bicycle Prohibition Sign (R5–6)'' in the NPA), the FHWA changes the sign name to be consistent with changes in Section 2B.31 SLOWER TRAFFIC KEEP RIGHT. The FHWA believes that this minor change is needed to maintain consistency with other sections of the MUTCD.

341. In Section 9B.09 No Parking Bike Lane Signs (R7–9, R7–9a) (referred to as Section 9B.08 No Parking Bicycle Lane Signs (R7–9, R7–9a) in the 2000 MUTCD), the FHWA changes the title and the first STANDARD statement to accurately reflect the name of the sign. Two commenters representing the NCUTCD and the City of Tucson, Arizona, expressed agreement with the changes in this section. One commenter from New York City expressed concerns that the R7–9 and R7–9a signs have limited use in a dense urban area because most bike lanes are along roadways where parking is allowed at the curb. While localities are seeking signs to prohibit parking in the bike lanes, R7–9 and R7–9a do not work in these instances. The use of R7–9a could be confusing to use if curbside parking is allowed. With the change in the bike lane sign, now R3–17, it further complicates the agency's ability to regulate parking in bike lanes. The FHWA determines that the R7–9 and R7–9a signs are not appropriate if curbside parking is allowed. If a bike lane exists where curbside parking is allowed, pavement markings will have to be used to communicate which

portion of the pavement is for parking and which portion of the pavement is for bike use. In the NPA, the FHWA proposed removing the R3–17a sign that was available for this purpose. The NCUTCD recommended removing the R3–17a sign because the sign is even more confusing to road users. The FHWA adopts the changes as proposed in the NPA

342. In Section 9B.10 Bicycle Regulatory Signs (R9–5, R9–6, R10–3) (titled Bicycle Regulatory Signs (R9–5, R9–6) in the NPA), the FHWA removes the first paragraph of the OPTION statement, and includes the R10–3 sign in the section title. Two commenters representing the NCUTCD and the City of Tucson, Arizona, expressed agreement with the minor changes in this section. The FHWA also received one comment from a private citizen suggesting that the first sentence of the OPTION statement (as proposed in the NPA) was not necessary, and could be potentially confusing when taken in context with the three paragraphs that follow it. The FHWA agrees and removes that sentence in this final rule. The FHWA also adds the R10–3 sign to the title because the sign's use is described in this section.

343. The FHWA adds a new section following existing Section 9B.10 (new Section 9B.11) Shared-Use Path Restriction Sign (R9–7). The new section is numbered and titled ''Section 9B.12 Bicycle Signal Actuation Sign (R10–22)'' and provides a new sign giving information to bicyclists on how to best situate themselves within the proposed new Bicycle Detector pavement marking symbol so that they can actuate the traffic signal. The remaining sections are renumbered accordingly. Fifteen commenters, representing the NCUTCD, State and local highway agencies, as well as private citizens, supported the new section. The FHWA adopts the changes as proposed in the NPA.

344. In Section 9B.16 (formerly Section 9B.14) Bicycle Surface Condition Warning Sign (W8–10), the FHWA revises the first OPTION statement to clarify that BUMP, DIP, PAVEMENT ENDS, and any other word message signs are not supplemental plaques used with the W8–10 sign, but are instead standard signs to be used independently. The NCUTCD supported this change. The FHWA adopts the changes as proposed in the NPA.

345. In Section 9B.17 Bicycle Warning Sign (W11–1) (referred to as Section 9B.17 Bicycle Crossing Warning Sign (W11–1) in the NPA), the FHWA received one comment from the NCUTCD in support of the changes to the section, and two comments from traffic engineering consultants suggesting additional changes. The commenters stated that the sign has other uses besides warning of a crossing. The FHWA agrees that this clarifies the use of these signs and changes the title of the section as well as the sign name and deletes the word ''Crossing.''

346. In Section 9B.18 Other Bicycle Warning Signs, the FHWA received three comments suggesting that the Narrow Bridge symbol sign be kept in the MUTCD. (See the discussion regarding Part 2 where FHWA eliminates the Narrow Bridge symbol sign.) Accordingly, the FHWA adopts the changes to this section as proposed in the NPA.

347. In Section 9B.19 Bicycle Route Guide Signs (D11–1), the FHWA received several comments from the NCUTCD and private citizens supporting the figures and GUIDANCE changes as proposed in the NPA. Several commenters suggested editorial changes to the figures, which the FHWA incorporates in this final rule. One traffic engineering consultant suggested further revisions to clarify the use of stop and yield signs on paths in conjunction with crosswalk markings. The FHWA believes that this suggestion goes beyond the scope of this rulemaking and would need to be addressed in a future rulemaking.

348. In Section 9B.20 Bicycle Route Signs (M1–8, M1–9) (titled Bicycle Route Markers in the NPA), the FHWA changes ''drivers'' to ''motorists'' in response to an editorial comment. The FHWA received three comments from private citizens stating that the bike route signs shown in the MUTCD need improvement to meet the needs of bicyclists who commute in an urban environment, and to clearly show compass directions and route designations. This suggestion goes beyond the scope of this rulemaking. The FHWA adopts the text as described in the NPA.

349. In Section 9C.01 Functions of Markings, the FHWA modifies the SUPPORT statement to remove the first sentence because it only refers to roadways with a designated bicycle lane and is not broad enough to describe markings used for all types of bicycle facilities. There were two comments from NCUTCD and the City of Tucson, Arizona, supporting this change.

350. In Section 9C.02 General Principles, the FHWA adds a new STANDARD statement after the second GUIDANCE statement. This new STANDARD statement referring to the colors, widths of lines, and patterns of lines, and symbols used for bicycle markings is being moved from Section 9C.03 Marking Patterns and Colors on Shared-Use Paths to Section 9C.02 because this text is applicable to all bicycle facilities, not just shared-use paths, and is more appropriate in this section than Section 9C.03. The FHWA received two comments from NCUTCD and the City of Tucson, Arizona, in support of this change. One traffic engineering consultant stated that the portion of the second GUIDANCE statement that refers to selecting pavement marking materials that minimize the loss of traction for bicycles under wet conditions should be a STANDARD. The FHWA disagrees and believes GUIDANCE is strong enough for this sentence because the traction characteristics of marking materials are not always known. The FHWA adopts this section, with minor editorial changes to Figure 9C–4.

351. In Section 9C.03 Marking Patterns and Colors on Shared-Use Paths, the FHWA moves the STANDARD statement to Section 9C.02 General Principles because this text is applicable to all bicycle facilities, not just shared-use paths and is more appropriate in that section than Section 9C.03. Two commenters from NCUTCD and the City of Tucson, Arizona, were in general support of the changes made to this section.

Additionally, the FHWA removes the SUPPORT statement because it discourages the use of centerlines. There were no specific comments regarding this change.

The FHWA adds to the GUIDANCE statement additional information on the marking of obstructions in a path.

The FHWA moves to the OPTION statement the second item of the OPTION statement currently in Section 9C.05 Bicycle Detector Symbol because letter, symbol, and arrow sizes to be used on shared-use paths represent markings rather than markers. The FHWA received comments in support of this change, thus the FHWA adopts this change as proposed in the NPA.

Finally, the FHWA moves the contents of existing Section 9C.06 in its entirety to Section 9C.03 because this information is more applicable in Section 9C.03 as it clarifies the design and placement of marking patterns and object markers on shared-use paths. Several commenters supported this change.

352. In Section 9C.04 Markings For Bicycle Lanes, the FHWA revises the first sentence of the STANDARD statement to remove the specific distance of ''not closer than 20 m (65 ft) from the crossroad'' from the requirement for placing bicycle lane

symbols, to provide jurisdictions with additional flexibility. The FHWA received three comments from the City of Tucson, Arizona, Caltrans, and the Association of Pedestrian and Bicycle Professionals in general agreement with changes to this section.

Additionally, the FHWA adds a new item to the STANDARD statement prohibiting the placement of bicycle lanes to the right of a right turn only lane. The FHWA received nineteen comments from the NCUTCD, State and local agencies, as well as from private citizens, in support of this new statement. One private citizen suggested that this statement be broadened to also restrict bike lanes from being positioned to the left of a left turn only lane. This goes beyond the scope of this rulemaking and would need to be addressed in a future rulemaking.

The FHWA also adds a new item to the STANDARD statement prohibiting the placement of bicycle lanes in the circular roadway of a roundabout intersection because such markings have been found to cause a false sense of security for bicyclists traveling through the roundabout with conflicting and turning traffic. This change is consistent with the state of the practice for roundabout intersection design and is consistent with changes to Section 3B.24 Markings for Roundabout Intersections. The FHWA received seventeen comments from the NCUTCD, State and local highway agencies, and private citizens in support of this change. The Oregon DOT agreed with the principle of discouraging the use of bicycle lanes in roundabouts, but suggested that the statement be a GUIDANCE, rather than a STANDARD, because it is difficult to foresee all possible circumstances. Given the strong support for the STANDARD statement, the FHWA adopts the language as a STANDARD.

The FHWA adds a new paragraph to the SUPPORT statement indicating that a bicyclist continuing straight through an intersection from the right of a right turn lane would be inconsistent with normal traffic behavior and would violate the expectation of right-turning motorists. The FHWA received one comment from the NCUTCD in support of this change.

The FHWA adds a new GUIDANCE statement to establish guidance for bicycle lane markings at locations where a right through lane becomes an exclusive right turn lane and at locations where there is a shared through and right turn lane next to a right turn only lane. Commenters were generally in agreement with this text; however, the Wisconsin DOT and a private citizen suggested that the FHWA include a figure to illustrate the intent of the text. Such a figure would require discussion and comment, thus it is more appropriate for a future rulemaking. The Association of Pedestrian and Bicycle Professionals suggested that the GUIDANCE be changed to a STANDARD. The FHWA believes this should be addressed in a future rulemaking.

The FHWA also adds a GUIDANCE statement and a SUPPORT statement to provide guidance on not using posts or raised pavement markers to separate bicycle lanes from adjacent travel lanes because they can hinder maintenance of the bicycle lane and prevent proper vehicle merging. While a private citizen and a traffic engineering consultant supported the changes as proposed in the NPA, several commenters representing the NCUTCD, the Arizona DOT, the City of Downers Grove, Illinois, and the League of American Bicyclists, requested that ''curbs or other physical barriers within the traveled way'' be included as devices that should not be used to separate bicycle lanes from adjacent travel lanes. The SUPPORT item following this GUIDANCE addresses this issue in part. The additional text proposed by the commenters goes beyond the scope of this rulemaking. The FHWA received comments in agreement with the proposed SUPPORT statement, as well as requests for revising the language to reorder the text to prioritize the potential concerns regarding raised devices and bicycle lanes. The FHWA agrees and adopts the changes with minor revisions.

353. The FHWA removes Section 9C.05 Word Messages and Symbols Applied to the Pavement and Section 9C.06 Object Markers on Shared-Use Paths, in their entirety. The FHWA incorporates the information from these sections into Section 9C.03 Marking Patterns and Colors on Shared-Use Paths, as this more properly locates the information. The FHWA renumbers the remainder of the sections accordingly.

354. The FHWA adds a new Section 9C.05 Bicycle Detector Symbol, containing an OPTION statement that defines a standard symbol for the marking of detector locations for traffic signals actuated by bicyclists. This symbol marking is shown in a new figure numbered and titled ''Figure 9C–7 Example of Bicycle Detector Pavement Marking.'' The FHWA received sixteen comments from the NCUTCD, State and local DOTs and private citizens supporting the material in this new section. Three commenters from Caltrans and private citizens suggested additional text be added regarding the optimum location for placement of detectors. The FHWA believes that detector placement is within the discretion of the agencies.

355. In Section 9C.06 Pavement Markings for Obstructions, the FHWA received one comment from the NCUTCD supporting the minor changes to this section and to Figure 9C–8. The FHWA also received two comments from private citizens who suggested that the entire text of this section and Figure 9C–8 be removed from the MUTCD because they believe it could be used by some jurisdictions to justify not fixing serious road defects. The FHWA disagrees and adopts this section and figure in the MUTCD; however, the FHWA revises the GUIDANCE as follows: ''In roadway situations where it is not practical to eliminate a drain grate or other roadway obstruction that is inappropriate for bicycle travel'' because it may not always be practical to fix the defect.

356. In Section 9D.02 Signal Operations for Bicycles, the FHWA revises the STANDARD statement to require that signal timing and actuation be reviewed and adjusted to consider the needs of bicyclists instead of simply requiring the consideration of bicyclists' needs when timing signals. Many commenters were in support of this change, and several requested that bicycle detectors be used on all roadways where bicycle travel is permitted. The FHWA doesn't believe it is necessary to require bicycle detectors be placed on all roadways where bicycle travel is permitted, but may address this issue in a future rulemaking.

Discussion of Adopted Amendments to Part 10—Traffic Controls for Highway-Light Rail Transit Grade Crossings

357. In Section 10A.01 Introduction, the FHWA adds a SUPPORT statement at the end of the section to reference Section 8A.01 Introduction for the definitions applicable to Part 10. There were no comments on this change and the FHWA adopts it.

358. In Section 10A.03 Uniform Provisions, the FHWA changes the STANDARD statement to indicate that no sign or signal shall be located in the center of an undivided highway, except in a ''raised island''. This change is necessary to be consistent with changes as discussed in Section 8A.03 Uniform Provisions.

Additionally, the FHWA adds a GUIDANCE statement at the end of the section to reinforce that where the distance between tracks exceeds 30 m (100 ft), additional signs or other appropriate traffic control devices

should be used. There were no comments on this change and the FHWA adopts it.

359. In Section 10A.04 Highway-Light Rail Transit Grade Crossing Elimination, the FHWA removes language from the second GUIDANCE statement and adds it to the STANDARD statement that if the existing traffic control devices at a multiple-track highway-light rail transit grade crossing become improperly placed or inaccurate because of the removal of some of the tracks, the existing traffic control devices shall be relocated and/or modified. The FHWA also adds to the second GUIDANCE statement that when a roadway is removed from a highway-light rail transit grade crossing, appropriate signs should be placed at the end of roadway and other appropriate locations to alert road users that the road no longer crosses the light rail transit tracks. There were two comments supporting these proposed changes. The FHWA adopts these changes.

The FHWA adds to the OPTION statement at the end of the section so that it is identical to the last OPTION statement in Section 8A.04 Highway-Rail Grade Crossing Elimination, and incorporates the same revisions in this section. Accordingly, the FHWA adds to the OPTION statement to indicate that, based on engineering judgment, the TRACKS OUT OF SERVICE sign may be temporarily installed until the tracks are removed or paved over. Also, agencies may consider the length of time that the tracks will be out of service before they are removed or paved over in deciding whether to install the sign.

360. In Section 10A.05 Temporary Traffic Control Zones, the FHWA combines the two separate STANDARD statements into one STANDARD statement at the beginning of the section. The FHWA received one comment in support of this change, and adopts this change.

The FHWA received one comment from a private citizen suggesting that a new paragraph be added to the end of the GUIDANCE statement to mirror the GUIDANCE in Section 8A.05 that the width, grade, alignment, and riding quality of the highway surface at a light rail transit crossing should, at a minimum, be restored to correspond with the quality of the approaches to the highway-light rail transit grade crossing. The FHWA agrees with the comment and adds this language because this is necessary for consistency with Part 8 of the MUTCD and would make the temporary light rail crossing as safe as the existing conditions.

361. In Section 10C.01, the FHWA changes the title from ''Introduction'' to ''Purpose'' to more accurately reflect the contents of the section and corrects the text in the STANDARD statement to properly indicate that the design and location of signs shall conform to all of Part 2. The FHWA received one comment in support of the changes, and adopts these changes.

362. The FHWA adds a new section numbered and titled ''Section 10C.02 Highway-Rail Grade Crossing (Crossbuck) Sign (R15–1) and Number of Tracks Sign (R15–2) (titled ''Highway-Rail Grade Crossing (Crossbuck) Signs (R15–1, R15–2, and R15–9) in the NPA), which provides information on the use of Crossbuck signs at highway-light rail grade crossings. In the NPA, the FHWA proposed that this section be identical to Section 8B.02 (as proposed in the NPA) because the use of Crossbuck signs and the proposed optional Crossbuck Shield signs are applicable to both highway-light rail transit and highway-rail grade crossings and it is important to have this information in both parts of the MUTCD. The FHWA received five comments from the NCUTCD and members of the Railroad-Light Rail Transit Technical Committee opposed to this section, stating that the use of these Crossbuck signs in mixed-use alignments where light rail transit operates in streets in urban areas is frequently impractical. The FHWA agrees, and clarifies the first STANDARD statement to indicate that the Crossbuck sign is mandatory for semiexclusive Light Rail Transit alignments, and creates a new OPTION statement following the second paragraph of the first STANDARD to indicate that use of the Crossbuck sign is optional for mixed-use alignments, either alone or in combination with other traffic control devices.

In the NPA, the FHWA proposed to add an OPTION statement for the optional use of a new Crossbuck Shield sign. See the discussion regarding the removal of all text and graphic references to the Crossbuck Shield sign in Section 8B.02. Accordingly, the FHWA withdraws all text and graphic references to the Crossbuck Shield sign in Section 10C.02.

The FHWA revises the third STANDARD statement to require the placement of retroreflective white material on the front and back of the supports for highway-light rail transit grade crossing Crossbuck signs to within 0.6 m (2 ft) above the edge of the roadway, except on the side of those supports where a STOP or YIELD sign or flashing lights have been installed, or on the back side of supports for Crossbuck signs installed on one-way streets. This change is necessary for consistency with changes as discussed in Section 8B.02.

The FHWA renumbers all remaining sections accordingly.

363. In Section 10C.04 STOP (R1–1) or YIELD (R1–2) Signs at Highway-Light Rail Transit Grade Crossings, (numbered and titled Section 10C.03 STOP or YIELD Signs (R1–1, R1–2, W3–1a, W3–2a) in the 2000 MUTCD), the FHWA renumbers and retitles the section to more accurately reflect the content of the section.

The FHWA modifies the last sentence of the STANDARD statement to require agencies to install Stop Ahead (W3–1) and Yield Ahead (W3–2) Advance Warning Signs when the criteria listed in Section 2C.29 Advance Traffic Control Signs, is met.

The FHWA adds to the list of characteristics in the GUIDANCE statement to clarify when STOP or YIELD signs may be used at highway-light rail transit grade crossings. The FHWA adds characteristics such as traffic volume, light rail train speed, and the need to sound an audible signal as well as the location of light rail tracks in relation to the line of cars waiting to cross. The FHWA received one comment from the City of Tucson, Arizona, in support of these changes, and eight comments from the NCUTCD and members of the NCUTCD's Railroad-Light Rail Transit Technical Committee opposed to using the light rail transit speed as one of the characteristics, suggesting that this item be deleted from the list. The reason cited by those in opposition was that train speed alone is not a factor in the decision to install STOP or YIELD signs at light rail transit crossings, provided the other conditions listed exist. The FHWA disagrees with deleting this item at this time because FHWA believes research or documentation would be needed to justify not considering light rail transit speed. The FHWA adopts these changes as proposed in the NPA.

364. In Section 10C.05 DO NOT STOP ON TRACKS Sign (R8–8) (numbered Section 10C.04 in the 2000 MUTCD), the FHWA adds to the OPTION statement to clarify that DO NOT STOP ON TRACKS (R8–8) signs may be placed on both sides of the track, to enhance visibility of the signs for road users. The FHWA received two comments in support of this change and adopts this change.

365. The FHWA adds a new section numbered and titled ''Section 10C.06 TRACKS OUT OF SERVICE Sign (R8–9)'' describing the use of the TRACKS OUT OF SERVICE (R8–9) sign at highway-light rail transit grade

crossings. While this section is identical to Section 8B.09 TRACKS OUT OF SERVICE, the use of the TRACKS OUT OF SERVICE (R8–9) sign is applicable to both highway-light rail transit and highway-rail grade crossings so the FHWA believes that it is important to have this information in both parts of the MUTCD. The FHWA received one comment from the Ohio DOT in general support of this new section, and adopts this new section in this final rule. The FHWA renumbers the remaining sections accordingly.

366. In Section 10C.07 STOP HERE ON RED Sign (R10–6) (numbered 10C.05 in the 2000 MUTCD), the FHWA clarifies this section to indicate that the STOP HERE ON RED sign be restricted to just those crossings where traffic control signals are used to control traffic, and not used at locations with flashing-light signals to be consistent with changes as discussed in Section 8B.10 STOP HERE WHEN FLASHING Sign (R10–8).

367. The FHWA adds a new section numbered and titled ''Section 10C.08 STOP HERE WHEN FLASHING Sign (R8–10)'' describing the use of the STOP HERE WHEN FLASHING (R8–10) sign at highway-light rail transit grade crossings. While this section is identical to Section 8B.10 STOP HERE WHEN FLASHING, the use of the STOP HERE WHEN FLASHING (R8–10) sign is applicable to both highway-light rail transit and highway-rail grade crossings so the FHWA believes that it is important to have this information in both parts of the MUTCD. The FHWA renumbers the remaining sections accordingly.

368. In Section 10C.09 Light Rail Transit-Activated Blank-Out Turn Prohibition Signs (R3–1a, R3–2a) (numbered Section 10C.06 in the 2000 MUTCD), the FHWA adds a STANDARD statement at the end of the section. This STANDARD statement is identical to the STANDARD statement in Section 8B.06 Turn Restrictions During Preemption and reinforces that at both highway-rail and highway-light rail transit grade crossings turn prohibition signs that are associated with preemption shall be visible only when the grade crossing restriction is in effect in order not to cause confusion to road users. The FHWA received one comment from the City of Tucson, Arizona, in support of the changes to this section.

In concert with comments regarding Section 8B.06, the FHWA received several comments from members of the NCUTCD Railroad and Light Rail Transit Committee recommending deleting the track image that appears in the center of the R3–1a and R3–2a signs and to call these signs R3–1 and R3–2, because they would become identical to the turn prohibition signs in Chapter 2B. See the discussion in Section 8B.06 as it applies to this section as well.

369. The FHWA adds a new section numbered and titled ''Section 10C.10 EXEMPT Highway-Rail Grade Crossing Signs (R15–3, W10–1a)'' describing the use of the supplemental EXEMPT Highway-Rail Grade Crossing (R15–3, W10–1a) signs at highway-light rail transit grade crossings. While this section is identical to Section 8B.05 EXEMPT Highway-Rail Grade Crossing Signs (R15–3, W10–1a), the use of these supplemental signs is applicable to both highway-light rail transit and highway-rail grade crossings, and the FHWA believes that it is important to have this information in both parts of the MUTCD. The FHWA received one comment in support of this new section and several comments from members of the NCUTCD Railroad and Light Rail Transit Committee recommending deleting this section and the associated sign, stating that this sign is not applicable to light rail transit situations. The FHWA adopts this section because there are cases where this sign may be appropriate. The FHWA adds to the OPTION statement that where neither the Crossbuck nor Advance Warning sign exist for a particular crossing, an EXEMPT (R15–3) sign with a white background may be placed on its own post on the near right side of the approach to the crossing. The FHWA renumbers the remaining sections accordingly.

370. In Section 10C.13 Light Rail Transit Only Lane Signs (R15–4 Series) (numbered Section 10C.09 in the 2000 MUTCD), the FHWA titles the figure illustrating regulatory sign panels as ''Figure 10C–2 Regulatory Signs'' and adds to and revises the signs illustrated in the figure, to be consistent with Section 2B.26 Preferential Only Lane Signs, and to reflect changes elsewhere in Part 10. The FHWA received one comment from the City of Tucson, Arizona, in support of the changes to this section and two editorial comments, which the FHWA adopts in this final rule.

371. In Section 10C.15 Highway-Rail Grade Crossing Advance Warning Signs (W10 Series) (numbered Section 10C.11 in the 2000 MUTCD), the FHWA revises the entire section by replacing it with the STANDARD, OPTION, and GUIDANCE statements also contained in Section 8B.04 Highway-Rail Grade Crossing Advance Warning Signs, including the revisions as described in Part 8. The use of advance warning signs is applicable to both highway-light rail transit and highway-rail grade crossings and the FHWA believes that it is important to have consistency in the use of these signs so this information is included in both parts of the MUTCD. Several members of the NCUTCD Railroad and Light Rail Transit Committee suggested that the title and text within the section should be ''highway-rail,'' rather than ''highway-light rail transit'' in several cases because this sign is not exclusive to light rail transit and this sign section should be identical to Section 8B.03 Highway-Rail Grade Crossing (Crossbuck) Sign (R15–1) and Number of Tracks Sign (R15–2). The FHWA agrees and revises the section title and appropriate text accordingly in this final rule.

In addition, many commenters suggested deleting item A of the first STANDARD regarding T-intersections, stating that the wording is repeated in the first paragraph of the second STANDARD statement. See the discussion of this issue under Section 8B.04 Highway-Rail Grade Crossing Advance Warning Signs (W10 Series). For these reasons, the FHWA adopts item A.

The FHWA received two comments from a railroad operator and a private citizen suggesting changes to item C of the first STANDARD statement to change ''where active light rail transit grade crossing traffic controls are in use'' to ''controlled with traffic signals or stop signs.'' The FHWA disagrees with the suggested change because it is necessary for this item to correspond to the text in Part 8. This may be a topic for a future rulemaking to consider changing the text in both parts. The FHWA adopts item C as proposed in the NPA.

The FHWA also titles the figure illustrating predominantly warning sign panels as ''Figure 10C–3 Warning Signs and Light Rail Station Sign'' and adds to and revises the signs illustrated in the figure, to reflect changes elsewhere in Part 10.

372. The FHWA adds a new section numbered and titled ''Section 10C.16 Low Ground Clearance Highway-Rail Grade Crossing Sign (W10–5)'' which describes the use of the Low Ground Clearance (W10–5) sign at highway-light rail transit grade crossings. In the NPA, the FHWA proposed that the title of the section and name of the sign be ''Low Ground Clearance Highway-Light Rail Transit Grade Crossing Sign,'' however the FHWA received four comments suggesting that ''light'' and ''transit'' be deleted because low-ground clearance signs can be used for grade-crossings

generally, not just light-rail operations. The FHWA agrees and changes the section title and sign name in this final rule.

In the NPA, the FHWA proposed to include the same STANDARD, GUIDANCE, OPTION, and SUPPORT statements in this section regarding the use of this sign as was contained in Section 8B.17 Low Ground Clearance Highway-Rail Grade Crossing Sign. The FHWA believes that this is redundant, and instead includes a SUPPORT statement in this final rule that references Section 8B.17 for additional information regarding the use of the W10–5 sign. The FHWA renumbers the remaining sections accordingly.

373. The FHWA adds a new section numbered and titled ''Section 10C.18, Storage Space Signs (W10–11, W10–11a, W10–11b)'' which describes the use of Storage Space (W10–11) signs at highway-light rail transit grade crossings. In the NPA, the FHWA proposed including a copy of the full text from Section 8B.17 Low Ground Clearance Highway-Rail Grade Crossing Sign in this new section. The FHWA received one comment from the Ohio DOT suggesting that the FHWA cross-reference Section 8B.18 Storage Space Signs, rather than include the full text. The FHWA agrees and deletes the second paragraph of the GUIDANCE statement and the OPTION statements as proposed in the NPA, and adds a SUPPORT statement indicating that information regarding the use of the W10–11, W10–11a, and W10–11b signs is contained in Section 8B.18 in this final rule.

374. The FHWA adds a new section numbered and titled ''Section 10C.19 Skewed Crossing Sign (W10–12)'' which describes the use of Skewed Crossing (W10–12) sign at highway-light rail transit grade crossings. In the NPA, the FHWA proposed to include a copy of the full text from Section 8B.19 Skewed Crossing Sign in this new section. The FHWA received two comments from the NCUTCD and the New Jersey DOT in support of the new section. The Ohio DOT suggested that the FHWA cross-reference Section 8B.19, rather than include the full text. The FHWA agrees and deletes the GUIDANCE and STANDARD statements as proposed in the NPA and adds a SUPPORT statement indicating that information regarding the use of the W10–12 sign is contained in Section 8B.19. The FHWA renumbers the remaining sections accordingly.

375. The FHWA adds a new section numbered and titled ''Section 10C.21 Emergency Notification Sign (I–13 or I–13a)'' which describes the use of Emergency Notification (I–13 or I–13a) signs at highway-light rail transit grade crossings. This section essentially contains similar information as is contained in Section 8B.12 Emergency Notification Sign, and the FHWA believes that it is important to have this information in both parts of the MUTCD. The FHWA received several comments from members of the NCUTCD Railroad and Light Rail Transit Committee recommending the FHWA delete this section because these signs are not applicable in Part 10, especially in urban or downtown areas where calls to emergency would be 911. The FHWA adopts this section because not all light rail transit lines run only in downtown areas and there may be some jurisdictions that may want to use this sign. The FHWA revises the text to clarify that the intent is to place Emergency Notification signs on highway-light rail transit grade crossing on semiexclusive alignments, and the FHWA deletes the sentence from the GUIDANCE that states that these signs are typically located on the transit right-of-way. The FHWA renumbers the remaining sections accordingly.

376. The FHWA adds a new section numbered and titled ''Section 10C.23 Pavement Markings'' which describes the use of pavement markings at highway-light rail transit grade crossings. While this section is identical to Section 8B.20 Pavement Markings, it is important that the use of pavement markings at highway-light rail transit and highway-rail grade crossings is consistent so the FHWA believes that it is important to have this information in both parts of the MUTCD. The FHWA received several comments from the Ohio DOT suggesting that information from Part 8 be cross-referenced, rather than repeating the information in Part 10. The FHWA includes the full text because there are some differences in the figures between the two parts.

Additionally, to be consistent with changes made to Part 3, the FHWA revises the second paragraph of the STANDARD statement to clarify that a no-passing marking on two-lane highways is needed only in locations where centerline markings are used. The FHWA also adds two new figures. The first figure is numbered and titled ''Figure 10C–5 Example of Placement of Warning Signs and Pavement Markings at Highway-Light Rail Transit Grade Crossings'' and illustrates the placement of warning signs and pavement markings at highway-light rail transit grade crossings. The second new figure is numbered and titled ''Figure 10C–6 Examples of Highway-Light Rail Transit Grade Crossing Pavement Markings'' and illustrates the use of R X R and associated pavement markings at highway-light rail transit grade crossings. These figures were numbered Figures 10C–10 and 10C–11 in the NPA. While these figures are identical to Figures 8B–6 and 8B–7, respectively, it is important that the warning signs and pavement markings at highway-light rail transit and highway-rail grade crossings are consistent so the FHWA believes that it is important to have this information in both parts of the MUTCD.

377. The FHWA adds a new section numbered and titled ''Section 10C.24 Stop Lines'' which describes the use of stop lines at highway-light rail transit grade crossings. The FHWA received one comment from the Ohio DOT suggesting that the FHWA cross-reference Section 8B.21 Stop Lines, rather than include the full text. The FHWA agrees and deletes the GUIDANCE statement as proposed in the NPA and adds a SUPPORT statement indicating that information regarding the use of stop lines at grade crossings is contained in Section 8B.21. The FHWA renumbers the remaining sections accordingly.

378. In Section 10C.25 Dynamic Envelope Markings (numbered and titled ''Section 10C.15 Dynamic Envelope Delineation Markings'' in the 2000 MUTCD), the FHWA retitles the section to clarify that the text refers to pavement markings.

Additionally, the FHWA modifies the STANDARD statement to clarify that, if used, the pavement marking used to delineate the dynamic envelope shall be a normal solid white line, contrasting pavement color, and/or contrasting pavement texture. This STANDARD is identical to that in Section 8B.22 Dynamic Envelope Markings. The FHWA received several editorial comments regarding changes to this section and figures and incorporates the applicable comments in this final rule.

379. In Section 10D.01 Introduction, the FHWA removes the STANDARD statement because the information is already properly contained in Section 10A.01 Introduction.

Additionally, in the NPA, the FHWA proposed to add to the OPTION statement that In-Roadway Stop Line Lights and In-Roadway Warning Lights may be installed at highway-light rail transit grade crossings that are controlled by active grade crossing warning systems. The FHWA received ten comments from the NCUTCD, members of the NCUTCD Railroad and Light Rail Transit Committee, State DOTs and railroad associations opposed to allowing the use of In-Roadway

Lights for this application, stating that there has not been enough research regarding the effectiveness of In-Roadway Lights. The FHWA agrees and withdraws this paragraph in this final rule.

380. In Section 10D.02 Flashing Light Signals (numbered Section 10D.04 in the 2000 MUTCD), the FHWA moves this entire section to follow Section 10D.01 Introduction so that content contained in Sections 10D.01 and 10D.02 appears in the same order as it appears in Part 8. The FHWA received one comment from the City of Tucson, Arizona, in support of this change and adopts this change.

381. In Section 10D.03 Automatic Gates, the FHWA changes the last SUPPORT statement to an OPTION statement to be consistent with the same language contained in Section 8D.04 Automatic Gates, on how the effectiveness of gates may be enhanced by the use of channelizing devices or raised median islands to discourage driving around lowered automatic gates. The FHWA received one comment from the City of Tucson, Arizona, in support of this change and adopts this change.

382. In Section 10D.04 Four-Quadrant Gate Systems (numbered Section 10D.02 in the 2000 MUTCD), the FHWA moves this entire section to follow Section 10D.03 LOOK Sign (R15–8) so that content contained in this section appears in the same order as it appears in Section 8D.05 Four-Quadrant Gate Systems.

The FHWA revises and adds to the GUIDANCE statement information to describe the various operating modes of exit gates and how they should be used to be consistent with changes as discussed in Section 8D.05 Four-Quadrant Gate Systems.

The same NCUTCD Committee also suggested deleting the GUIDANCE statement regarding placement of exit gates to provide a safe zone because this practice is seldom used. Because Four-Quadrant Gates are a relatively new concept to grade crossings, the FHWA believes that if space is available, the exit gates should be set back at least one design vehicle length from the nearest rail in order to reduce the chances of a vehicle becoming trapped on the tracks. The FHWA adopts the changes as proposed in the NPA.

Additionally, the FHWA revises the third paragraph of the STANDARD statement to accommodate constant warning time or other advanced systems to be consistent with changes as discussed in Section 8D.05 Four-Quadrant Gate Systems.

Based on a comment received from a railroad company regarding identical text in Section 8D.05, the FHWA revises the third and fourth paragraphs of the GUIDANCE statement to include coordination with the affected transit agency when determining the operating mode of exit gates and the Exit Gate Clearance Time.

383. In Section 10D.08 Pedestrian and Bicycle Signals and Crossings, the FHWA changes the first OPTION statement (in the 2000 MUTCD) to a GUIDANCE statement to emphasize that if an engineering study shows that flashing-light signals alone would not provide sufficient notice of an approaching light rail transit vehicle, the LOOK (R15–8) sign and/or pedestrian gates should be considered. The FHWA received several comments from members of the NCUTCD Railroad and Light Rail Transit Committee recommending that the FHWA keep this paragraph an OPTION because pedestrian gates are too easily circumvented and their effectiveness has never been adequately demonstrated. The FHWA changes the text to a GUIDANCE in this final rule because if an engineering study has determined that flashing-light signals are not enough, then the additional measures should be recommended for consideration, not just permitted.

Discussion of Adopted Amendments to Appendix A1—Congressional Legislation

384. In Appendix A1 Congressional Legislation, the FHWA adds Section 306 Motorist Call Boxes to the listing of pertinent sections of Public Law 104–59—Nov. 28, 1995 (National Highway System Designation Act of 1995). This section discusses the uses of motorist call boxes along the National Highway System. No comments were received on this addition and the FHWA adopts it as proposed in the NPA.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures. The economic impact of this rulemaking will be minimal. Most of the changes in this final rule provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA believes that the uniform application of traffic control devices will greatly improve the traffic operations efficiency and roadway safety. The standards, guidance, and support are also used to create uniformity and to enhance safety and mobility at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 60 l–612) the FHWA has evaluated the effects of this action on small entities. This final rule adds some alternative traffic control devices and only a very limited number of new or changed requirements. Most of the changes are expanded guidance and clarification information. The FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The revisions directed by this action can be phased in by the States over specified time periods in order to minimize hardship. The changes made to traffic control devices that would require an expenditure of funds all have future effective dates sufficiently long to allow normal maintenance funds to replace the devices at the end of the material life-cycle. To the extent the revisions require expenditures by the State and local governments on Federal-aid projects, they are reimbursable. This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this action does not have a substantial direct effect or sufficient federalism implications on States and local governments that would limit the policymaking discretion of the States and local governments. Nothing in the MUTCD directly preempts any State law or regulation.

The MUTCD is incorporated by reference in 23 CFR part 655, subpart F. These amendments are in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of the highway. The

overriding safety benefits of the uniformity prescribed by the MUTCD are shared by all of the State and local governments, and changes made to this rule are directed at enhancing safety. To the extent that these amendments override any existing State requirements regarding traffic control devices, they do so in the interest of national uniformity.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain a collection of information requirement for the purposes of the PRA.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, to eliminate ambiguity, and to reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This is not an economically significant action and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This action would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that this is not a significant energy action under that order because it is not a significant regulatory action under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Regulation Identification Number

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

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—Transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

Issued on: November 7, 2003.

Mary E. Peters,

Federal Highway Administrator.

■ In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, part 655, subpart F as follows:

PART 655—TRAFFIC OPERATIONS

■ 1. The authority citation for part 655 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart F—Traffic Control Devices on Federal-Aid and Other Streets and Highways—[Amended]

■ 2. Revise § 655.601(a), to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), 2003 Edition, FHWA, dated October, 2003. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and is on file at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. It is available for inspection and copying at FHWA, 400 Seventh Street, SW., Room 3408, Washington, DC 20590, as provided in 49 CFR part 7. The text is also available from the FHWA Office of Transportation Operations' Web site at: *http://mutcd.fhwa.dot.gov.*

* * * * *

Appendix to Subpart F of Part 655—Alternate Method of Determining the Color of Retroreflective Sign Materials and Pavement Marking Materials—[Amended]

■ 3. Amend Table 3 by adding (after the color Fluorescent Green) the color Fluorescent Pink with Chromaticity Coordinates as follows:

Color	Chromaticity coordinates							
	1		2		3		4	
	x	y	x	y	x	y	x	y
* * *	*		*		*		*	
Fluorescent Pink	0.450	0.270	0.590	0.350	0.644	0.290	0.536	0.230

■ 4. Amend Table 3a by adding (after the color Fluorescent Green) the color Fluorescent Pink with Luminance Factor Limits (Y) as follows:

Color	Luminance factor limits (Y)		
	Min	Max	Y_F
* *	*	*	*
Fluorescent Pink	25	None	15

[FR Doc. 03–28673 Filed 11–19–03; 8:45 am]

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Federal Register

Thursday,
November 20, 2003

Part III

Environmental Protection Agency

40 CFR Parts 260 and 261

Hazardous Waste Management System: Identification and Listing of Hazardous Waste: Conditional Exclusions From Hazardous Waste and Solid Waste for Solvent-Contaminated Industrial Wipes; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[RCRA–2003–0004; FRL–7587–7]

RIN 2050–AE51

Hazardous Waste Management System: Identification and Listing of Hazardous Waste: Conditional Exclusions From Hazardous Waste and Solid Waste for Solvent-Contaminated Industrial Wipes

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) today proposes to modify its hazardous waste management regulations under the Resource Conservation and Recovery Act (RCRA) for certain solvent-contaminated materials, such as reusable shop towels, rags, disposable wipes and paper towels. Specifically, EPA is proposing: to conditionally exclude from the definition of hazardous waste disposable industrial wipes that are contaminated with hazardous solvents and are going to disposal; and, to conditionally exclude from the definition of solid waste reusable industrial shop towels and rags that are contaminated with hazardous solvents and are sent for laundering or dry cleaning (hereinafter referred to as disposable industrial wipes and reusable industrial wipes, respectively). This proposal affects contaminated industrial wipes being sent to both landfill and non-landfill (*e.g.,* laundries and combustion) facilities and is applicable to: industrial wipes exhibiting a hazardous characteristic (*i.e.,* ignitability, corrosivity, reactivity, or toxicity) due to use with solvents; or industrial wipes contaminated with F001–F005 spent F-listed solvents or comparable P- and U-listed commercial chemical products that are spilled and cleaned up with industrial wipes.

Today's proposal would resolve, at the Federal level, long-standing issues associated with the management of solvent-contaminated industrial wipes by: facilitating pollution prevention and waste minimization opportunities, including the recycling of the spent solvents extracted from contaminated industrial wipes; fostering improved solvents management by generators and handling facilities; reducing compliance costs; increasing consistency in the regulations governing solvent-contaminated industrial wipes across the United States; clarifying existing federal rules; and creating flexibility for generators to work with industrial laundries, as appropriate, to ensure compliance with local pretreatment standards established by Publicly Owned Treatment Works (POTWs).

Today's proposal also contains the Agency's proposed response to rulemaking petitions filed by the Kimberly-Clark Corporation and the Scott Paper Company.

DATES: Submit comments on or before February 18, 2004. Comments postmarked after this date will be marked ''late'' and may not be considered. Any person may request a public hearing on this proposal by filing a request by January 20, 2004.

ADDRESSES: Comments may be submitted by mail to: RCRA Information Center, Mailcode: 5305T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID Number RCRA–2003–0004. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in section 1.B. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For information, contact the RCRA/Superfund/EPCRA/UST Hotline at (800) 424–9346 (toll free) or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–3323 or TDD (703) 412–9810. You can also contact Kathy Blanton at (703) 605–0761 or at *blanton.katherine@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. Docket

EPA has established an official public docket for this action under Docket ID No. RCRA–2003–0004. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket in the EPA Docket Center at 1301 Constitution Avenue, Washington, DC. The EPA Docket Center Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. Copies cost $0.15/page.

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at <*http://www.epa.gov/fedrgstr/*>, and you can make comments on this proposed rule at the Federal e-rulemaking portal, <*http://www.regulations.gov*>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <*http://www.epa.gov/edocket/*> to submit or view public comments, access the index listing of the contents of the official public docket or to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Docket. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.A.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the

copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. EPA Dockets

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <*http://www.epa.gov/edocket,*> and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID Number RCRA–2003–0004. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

b. E-mail

Comments may be sent by electronic mail (e-mail) to ''*rcra-docket@epamail.epa.gov,*'' Attention Docket ID Number RCRA–2003–0004. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

c. Disk or CD ROM

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this section. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail

Send your comments to: OSWER Docket, EPA Docket Center, Mailcode: 5305T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID Number RCRA–2003–0004.

3. By Hand Delivery or Courier

Deliver your comments to: Environmental Protection Agency, EPA Docket Center, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID Number RCRA–2003–0004. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

4. By Facsimile

Fax your comments to: (202) 566–0270, Attention Docket ID Number RCRA–2003–0004.

C. How Should I Submit Confidential Business Information (CBI) to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. RCRA–2003–0004. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

ACRONYMS

Acronym	Definition
APA	Administrative Procedures Act.
ASTSWMO.	Association of State and Territorial Solid Waste Management Officials.
CAA	Clean Air Act.
CAS No	Chemical Abstracts Service Registry Number.
CBI	Confidential Business Information.
CESQG	Conditionally Exempt Small Quantity Generator.
CFR	Code of Federal Regulations.
CSI	Common Sense Initiative.
CWA	Clean Water Act.
DOT	Department of Transportation.
ELG	Effluent Limitations Guideline.
EPA	Environmental Protection Agency.
FR	Federal Register.
HSWA	Hazardous and Solid Waste Amendments.
ICR	Information Collection Request.
IRIS	Integrated Risk Information System.
LDR	Land Disposal Restrictions.
MIBK	Methyl Isobutyl Ketone.
MWC	Municipal Waste Combustor.
NESHAP	National Emission Standards for Hazardous Air Pollutants.
NSPS	New Source Performance Standards.
NTTAA	National Technology Transfer and Advancement Act.
OMB	Office of Management and Budget.
OPPE	Office of Policy, Planning and Evaluation.
OSHA	Occupational Safety and Health Administration.
PBMS	Performance Based Measurement System.
POTW	Publicly Owned Treatment Works.
SBREFA	Small Business Regulatory Enforcement Fairness Act.
RCRA	Resource Conservation and Recovery Act.
RFA	Regulatory Flexibility Act.
RfC	Reference Air Concentrations.
RfD	Reference Doses for Exposure through Ingestion.
RIC	RCRA Information Center.
TC	Toxicity Characteristic.
TCLP	Toxicity Characteristic Leaching Procedure.
TBD	Technical Background Document.
TDD	Telecommunications Device for the Deaf.
UMRA	Unfunded Mandates Reform Act.
VOCs	Volatile Organic Compounds.

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C. How Should I Submit Confidential Business Information (CBI) to the Agency?
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9. Proposed Conditions for Intra-Company Transfers
10. Proposed Conditions for Management at Handling Facilities
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I. National Technology Transfer Advancement Act
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Appendix B to Preamble—Memorandum from Michael Shapiro

II. Legal Authority

EPA proposes these regulations under the authority of Sections 2002, 3001–3010, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912 , 6921–6930, and 6974.

III. Summary of Proposed Changes

EPA today proposes a conditional exclusion from the regulatory definition of hazardous waste for solvent-contaminated industrial wipes going to disposal and combustion, including use as a fuel, and a conditional exclusion from the regulatory definition of solid waste for solvent-contaminated reusable wipes, shop towels, and rags that are sent for laundering or dry cleaning (hereinafter referred to as disposable industrial wipes and reusable industrial wipes, respectively). As long as the specified conditions are met, the Agency proposes that the exclusions from both the definition of hazardous waste and the definition of solid waste be applicable to (1) industrial wipes exhibiting a hazardous characteristic (*i.e.*, ignitability, corrosivity, reactivity, or toxicity)[1] due to use with solvents or (2) industrial wipes contaminated with F001–F005 spent F-listed solvents or comparable P- and U-listed commercial chemical products that are spilled and cleaned up with industrial wipes. This proposal would not affect the regulatory status, under federal regulation, of Conditionally Exempt Small Quantity Generators (CESQGs)—those that generate no more than 100 kilograms of hazardous waste or no more than one kilogram of acutely hazardous waste in a month and who accumulate no more than 1000 kilograms of hazardous waste or no more than one kilogram of acutely hazardous waste at one time.

It has long been EPA's policy to encourage the appropriate state or EPA regional office to characterize the regulatory status of laundered and reused wipes based on site-specific factors. (*See* Appendix B, which contains a policy memo from Mike Shapiro, Director, Office of Solid Waste, to EPA Waste Management Division Directors, February 14, 1994.) Most authorized states already exclude reusable wipes from the definition of solid or hazardous waste as long as certain basic conditions are met, such as the removal of free liquids by the user. It is not EPA's intent to modify or in any way limit the existing state or EPA regional exclusions or policies through this proposed Federal rulemaking. Because this action is a proposed rulemaking, provisions of the proposal, as well as EPA's assumptions and rationale leading to them, are subject to public notice and comment. Therefore, until a final rule governing these materials is issued, the regulatory status and classification of these materials, including all regulatory exclusions under the current RCRA programs implemented by a state or EPA region implementing the RCRA program, remain unchanged. *See* section IX.B. of this preamble for the effect this rule would have on the RCRA program in authorized states when finalized.

EPA's recent examination of solvent-contaminated industrial wipes is a result of issues and questions raised by stakeholders concerning the Agency's current policy on these materials. In developing our response to those concerns, EPA also conducted a risk screening analysis and an investigation of potential damages from mismanagement of solvent-contaminated industrial wipes to make sure risks from wipes management would be addressed and taken into consideration.

We emphasize that EPA's concern surrounding the use of both types of industrial wipes—disposables and reusables—is based on the hazardous solvent contained in the used wipes, not the industrial wipes themselves. This proposed rule would not apply to industrial wipes contaminated with aqueous-based solvents or solvents that, when spent, are not hazardous wastes. We strongly recommend that generators examine the feasibility of substituting non-hazardous solvents for hazardous solvents. By using non-hazardous solvents, individual facilities may eliminate or reduce compliance costs associated with RCRA and the Clean Air Act (CAA), as well as U.S. Occupational Safety and Health Administration (OSHA), and U.S. Department of Transportation (DOT) regulations. For generators using reusable industrial wipes that are managed by an industrial laundry or dry cleaner, indirect costs associated with Clean Water Act (CWA) regulations may also be reduced. We also encourage generators to examine the possibilities of resource conservation through removal and reclamation of their solvents, if possible, and believe that the changes proposed today will encourage additional reclamation of hazardous solvents.

The conditions that would be required for the exclusion from the definition of hazardous waste and the exclusion from the definition of solid waste are outlined below. For a more detailed discussion of generator, handler and processing facility conditions, *see* Section V.

A. Generator Conditions

1. Generator Conditions: Exclusion From the Definition of Hazardous Waste

For disposable solvent-contaminated industrial wipes that will be managed at a non-landfill disposal facility to meet the exclusion from the definition of hazardous waste, generators would be required to (1) accumulate and store solvent-contaminated wipes on site in non-leaking covered containers; (2) ensure that the solvent-contaminated wipes contain no free liquids, except as noted below, when transported off site to a handling facility; and (3) transport the solvent-contaminated industrial wipes off site in containers designed, constructed, and managed to minimize solvent loss to the environment and labeled ''Excluded Solvent-Contaminated Wipes.''

Today's proposal would also require that disposable solvent-contaminated wipes managed at municipal landfills or other non-hazardous waste landfills that meet the standards under 40 CFR part 257 subpart B (the disposal standards applicable to the receipt of CESQG wastes at non-municipal, non-hazardous waste disposal units)[2] (i) must be ''dry'' (*i.e.*, contain less than five grams of solvent), and (ii) must not contain any of the 11 listed spent solvents which the Agency has tentatively determined may pose adverse risks to human health and the environment when disposed of in a landfill, even if the wipe is ''dry.'' *See* Table 1 below for the listed solvents that, when contaminating industrial wipes, would make landfilled wipes ineligible for an exclusion from the definition of hazardous waste. In other words, wipes contaminated with Table 1 solvents would not be allowed in municipal landfills or other non-hazardous waste landfills under the provisions of this proposal.

[1] Solvent-contaminated industrial wipes that are co-contaminated with another material that makes them characteristically hazardous for corrosivity, reactivity, or toxicity would not be eligible for the exclusion from the definition of hazardous waste or the exclusion from the definition of solid waste. If the industrial wipes are co-contaminated with a material that makes them characteristically hazardous for ignitability, they would remain eligible. For more discussion of this provision, *see* Section V.B.11.

[2] For the purposes of today's preamble, we will use the term *other non-hazardous landfill* to denote part 257 subpart B compliant non-hazardous waste landfills. If a non-hazardous landfill that is not a municipal landfill accepts this waste, it must meet the minimum strandards of 40 CFR part 257 subpart B.

TABLE 1.—LISTED SOLVENTS INELIGIBLE FOR MUNICIPAL OR OTHER NON-HAZARDOUS LANDFILL DISPOSAL

2-Nitropropane	Nitrobenzene.
Methyl Ethyl Ketone (MEK)	Methylene Chloride.
Pyridine	Benzene.
Cresols (o,m,p)	Carbon Tetrachloride.
Chlorobenzene	Tetrachloroethylene.
Trichloroethylene	

In addition, EPA is proposing that transporters be allowed to carry wipes with free liquids to other facilities within the same company under the hazardous waste exclusion when they are transporting them to a solvent recovery facility that will remove enough solvent to meet either the ''no free liquid'' or the ''dry'' condition, provided the other conditions are met.

III.A.2. Generator Conditions: Exclusion From the Definition of Solid Waste

For reusable solvent-contaminated industrial wipes going to be reclaimed and reused to meet the exclusion from the definition of solid waste, generators would be required to (1) accumulate and store solvent-contaminated wipes on site in non-leaking covered containers; (2) ensure that the solvent-contaminated wipes contain no free liquids when laundered on site or transported off site to a handling facility, except as noted below; and (3) transport the solvent-contaminated industrial wipes off site in containers designed, constructed, and managed to minimize losses to the environment (*e.g.*, plastic bags, 55-gallon drums, or other containers). The exclusion from the definition of solid waste would be applicable only to wipes that are being reclaimed for reuse through a cleaning process.

EPA is also proposing that wipes can be transported with free liquids to facilities within the same company under the exclusion when they are transporting them to a solvent recovery facility that will remove enough solvent to meet either the ''no free liquid'' or the ''dry'' condition, provided the other conditions are met.

B. Handling Facility Conditions

1. Handling Facility Conditions: Exclusion From the Definition of Hazardous Waste

For disposable industrial wipes to continue to meet the exclusion from the definition of hazardous waste, combustors and facilities that handle solvent-contaminated industrial wipes to remove solvent from them prior to disposal would be required to manage them (a) in containers designed, constructed and managed to minimize losses to the environment that meet the transportation requirements in today's proposal or (b) in non-leaking covered containers that would meet the generator accumulation conditions in today's proposal. Unless the handling facility and the generator are in the same company, if a handler discovers any free liquid accompanying the used solvent-contaminated industrial wipes, it would be required either to remove the free liquid and manage it properly as a hazardous waste, if applicable, or to return the container with the wipes and free liquid to the generator.

2. Handling Facility Conditions: Exclusion From the Definition of Solid Waste

For reusable wipes to continue to meet the exclusion from the definition of solid waste, industrial laundries and dry cleaners, as well as facilities that handle solvent-contaminated industrial wipes to remove solvent from them prior to cleaning, would be required to manage them in containers designed, constructed and managed to minimize losses to the environment (*i.e.*, today's proposed transportation condition), or in non-leaking covered containers that would meet the generator accumulation conditions in this proposal. Unless the handling facility and the generator are in the same company, if a handler discovers any free liquid accompanying the used solvent-contaminated industrial wipes, it would be required either to remove the free liquid and manage it properly or to return the container with the wipes and free liquid to the generator.

C. Who Would Be Affected by the Proposed Exclusions?

The following table summarizes the types and numbers of entities nationwide which we estimate could be eligible for the proposed exclusions. The exclusions would only affect those establishments which use industrial wipes in conjunction with operations involving solvents that are included in the scope of this proposal (*i.e.*, F001–F005 spent F-listed solvents at 40 CFR 261.31; comparable P- and U-listed commercial chemical products at 40 CFR 261.33 that are spilled and cleaned up with industrial wipes; and solvents exhibiting a hazardous characteristic (*i.e.*, ignitability, corrosivity, reactivity, or toxicity at 40 CFR 261.21–261.24)).

TABLE 2.—ENTITIES POTENTIALLY AFFECTED BY THE PROPOSED RULE

Item	Economic sub-sector (entity type)	NAICS Code	SIC Code	Number of affected establishments [1]
1	Printing manufacturing (mfg)	323	275 to 279	18,700 to 42,000.
2	Chemical & allied products mfg	325	28	1,100 to 2,900.
3	Plastics & rubber products mfg	326	30	1,400 to 3,700.
4	Fabricated metal products mfg	332	34	4,900 to 13,000.
5	Industrial machinery & eqpt mft	333	352 to 356	2,400 to 6,300.
6	Electronics & computers mfg	3344	367	550 to 1,500.
7	Transportation eqpt mfg	336	37	1,100 to 3,000.
8	Furniture & fixture mfg	337	25	1,600 to 4,300.
9	Auto dealers (retail trade)	4411	5511 & 5521	4,000 to 10,700.
10	Publishing (printed matter)	5111	271 to 274	10,600 to 23,600.
11	Business services	561439	7334	2,900 to 6,400.
12	Auto repair & maintenance	8111	753	13,500 to 35,900.
13	Military bases	92812	9721	50 to 130.
14	Solid waste services	562	4953	4,800 to 9,650.
15	Industrial launderers	812332	7218	590 to 1,175.
Total				68,000 to 164,000

[1] Establishment counts above do not necessarily represent all establishments in each industry; counts represent EPA's estimate of establishments which use solvent industrial wipes and to which the conditional exclusions may apply.

IV. Background

EPA is addressing the issue of solvent-contaminated industrial wipes in response to stakeholder concerns that these materials warrant special consideration to correct over-regulation, as well as to ensure more consistency in the regulation of these materials. In addition, EPA sees this proposed rule as encouraging resource conservation and responsible solvent management, as well as removing potential regulatory restrictions to solvent recovery.

Industrial wipes are used by thousands of commercial and industrial facilities throughout the United States to ensure that products and services meet design, performance, or operating standards. Generators often use these wipes in conjunction with ignitable solvents (any material with a flash point less than 140°F) or listed solvents that, when spent, are hazardous wastes (approximately 30 specific halogenated and non-halogenated solvents are defined by EPA as meeting the criteria for designation as hazardous).

For the purposes of this proposal, we are considering two broad categories of industrial wipes: reusables and disposables. Specific definitions for the different kinds of industrial wipes can be found in Appendix A to this proposal but we have chosen, for simplicity's sake, to call all disposable wipes and reusable shop towels and rags for which this proposed rule would be applicable ''industrial wipes,'' and to distinguish only between those which are going to be laundered, or otherwise cleaned for reuse (''reusables''), and those which will be discarded either by combustion, including use as a fuel, or landfilling (''disposables'').

A generator's decision to use disposable or reusable industrial wipes depends primarily on their processes, but sometimes it may be based on their waste management strategy. The process employed is important, for example, because the amount of lint a wipe generates can play a very significant role. Some processes, such as those in electronics and printing applications, cannot tolerate any lint, whereas other processes, such as cleaning auto parts, can tolerate large amounts of lint. Absorbent capacity is also another factor in some tasks, as is durability of a wipe in both physical strength and in its ability to withstand strong solvents.

As with other commodities, a wipe's life cycle depends on its ultimate disposition. The following description illustrates generally how industrial wipes are used, but is not exhaustive of all possibilities. Some disposable wipes arrive at the generator dry, whereas others are packaged already saturated with solvent and are, therefore, ready for use immediately. Either way, the generator uses the wipe in its process and then often discards it. These wipes are typically disposed of either in a landfill or by combustion. Alternately, some wipes generally thought of as ''disposable'' (perhaps if they are made with paper fiber) are used more than once by being put through a solvent removal system. Because this proposal makes a distinction between wipes destined for disposal and destined for reuse, in this case the industrial wipe would be considered ''reusable'' if it were to be reused, even if it was manufactured for typical one-time use.

Reusable wipes are part of a more systematic handling system. In general, a laundry owns reusable industrial wipes, rents them to generators, and collects them for laundering on a regular basis. Generators receive deliveries of wipes from the laundries, use them, and accumulate used wipes. Drivers, most often employed by the laundries, pick up the contaminated industrial wipes, replacing them with clean wipes at the same time, and then return the soiled wipes to the laundry. Once at the laundry, the wipes are then counted to assure the laundry is getting back from the generator the same number sent out and, finally, are cleaned before entering the cycle again.

Solvent removal and recovery can happen at various points in the life cycle of both disposables and reusables. Generators may choose to recover solvent either to reduce solvent use and save money, or to reduce environmental impact; generators may generally recover solvents without additional RCRA requirements under the provisions of 40 CFR 261.6(c). In addition, laundries may recover solvents from the wipes that arrive at their facilities to minimize the amount of solvent in their effluent to comply with pretreatment requirements imposed by a Publicly Owned Treatment Works (POTW) or to recover solvent, which can be sold, refined, and reused when it is recovered. One of EPA's goals in this rulemaking is to encourage solvent recovery and recycling in order to minimize the amount of potentially hazardous solvents that are released to the environment and to conserve resources.

A. What Is the Intent of Today's Regulatory Proposal?

A brief history of the current regulatory scheme applicable to solvent-contaminated wipes lends perspective on how EPA has developed this proposal and explains how EPA has focused its efforts on responding to stakeholder concerns.

Since EPA began to look at solvent-contaminated industrial wipes, we have heard from many interested groups that they are frustrated with the regulatory scheme now applicable to them. After the initial promulgation of the federal hazardous waste regulations, EPA began receiving inquiries from makers and users of disposable wipes, who stated that the regulations were too stringent for industrial wipes based on the risks they pose. Specifically, in 1985, EPA received a petition, pursuant to 40 CFR.260.20, from the Kimberly-Clark Corporation, a manufacturer of disposable industrial wipes, that asked EPA to exclude disposable wipes from the definition of hazardous waste. The petition stated that these materials are over-regulated because the amount of solvent in the wipes is insignificant and because the disposable wipes do not pose a threat to human health and the environment even when disposed of in a municipal solid waste landfill. In 1987, EPA received a second rulemaking petition from the Scott Paper Company that reiterated many of Kimberly-Clark's points and added that the hazardous waste regulations are not necessary because contaminated disposable wipes are handled responsibly, make up just 1% of a generator's waste stream, and could be beneficial to the operation of incinerators because of their heat value.

In addition to these petitions from the makers of disposable wipes, in 1987, EPA received a rulemaking petition pursuant to 40 CFR 260.20 from the industrial laundries requesting that the solvent-contaminated wipes they wash before returning them to their customers for reuse be excluded from the definition of solid waste. In 2000, the laundries withdrew their petition. Nevertheless, the various rulemaking petitions helped set in motion the development of this proposed rule that addresses the regulatory requirements for both disposable and reusable industrial wipes.

A rule addressing both types of wipes is also important because generators of solvent-contaminated wipes have asked EPA over the years to clarify our position on both disposable and reusable wipes. In the early 1990s, EPA developed a policy that deferred determinations and interpretations regarding regulation of solvent-contaminated industrial wipes to states authorized to implement the federal hazardous waste program or to the EPA region in the cases where a state is not authorized (see 2/14/94 Memo from Michael Shapiro to Waste Management

Division Directors Regions I–X in Appendix B). We did this because we felt, at that time, that these questions were best addressed by the regulatory officials responsible for implementing the regulations.

This policy led to the application of different regulatory schemes for both types of industrial wipes in EPA regions and states. Although the states differ in the details of their policies, in general, they regulate disposable industrial wipes as a hazardous waste when they are contaminated with a solvent that is listed or exhibits a hazardous waste characteristic. On the other hand, many, but not all, states provide regulatory relief for reusable contaminated wipes sent to an industrial laundry or other facility for cleaning and reuse. In about half the cases, this regulatory relief is in the form of an exclusion from the definition of hazardous waste, whereas other states provide an exclusion from the definition of solid waste. The substantive difference between these two approaches is that materials excluded from the definition of solid waste are not considered a waste at all, and are not subject to Federal RCRA regulation, whereas materials excluded from the definition of hazardous waste are considered to be wastes that, when certain conditions are met, do not need to be managed as hazardous wastes.

For reusable industrial wipes, the conditions for the various exclusions vary from state to state, but most require that the containers of wipes not contain free liquids, and require that the laundry discharge to a Publicly Owned Treatment Works (POTW) or be permitted under the Clean Water Act. Some states have established other requirements such as requiring generators to manage contaminated wipes according to the hazardous waste accumulation standards prior to laundering, and requiring generators to file a one-time notice under the land disposal restriction (LDR) program (*see* 40 CFR part 268) when wipes are sent to be laundered. More detail on the specifics of the states' policies can be found in Chapter 3 of the Technical Background Document to this proposal.

The EPA policy laid out in the Shapiro memo, deferring interpretation to the states or EPA regions, has led to some confusion. The state regulations and policies established on the basis of the Shapiro memo, as described above, differ from state to state. This rule, when finalized, would clarify that EPA believes that full RCRA hazardous waste regulation of these materials is not necessary to protect human health and the environment and, therefore, that management of solvent-contaminated wipes in the manner described in this proposal is appropriate.

In late 1994, EPA's policy regarding solvent-contaminated industrial wipes came under further review as a part of the Common Sense Initiative (CSI) for the printing industry. The CSI sought the insight and input of multiple stakeholders on how to make environmental regulation more easily implementable and/or less costly while still maintaining protection of human health and the environment. The one significant problem posed by RCRA regulations identified by the representatives from the printing industry was the ambiguity of the rules and regulations applicable to disposable and reusable solvent-contaminated industrial wipes. Specifically, they requested that EPA do three things: (1) Clarify the definition of ''treatment'' as it pertains to printers wringing solvent from their wipes; (2) examine the potential for over-regulation of disposable industrial wipes; and (3) increase regulatory consistency among the states.

This proposal, therefore, results from discussions during the printing industry CSI, as well as the concerns we have heard from other stakeholders on the Agency's (and states'') current policies. We are addressing these concerns, while at the same time encouraging recycling and solvent recovery and ensuring protection of human health and the environment. In summary, the stakeholders' general positions are that generators of contaminated industrial wipes seek clarification of the rules and a more consistent regulatory scheme throughout the states; manufacturers of disposable industrial wipes feel their product is over-regulated by RCRA when levels of risk are taken into consideration leading to inequitable treatment vis-à-vis reusable wipes; and industrial laundries which clean solvent-contaminated wipes believe they are managing a commodity, not solid wastes, and should be considered accordingly.

Additional stakeholder groups have also been involved in the development of this proposal. The first is made up of the state and local governments that have been developing and implementing policies for these materials for the past ten years. They have come to EPA to ask advice on what they should do when conditions established at the state level for an exclusion are not met. The second is worker unions which have also recently expressed interest in RCRA requirements for management of solvent-contaminated industrial wipes because of worker safety concerns.

B. Jurisdiction Over Solvent-Contaminated Industrial Wipes

1. Exclusion From the Definition of Hazardous Waste

The concept of regulating a waste if it fails to meet certain standards forms the basis of many RCRA regulations. To provide added flexibility for implementation, EPA has previously promulgated conditional relief from subtitle C regulation for low-level mixed waste,[3] for certain refining wastes,[4] and for non-chemical military munitions.[5] Today's proposed rule would limit regulation under subtitle C for solvent-contaminated industrial wipes that are disposed or combusted (circumstances when the industrial wipes are used as a fuel are included) when they meet the conditions described in this notice.

The DC Circuit Court of Appeals has expressly upheld EPA's authority under RCRA to establish a conditional exemption from subtitle C regulation (*i.e.*, hazardous waste regulation) for wastes that, absent the exemption, would be hazardous (*See Military Toxics Project* v. *EPA* 146 F.3d 948, D.C. Cir. 1998). For a more detailed discussion of EPA's authority to establish a conditional exemption from subtitle C regulation, *see* the discussion at 62 FR 6636–6637 for the Military Munitions Rule preamble.

2. Exclusion From the Definition of Solid Waste

Makers and users of reusable industrial wipes that are sent to laundries or dry cleaners to be cleaned prior to reuse have asked EPA to maintain our current policy of deferring to the states. Under current EPA policy, as established in 1994, EPA defers interpretations and decisions about how to regulate solvent-contaminated wipes to either an EPA region or authorized state (*see* 2/14/94 memo from Michael Shapiro to Waste Management Division Directors Regions I-X).

EPA is today proposing to exercise its discretion to exclude from the subtitle C definition of solid waste reusable industrial wipes exhibiting a hazardous waste characteristic due to use with

[3] *See* 66 FR 27266, May 16, 2001, Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived-From Rules: Final Rule.

[4] *See* 63 FR 42109, August 6, 1998, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities.

[5] *See* 62 FR 6621, February 12, 1997, Military Munitions Rule; Hazardous Waste Identification and Management; Explosives Emergencies: Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways and Contiguous Properties: Final Rule.

solvents or containing listed solvents when the industrial wipes are laundered or cleaned for reuse under the conditions set out below. Liquids removed from such wipes are subject to hazardous waste regulation if they contain listed solvents or if they exhibit hazardous waste characteristics.

The proposed conditional exclusion from the definition of solid waste will not apply to wipes that are taken out of service to be disposed of. When the wipes are disposed of, they cease being ''reusable'' industrial wipes and become ''disposable'' industrial wipes and must be handled accordingly. The proposed exclusion also does not apply to reusable wipes containing solvents or other materials that are not hazardous wastes. These wipes are not subject to subtitle C regulation.

EPA also proposed a rule that would eliminate regulation of a range of materials which are reused in a continuous process within the same generating industry (68 FR 61558, October 28, 2003). The proposed rule would establish, if finalized, that such materials are not solid wastes under the rulings in *American Mining Congress* v. *EPA*, 824 F 2d 1177 (1987) (''AMC I'') and *Association of Battery Recyclers* v. *EPA*, 208 F. 3d 1047 (2000), (''ABR''). While today's proposal is more narrowly targeted in terms of waste streams, and involves cross-industry transfers, EPA will take appropriate action to ensure that the provisions in this rule are consistent with those of that broader rule, when finalized.

a. Basis for Proposed Exclusion From the Definition of Solid Waste

EPA's basis for the exclusion from the definition of solid waste proposed today is that industrial wipes being cleaned and returned into service are more commodity-like than waste-like and, therefore, that they can be conditionally excluded from the regulatory definition of solid waste. In 40 CFR 260.31(c), EPA states that a material's commodity-like properties can be a basis for a variance from being a solid waste, among other things, because of how they resemble a product rather than a waste and how they are managed. The finding that solvent-contaminated reusable industrial wipes are commodity-like is based on three factors and, importantly, on the fact that in this case all three factors apply to industrial wipes. EPA may not reach a similar conclusion for a material that meets just one or two of these factors.

The first of the ''commodity-like'' factors is that the industrial wipes are often partially reclaimed, that is, spun in a centrifuge, wrung out, or allowed to drain so that some of the unwanted solvent has been removed before shipment, helping to restore the wipes to a usable condition. We are proposing a ''no free liquid'' condition for transportation off site to ensure that wipes that are going to reclamation have low levels of solvent consistent with this factor.

The second of the factors is that industrial wipes are handled throughout the laundering or reuse process as valuable commodities because the laundry benefits from their use and reuse. When wipes return to a laundry from a user to be laundered, they are counted before the washing process. This process keeps users financially accountable for the number of wipes they have in their possession and demonstrates that the wipes are not waste-like, as they have value to the laundries and to the users. Consequently, it is more likely that the used industrial wipes will be handled carefully, in appropriate containers, and will be treated as commodities, rather than as wastes, by both users and laundries.

The final consideration is that the solvent-contaminated industrial wipes are owned by the same entity throughout the process. Laundries own the wipes and lease them to the users and, therefore, have an incentive to ensure that the wipes are reused, not discarded. This factor encourages much of the same behavior as the second factor does, leading to responsible management of the materials.

C. Solvent Removed From Industrial Wipes

When industrial wipes are returned to laundries, the solvents are removed through laundering so that the wipes can be reused. In some cases, the solvents are collected and recycled for further use, but, in other cases, the solvent is discarded as a hazardous waste or discharged to a Publicly Owned Treatment Works (POTW). Some stakeholders have argued that industrial wipes should not be considered eligible for an exclusion from the definition of solid waste for being commodity-like, because the solvent is the hazardous constituent, not the industrial wipe, and the solvent is often discarded rather than reused. However, spent material reclamation scenarios frequently involve the removal of unwanted contaminants from the material being reclaimed. In this case, as stated above, EPA perceives the reusable solvent-contaminated industrial wipes to be a commodity-like material. Even though it contains solvent, the material is predominantly a product that needs servicing (*i.e.*, solvent removal) before it can be used. Therefore, no discard occurs until after the contamination is removed from the wipe.

In addition, EPA has previously concluded that contaminated material can be excluded from the definition of solid waste even though contamination ends up in the wastestreams of the reclamation process. *See*, for example, the proposed exclusion for glass from cathode ray tubes (67 FR 40509) and the finalized conditional exclusion for waste-derived zinc fertilizers (67 FR 48393). Nevertheless, the Agency solicits comment on this issue, and specifically on whether reusable industrial wipes should be conditionally excluded from the definition of hazardous waste, as opposed to being conditionally excluded from the definition of solid waste.

V. Detailed Discussion of Proposed Rule

EPA is today proposing a conditional exclusion from the definition of hazardous waste for solvent-contaminated disposable industrial wipes and a conditional exclusion from the definition of solid waste for solvent-contaminated reusable industrial wipes.

This section discusses in detail the major features of and rationale for the proposal. The Agency also presents options we are considering in developing the proposed rule. We welcome any comments on all aspects of this proposed rule and on other options we considered in developing this proposal. More discussion of the options is also available in the Proposed Rule's Technical Background Document, available in the Rulemaking Docket. Throughout this description of the proposed rulemaking, EPA specifically requests comments on certain options, but comments are welcome on all elements of the proposal.

A. Scope of Solvents Covered by the Proposed Rule

EPA is proposing that both the exclusions in this proposal be applicable both to industrial wipes that exhibit a hazardous characteristic (*see* 40 CFR 261.21–261.14) due to use with solvents and to industrial wipes containing any listed hazardous waste solvents: F001–F005 listed spent solvents (*see* 40 CFR 261.31) and corresponding P- or U-listed commercial chemical products when spilled (*see* 40 CFR 261.33).

We also note that this proposed rule would not be applicable to generators using non-hazardous solvents, since these industrial wipes are not currently

subject to regulation under subtitle C. EPA strongly recommends that generators examine the feasibility of using non-hazardous solvents because of reduced risk from use of these solvents. However, EPA also realizes that in some cases, production incompatibilities may make such a substitution infeasible.

Table 3 summarizes which industrial wipes would be excluded from the definition of hazardous waste and which would be excluded from the definition of solid waste and the conditions each type of wipe would be required to meet.

TABLE 3.—SUMMARY OF CONDITIONS FOR GENERATORS

If you use or generate solvent-contaminated industrial wipes that will be managed at . . .	Then for your solvent-contaminated industrial wipes . . .
A combustion facility or other non-landfill disposal facility without first being sent to a handling facility for solvent removal	To be excluded from the definition of hazardous waste, you would be required to: 1. Accumulate the used wipes on site in a non-leaking, covered container; 2. Ensure that the wipes do not contain free liquids when transported off site; 3. Handle any removed solvents subject to hazardous waste regulations accordingly; 4. Package wipes for shipment off site in containers that are designed, constructed, and managed to minimize loss to the environment; and 5. Mark containers ''Excluded Solvent-Contaminated Wipes.''
A municipal or other non-hazardous[6] landfill without first being sent to a handling facility for solvent removal	To be excluded from the definition of hazardous waste, you would be required to: 1. Accumulate the used wipes on site in a non-leaking, covered container; 2. Ensure that the wipes meet the ''dry'' condition (contain less than 5 grams of solvent per wipe or have been processed by advanced solvent extraction) when transported; 3. Handle any removed solvents subject to hazardous waste regulations accordingly; 4. Package wipes for shipment off site in containers that are designed, constructed, and managed to minimize loss to the environment; 5. Mark the container ''Excluded Solvent-Contaminated Wipes''; and 6. Ensure that the wipe does not contain the listed solvents in Table 1.
—An industrial laundry —An industrial dry cleaner —A handling facility (not intra-company) that cleans wipes for reuse or removes solvent prior to cleaning or being sent for disposal	To be excluded from the definition of solid waste, you would be required to: 1. Accumulate the used wipes on site in a non-leaking, covered container; 2. Ensure that the wipes do not contain free liquids when laundered on site or transported off site; 3. Handle any removed solvents subject to hazardous waste regulations accordingly; and 4. Package wipes for shipment off site in containers that are designed, constructed, and managed to minimize loss to the environment.
Another facility within the company (intra-company) for free liquids removal processing to meet either the ''no free liquid'' condition or the ''dry'' condition	To be excluded from the definition of solid waste or from the definition of hazardous waste, you would be required to: 1. Accumulate the used wipes on site in a non-leaking, covered container; and 2. Package wipes for shipment off site in containers that are designed, constructed, and managed to minimize loss to the environment. Note: These wipes *can* be transported with free liquids.

Notes: (1) If wipes do not meet the appropriate conditions for accumulation and transportation, they would not be excluded and, if they cannot be made to meet the conditions, must be managed as hazardous waste.

(2) For residues from combustion and industrial laundry wastewater treatment (sludges), the generator must determine if they are characteristically hazardous and, if so, must be managed as hazardous waste. If not, additional generator or transport requirements do not apply.

[6] As stated above, for the purposes of this preamble, we will use the term *other non-hazardous landfill* to denote part 257 subpart B compliant non-hazardous waste landfills. That is, if a non-hazardous landfill that is not a municipal landfill accepts this waste, it must meet the minimum standards of 40 CFR part 257 subpart B.

B. Conditions for Exclusion From the Definition of Hazardous Waste for Solvent-Contaminated Industrial Wipes Destined for Disposal

1. Why Is EPA Proposing To Conditionally Exclude Disposable Solvent-Contaminated Wipes From the Definition of Hazardous Waste?

As discussed above, stakeholders have on several occasions indicated to us that regulating disposable solvent-contaminated industrial wipes as a hazardous waste is burdensome and unnecessary to protect human health and the environment and that this results in inequitable treatment relative to reusable industrial wipes. They argue that solvents associated with wipes are in low concentrations and are not likely to pose health and environmental risks similar to those from the disposal of process wastes. EPA's risk screening analysis, conducted to evaluate whether this contention is valid, suggests that management of these wipes under certain minimal, good management standards does not pose a substantial hazard to human heath and the environment and, therefore, we are proposing the conditional exclusion from the definition of hazardous waste presented today. The conditions proposed as part of the exclusion are designed both to minimize loss of solvent into the environment and, therefore, to minimize the risk of damage to the environment from those solvents, and to encourage solvent recovery and recycling.

Unions representing workers who come into contact with these materials have also raised concerns to EPA regarding the exposure of their members, both through direct contact and through air emissions, to hazardous solvents when handling industrial wipes. The conditions EPA would establish would also limit volatile releases and potential exposure of workers both at generator facilities and during transportation.

Finally, EPA has, where possible, designed these conditions to be performance-based and easy to understand and implement to address the concern that the Agency's current policy coupled with differing state policies, is complicated and hard to understand. Note that, as discussed in section IV of today's preamble, wipes are defined as disposable only if they will be disposed after use. If a wipe manufactured to be disposable is used and cleaned several times before disposal, it should be treated as a reusable wipe until its final use.

2. Proposed Conditions for Initial Storage and Accumulation

a. Proposed Condition

The proposed conditional exclusion from the definition of hazardous waste would apply to solvent-contaminated disposable industrial wipes at the point when the wipes are discarded by the generator. If the wipes were managed according to the proposed conditions, they would not be considered hazardous waste subject to subtitle C regulation.

The first condition the industrial wipes would have to meet is an accumulation standard. When an industrial wipe is contaminated with a hazardous solvent and is being disposed, generators would be required to place the hazardous solvent-contaminated wipe in a non-leaking, covered container. This performance standard leaves room for flexibility because a non-leaking covered container can range from a spring-operated safety container to a drum with its opening covered by a piece of plywood. Generators would not need to seal, secure, latch, or close the container every time a wipe is placed inside; rather, they would only need to ensure that the container was covered. EPA recognizes that many generators use a large number of wipes daily, so to require unsealing and sealing a container each time a wipe is placed inside would be impractical. This condition would reduce fugitive air emissions, maximizing the ability to capture free liquids for reuse or recycling. It would also be among good management practices for generators to have regardless of this proposal to minimize worker exposure to solvents.

Under the exclusion from the definition of hazardous waste, there would be no limit on accumulation time of wipes under federal regulations if the accumulation condition is being met-that is, the wipes are kept in a non-leaking covered container. Because the wipes would be solid waste but not hazardous waste, RCRA hazardous waste accumulation times would not apply.

This condition is designed to prevent releases of solvent while wipes are being accumulated for shipment. EPA believes that accumulating solvent-contaminated industrial wipes in covered containers is a responsible way to manage them to prevent loss of wipes and solvent, and represents good management practices for this material, as well as good housekeeping. The condition may also help to prevent the risk of fires, the most common damage reported from mismanagement of solvent-contaminated wipes, and would help reduce volatile organic compounds (VOCs) being emitted to the work environment and the atmosphere. It would also prevent the intentional air drying of wipes as a way to reduce free liquids.

One advantage of establishing a performance standard such as the one described above is that the generator may take innovative approaches to meet the performance standard being sought rather than having to use a specific design. A performance standard also provides a degree of flexibility in terms of allowing different approaches that minimize the length of time required for workers to place a used wipe in a storage container.

This condition would reduce requirements for generators of solvent-contaminated disposable industrial wipes. Currently, all states regulate disposable industrial wipes as a hazardous waste. 40 CFR part 265, subpart I describes the current federal requirements for the proper storage of hazardous waste in containers at generator facilities. These standards require generators of hazardous wastes to accumulate such wastes in units meeting certain technical requirements. The unit-specific requirements for generator accumulation units are found in 40 CFR part 265. In addition to requiring that containers are in good condition and that they are made of a material that is compatible with the wastes being contained, subpart I requires that containers be closed (*i.e.*, sealed) during accumulation. In addition, hazardous waste containers are subject to weekly visible inspections to locate potential deterioration, corrosion, or leaks. In addition, containers storing ignitable or reactive hazardous wastes are required to be located at least 50 feet from the facility's property line and special requirements exist for incompatible wastes.

b. Other Options

Accumulation Time Limit

EPA is also considering including a condition that establishes a time limit for accumulation of solvent-contaminated disposable wipes at a generator facility, so they cannot be kept on site indefinitely without management. This condition would be that solvent-contaminated disposable wipes being accumulated at the generator under the conditions proposed today must also follow the accumulation time limits in 40 CFR 262.34 that are applicable for their generator category (*i.e.*, 90 days for large quantity generators (LQGs) and 180 days for small quantity generators (SQGs)). In addition to following the time limits in 262.34, generators would have to mark any container in which solvent-contaminated disposable industrial wipes were being accumulated with a label stating that it holds excluded solvent-contaminated wipes and stating the date accumulation started.

Although this option would require generators to follow the appropriate time limit for their generator size, because the industrial wipes are excluded from the definition of hazardous waste from the point of generation, they would not have to be added to the generators counting of hazardous waste. In other words, generating solvent-contaminated wipes under the conditions of the proposal would not cause a facility to move from being an SQG to being an LQG.

No RCRA-Specific Condition

The Agency also is considering not establishing a specific accumulation condition, but relying on other regulatory statutes, like the Occupational Safety and Health Act (OSHA). The Occupational Health and Safety Standards of part 1910 provide both general and specific requirements for containers used to accumulate and store certain types of materials. Subpart H of part 1910 may be applicable for the storage of industrial wipes prior to solvent removal or recovery. Section 1910.106 contains standards for the management of hazardous materials, including requirements for the management of flammable [7] and combustible [8] liquids; facilities which either generate or launder solvent-contaminated industrial wipes may be subject to these standards. According to these standards, flammable liquids must be stored in approved containers which meet the requirements of § 1910.106(d). Metal containers and portable tanks meeting Department of Transportation standards (*see* 49 CFR parts 173 and 178) are acceptable. Section 1910.106 also specifies standards for the areas where containers holding flammable liquids are to be kept. The requirements for industrial plants may apply to generators or launderers of solvent-contaminated industrial wipes because the regulations apply to the portions of an industrial plant where the ''use and

[7] Flammable liquids are defined as any liquid having a flash point below 100° F (37.8° C) or higher, the total of which make up 99 percent or more of the total volume of the mixture. Several solvents that are either listed or characteristic hazardous wastes and are used in conjunction with wipes also meet the definition of a *flammable liquid* (such as acetone, ethyl acetate, ethyl benzene, methyl ethyl ketone, petroleum naphtha).

[8] Combustible liquids are any liquids having a flash point at or above 100° F (37.8° C).

handling of flammable and combustible liquids is incidental to the principal business (*e.g.*, solvents used for cleaning presses at printing facilities).'' At industrial plants, flammable liquids must be stored in tanks or *closed containers,* defined as a container that is sealed with a lid or other device to prevent the release of liquids or vapors at ordinary temperatures (§ 1910.106(a)(9)).

Storage of spent solvent wipes that contain a negligible amount of solvents may be addressed under OSHA's regulations at 29 CFR 1910.106 (e)(9)(iii), which describe general housekeeping measures for ''combustible waste material and residues'' and residues of flammable liquids, combustible waste material and residues in a building or unit operating area. These standards specify that these materials are to be (1) kept to a minimum; (2) stored in covered metal receptacles; and (3) disposed of daily. However, these standards may not apply to solvents if they do not meet OSHA's definition of *flammable liquid,* although they may still be hazardous waste under RCRA.

We believe that OSHA requirements would be applicable in some situations involving solvent-contaminated industrial wipes and that those generators following OSHA's requirements would be managing their wipes in a protective manner. Another advantage of using the OSHA standards would be that many generators are already familiar with these standards. These standards would not, therefore, complicate implementation of the conditional exclusion.

However, it appears there would be gaps in coverage if we relied strictly on deferring to OSHA regulations. For example, the OSHA container standards may not apply to contaminated wipes with no free-flowing liquids or when wipes are contaminated with non-flammable solvents and, therefore, OSHA regulations may not cover every workplace that RCRA does. Note, however, that if generators meet the OSHA standard for flammable liquids (whether or not that standard is applicable to them under OSHA), they will meet the condition proposed here.

c. Request for Comment

We request comment on our proposal for accumulating spent reusable solvent-contaminated industrial wipes in non-leaking, covered containers while at the generator's facility. We also seek comment on whether wipes are accumulating at generator sites in large numbers that may pose a risk to human health and the environment and on the option of adding an accumulation time limit to this accumulation condition. In addition, we seek comment on the desirability of deferring to OSHA regulations for the proper storage of solvent-contaminated wipes on site at a generator's facility.

3. Proposed Conditions for Containers Used for Transportation

a. Proposed Condition

We are proposing a condition for containers generators use to transport solvent-contaminated industrial wipes off site under the conditional exclusion from the definition of hazardous waste. This condition is to ensure that transporting industrial wipes without full RCRA hazardous waste requirements will still protect against any risks posed by these materials to human health and the environment. Under this proposal, generators must transport industrial wipes in containers that are designed, constructed and managed to minimize loss to the environment. In proposing this condition, EPA intends for transporters to use containers that do not leak liquids and that provide for control of air emissions. This condition is designed to minimize loss of solvent to the environment during transportation and, therefore, minimizes risk as well. Minimization of loss through evaporation or leakage also makes it more likely that larger quantities of solvent will be recycled or properly managed.

EPA has chosen to propose a condition designed as a performance standard for this condition because it provides industry the ability to be creative in developing less expensive ways to reach a desired outcome. Because there are several common ways industrial wipes are presently transported that meet this description, such as in drums and in plastic bags, EPA determined that a performance standard would be a more flexible way to ensure protective management than establishing specific conditions that might unintentionally force the use of specific containers or types of containers. A performance standard allows for use of a wide variety of containers so generators could continue with current practices where appropriate. For example, we would consider containers that meet DOT packaging requirements for hazardous materials to meet the proposed performance standard, as would closed, sealed, impermeable containers. Plastic bags or cloth bags that were cinched shut might also meet this condition. Closed cinched bags would minimize exposed surface area and, thus, minimize evaporative loss and, provided no free liquids were present, as required, may not release liquid solvents. We would consider hazardous solvents that are spilled or leaked during transportation to be disposed and those managing the industrial wipes at the time the spill occurred would be responsible for managing the spilled hazardous waste according to generally applicable RCRA requirements. The excluded industrial wipes would remain excluded if the spill were managed properly and promptly.

Generators would also have to comply with the existing DOT standards.[9] EPA believes that the ''designed, constructed, and managed to minimize loss to the environment'' condition is necessary because the DOT regulations may not be applicable to all solvent-contaminated wipes if they do not meet certain DOT definitions, such as ''solids containing flammable liquid.'' Proposing this performance standard ensures that the container condition would apply to all solvent-contaminated industrial wipes to which today's proposal applies.

EPA's condition for transportation does not specify that the containers must be closed (*i.e.*, containers with lids screwed on). Nevertheless, EPA believes that closed containers would minimize loss to the environment. We do not expect that open containers would meet the performance standard due to the potential for wipes and/or solvent to be released from the container if an open container tipped over during transportation. We also do not believe that containers that are open to the environment would minimize other losses, such as evaporative losses.

b. Other Option

Closed Containers

EPA is also considering an alternative option of requiring all generators of

[9] DOT's Hazardous Materials Regulations (HMR) state that any person who offers a material for transportation in commerce must determine whether the material is classified as a hazardous material. Typically, reusable solvent-contaminated wipes are classified as ''solids containing flammable liquid, n.o.s.'' (*see* 49 CFR 172.101). Under 49 CFR 172.102, Special Provision 47 allows mixtures of solids not subject to regulation as a hazardous material and flammable liquids to be transported under the generic entry ''solids containing flammable liquid, n.o.s.'' without first applying the classification criteria of Division 4.1 Flammable Solids, provided there is no free liquid visible at the time the material is loaded or at the time the packaging or transport unit is closed. All packaging must correspond to a design type that has passed a leak proof test at the Packing Group II level. Containers which are authorized for transporting hazardous materials in Packing Group II are listed under 49 CFR 173.212 and include, among other things, steel, aluminum, or plastic drums and plastic or cloth bags.

solvent-contaminated industrial wipes to transport them in impermeable closed containers. By *closed containers,* we specifically mean containers with a lid that screws on to the top and must be sealed to be considered *closed.* Some stakeholders have expressed concern that those transporting industrial wipes would not be able to determine if the industrial wipes met the ''no free liquids'' or the ''dry'' condition without having to further handle the container and wipes. Unsealing these containers each time a wipe is placed into the container and to make the no free liquids determination would be time consuming and would expose more of the solvents to the air than opening a covered container. In addition, stakeholders argue that, if the transporters of the wipes are unable to determine at the time of pick-up whether there are free liquids in the container, this may result in an unnecessary burden falling on the handlers if noncompliant wipes arrive at their site. We believe the approach taken in today's proposed regulation addresses these concerns and will ensure protection of human health and the environment.

c. Request for Comment

We request comment on our proposed performance standard and on the other option described above for containers used for transporting reusable solvent-contaminated industrial wipes.

4. Proposed Labeling Condition for Containers Used To Transport Disposable Wipes

a. Proposed Condition

EPA is proposing as a condition of the exclusion from the definition of hazardous waste that generators must appropriately label containers used to transport disposable industrial wipes containing hazardous solvents. This condition is meant to alert anyone handling the materials of what is enclosed in the container so that proper handling (or inspection) may occur. We are proposing to impose a labeling condition that would require the containers used to transport solvent-contaminated industrial wipes for disposal to be marked ''Excluded Solvent-Contaminated Wipes.'' This condition is comparable to the used oil designation labeling requirement in 40 CFR part 279.

This is a simple, straight-forward approach for labeling and would indicate the status of the materials to generators, workers, and downstream handlers. In addition, a label on containers of disposable industrial wipes stating that they are excluded from the definition of hazardous waste may benefit the generators of these wastes by eliminating questions from facilities receiving the waste, such as landfills or combustors, who may recognize that there are solvents in the waste and may be reluctant to accept the excluded industrial wipes before getting an assurance that they are not hazardous waste.[10]

A labeling condition would not add significant burden as existing regulatory programs administered by EPA, DOT, and OSHA already prescribe labeling requirements for containers, both in storage and transportation. Environmental Protection (40 CFR parts 260 through 265), Transportation (49 CFR parts 171 through173), and Labor (29 CFR 1910.1200) regulations all contain sections pertaining to the management of hazardous waste, including labeling requirements. Most of these labeling requirements refer to the DOT regulations found in 49 CFR 172. A variety of hazardous solvents may be used with industrial wipes, so DOT has a number of specific hazardous waste regulations, including labeling requirements, that apply to them.

b. Other Option

No RCRA-Specific Labeling Condition

Another option we are considering is not imposing a specific labeling condition. Under this approach, designation of the disposable industrial wipes as hazardous materials under DOT regulations might still require placarding or other marking for transportation of some fraction of these materials, as described previously. However, for the reasons explained above, we do not expect that the DOT provisions would apply to all solvent-contaminated industrial wipes covered by today's proposal and, therefore, would not be applicable to all industrial wipes covered by today's proposed rule.

c. Request for Comment

The Agency requests comment on today's proposal and the non-RCRA labeling condition. In particular, is a labeling requirement necessary, and, if so, is there a label that is more appropriate, easier to understand, and/or easier to implement than that being proposed?

[10] As will be noted later in today's preamble, a similar labeling requirement is not being proposed for reusable industrial wipes that are sent for reclamation/laundering or dry cleaning. The Agency believes such a requirement is not necessary for reusable industrial wipes. For further discussion, *see* Section V.C.5.

5. Proposed Condition for Transportation to a Municipal or Other Non-Hazardous Landfill

a. Proposed Condition

The conditional exclusion from the definition of hazardous waste for disposable industrial wipes proposed today would allow generators to transport certain disposable solvent-contaminated industrial wipes to municipal or other non-hazardous waste landfills [11] for disposal instead of to hazardous waste landfills when the conditions of the exclusion are met. EPA does not believe that other forms of land management, such as management in a waste pile or surface impoundment, are being applied to this waste stream. We, therefore, limited this proposed hazardous waste exclusion to land disposal of wipes in municipal or other non-hazardous waste landfills. A condition for disposal is that the industrial wipes contain no more than five grams of solvent per wipe, as explained in detail below.

Because of risk concerns, EPA is also proposing that industrial wipes contaminated with the specified F- or U-listed solvents in Table 4 or that are characteristically hazardous for other hazardous constituents, such as metals, cannot be disposed in municipal or other non-hazardous waste landfills. EPA has tentatively concluded that the solvents listed in Table 4 below may pose a substantial hazard to human health and the environment if wipes containing them were disposed in such landfills. If land disposed, industrial wipes contaminated with these solvents would have to continue to be managed in full compliance with the RCRA subtitle C hazardous waste management standards. Because of the risk concerns, this condition applies to any blends that contain a percentage of these solvents.

TABLE 4.—LISTED SOLVENTS NOT ALLOWED IN MUNICIPAL LANDFILLS

Benzene*	2-Nitropropane
Carbon tetrachloride*	Nitrobenzene
Chlorobenzene*	Pyridine
Cresols (o,m,p)*	Tetrachloroethylene*
Methyl ethyl ketone (MEK)	Methylene chloride
Trichloroethylene	

Nine of the solvents in Table 4 are characteristically toxic (TC), as defined in 40 CFR 261.24. Of these nine, six (as noted by an asterix: ''*'') are ineligible for disposal in a municipal or other non-hazardous waste landfill because they

[11] *See* footnote to Table 3 for explanation of the use of *non-hazardous waste landfill* in today's Preamble.

meet the toxicity characteristic, not because of the results of EPA's risk screening analysis. EPA's analysis finds that even when they have been through an advanced solvent-extraction process and contain less than five grams of solvent, the levels of these solvents in contaminated industrial wipes are likely to be higher than the regulatory levels indicated in 40 CFR 261.24. Therefore, these TC solvents are ineligible for disposal in municipal and other non-hazardous waste landfills because of their potential risk, as determined when they were originally identified by EPA as TC wastes.

We are proposing that the remaining five solvents in Table 4 also be restricted from disposal in municipal or other non-hazardous waste landfills because EPA's risk screening analysis indicates that they may pose an unacceptable risk to human health and the environment when disposed of at levels lower than the 5-gram condition described in detail below.[12] Included in these five are three solvents that both meet the toxicity characteristic and that were indicated in the risk screening assessment to pose an unacceptable risk (methyl ethyl ketone, nitrobenzene, and pyridine).

Table 5 contains the 19 listed solvents that were evaluated in the risk screening analysis and that would be allowed, under this proposal, to be disposed of in a municipal or non-hazardous waste landfill if they meet the ''dry'' condition. *Also see* Section VII for additional details on the results of our risk screening analysis.

TABLE 5.—LISTED SOLVENTS THAT MAY BE DISPOSED OF IN A MUNICIPAL LANDFILL UNDER TODAY'S PROPOSAL

Ethyl Ether	Carbon Disulfide	Isobutyl Alcohol	1,2-Dichlorobenzene
Acetone	Xylenes	Ethyl Acetate	1,1,2-Trichlorotrifluoroethane
Methanol	Cyclohexanone	Trichlorofluoromethane	1,1,1-Trichloroethane
Butanol	2-Ethoxyethanol	Methyl Isobutyl Ketone	1,1,2-Trichloroethane
Toluene	Ethyl benzene	Dichlorodifluoromethane	

Generators transporting their disposable industrial wipes to a municipal or other non-hazardous waste landfill must ensure that the wipes are ''dry.'' For purposes of this proposed rule, an industrial wipe is considered ''dry'' when it contains less than 5 grams of solvent. EPA chose 5 grams to be the standard for this condition because it falls within the range found in our risk screening analysis to not pose a substantial hazard to human health and the environment. This is also within the range of what is achievable through use of advanced solvent-extraction processes. Generators can meet this condition either by using less than five grams of solvent per wipe or by putting used industrial wipes through an advanced solvent-extraction process capable of removing sufficient solvent to meet the 5-gram condition. Generators can do the following to meet the ''dry'' condition:

- Remove excess solvents by centrifuging or other high-performance solvent-extraction or -removal technology, for example, microwave solvent recovery processes or the Petro-Miser or Fierro processes;[13]
- Use normal business records, such as the amount of solvent used per month for wiping operations divided by the number of wipes used per month for solvent wiping operations, to show they are under the threshold;
- Conduct sampling to measure the amount of solvent applied per wipe before use; or
- Sample to measure the amount of solvent remaining on wipes when use is completed.

EPA is proposing that generators using advanced solvent-extraction technologies will be considered to have met the ''dry'' condition because EPA believes that when properly operated these technologies will remove sufficient solvent to meet the 5-gram condition. For example, with respect to centrifuge effectiveness, our evaluation of existing centrifuges from site visits and data provided by industry shows that well-operated centrifuges result in wipes that contain less than 5 grams of solvent per wipe. We have found that the other high-performance processes have the same or greater rate of success at removing solvents. Therefore, if a generator uses one of these advanced solvent-extraction technologies on industrial wipes, they would qualify for the hazardous waste exclusion. Using business records to calculate the average amount of solvent on each wipe would also be an acceptable way of assuring that each wipe would have less than 5 grams of solvent on it. Finally, EPA considers sampling, when done properly using representative samples, to be an appropriate way of demonstrating that a standard is being met.

b. Request for Comment

EPA is requesting comment on its proposed ''dry'' condition. Comments are requested particularly on our preliminary decision that certain solvents contained in industrial wipes cannot be disposed of in municipal or other non-hazardous waste landfills. For example, should solvents which exhibit the characteristic of toxicity, but which were not found to pose a significant risk in our risk screening analysis for today's proposal, be prohibited from being sent to municipal or other non-hazardous waste landfills?

EPA is also requesting comment on what other high-extraction technologies not mentioned in this preamble could be used to meet the ''dry'' condition. Although we do not intend to promulgate a list of the only acceptable technologies, information on those that are appropriate for meeting the standard may be useful for future guidance.

In addition, as discussed in Section VII, our risk screening analysis identifies industrial wipes that pose an insignificant risk when disposed of in municipal or other non-hazardous waste landfills even though they contain solvents that meet the ''no free liquid'' condition, rather than the more stringent 5 gram condition (or ''dry'' condition). Nevertheless, to simplify the rule, we chose to propose that all industrial wipes containing solvents that can be landfilled under this proposal would be required to meet the ''dry'' condition prior to being allowed to be shipped to municipal or other non-hazardous landfills. The Agency requests comment as to whether we should allow industrial wipes containing solvents that pose insignificant risk when meeting the ''no

[12] Methyl Isobutyl Ketone (MIBK) was also found to be ineligible by the risk screening analysis, but because MIBK is listed for its characteristic of ignitability and, therefore, when mixed with solid waste, is no longer hazardous waste unless it continues to display its characteristic, a wipe containing it can be disposed of in a municipal or other non-hazardous waste landfill if it meets the other requirements.

[13] Descriptions of these technologies are found in the Technical Background Document. Mention of these processes is for descriptive purposes only and is not an endorsement of the products themselves.

free liquids'' condition to be placed in municipal or other non-hazardous waste landfills without being required to meet the ''dry'' condition.

Finally, we are requesting comment on whether solvent-contaminated industrial wipes meeting the ''dry'' condition should be required to meet the transportation requirements for wipes described in section V.B.3. The rationale for not specifying transportation standards would be that the level of solvents escaping would be insignificant if the industrial wipes were to contain less than 5 grams of solvent each. This option would increase relief for generators whose wipes meet the ''dry'' condition, but would complicate implementation of the rule both for regulators and generators.

6. Proposed Condition for Transportation to Non-Land Disposal Facilities

a. Proposed Condition

EPA is proposing a ''no free liquids'' condition to apply to solvent-contaminated industrial wipes going for disposal at a non-land disposal unit such as a municipal waste combustor (MWC) or other combustion unit (circumstances when the industrial wipes are used as a fuel are included) or to solvent-contaminated industrial wipes sent to an intermediate handler for further processing to meet the ''dry'' condition for disposal in a municipal or other non-hazardous waste landfill. This final case would apply to a generator who wants to send its solvent-contaminated industrial wipes to a landfill, but does not want to be responsible for making them meet the ''dry'' condition. The generator could send them to an intermediate handler under the ''no free liquids'' condition and contract with that handler to remove enough solvent that the wipes would meet the ''dry'' condition. This condition is meant to minimize the likelihood of loss of solvent into the environment, as well as to encourage solvent recovery and pollution prevention by generators.

In developing the ''no free liquids'' condition, EPA hopes to make it simple enough that both generators and handlers of the materials, as well as regulatory officials, would easily be able to verify that free liquids have been removed from the industrial wipes. For wipes to meet the ''no free liquids'' condition, no liquid solvent could drip from them when sent off site. In addition, no free liquids may be present in the bottom of the container in which the wipes are transported.

One concern certain stakeholders have expressed with this proposed condition is that once in a container, either at the generator site or in transit, industrial wipes can compress and solvent can percolate through them, collecting at the bottom of a container. This means that, while there may not have been free liquids in the container at the generator site, some may be generated during transportation. EPA believes that generators can take steps to minimize percolation by using less solvent or by recovering solvent from wipes before they are transported. However, EPA acknowledges that in some cases percolation can result in free liquids at the bottom of a container.

Because of percolation effects, the proposed rule contains the provision that, if free liquids are discovered at the handling/combustion facility, the solvent-contaminated wipes would remain excluded from the definition of hazardous waste as long as the handler either removes the solvent and manages it appropriately, or returns the shipment to the generator as soon as reasonably practicable, as described in Section V.B.10.a. However, if solvents escaped the container as a result of percolation, the container would not meet the ''minimize loss'' condition described above. Similarly, the mismanagement of the free solvents by the handler, either by illegal disposal or other means, would be a violation of the conditions of the exclusion. Because the generator is originally responsible for the existence of free liquids in the wipes, it would also be potentially responsible for the wipes having lost the exclusion at the handler despite the wipes being out of the generator's control at that moment.

Note that handlers/combustors would be required to determine whether the solvent which has been removed from the industrial wipes is listed as a hazardous waste or exhibits a characteristic of a hazardous waste as defined in 40 CFR part 261. Any hazardous waste solvent removed from the wipes would have to be managed in accordance with hazardous waste requirements found at 40 CFR parts 260 through 268 and 40 CFR part 270. In addition, for purposes of this proposed regulation, techniques or technologies used by generators to remove solvent from the wipes would not be defined as treatment under RCRA and, therefore, would not be subject to RCRA permitting (*see* Section V.B.8. for further discussion).

b. Other Option

EPA is considering a ''no free liquids when wrung'' condition instead of the ''no free liquids'' condition. Some states favor this approach, as it may minimize the chance for later solvent releases. They argue that this condition may result in better solvent management and less frequent receipt of free liquids at handling or combustion facilities. This approach differs from what we are proposing in that it would require that each wipe could not drip solvent when hand wrung. Some stakeholders argued that such a requirement would be a substantial change from current state policies on free liquids and would be burdensome for generators to implement. They also argue that this would expose wipes to the air more than necessary and, in essence, would require that the wipes be wrung immediately prior to placement on the shipping vehicle, further burdening generators. Based on these concerns, we are not including ''when wrung'' as part of the ''no free liquids'' condition in this proposal, but are seeking information on whether the benefits of an extra step of solvent removal at the generator outweigh the limitations of these concerns.

c. Request for Comment

We request comment on our proposed ''no free liquids'' condition and our decision not to propose a ''no free liquids when wrung'' condition.

d. How Can Generators Meet the ''No Free Liquids'' Condition?

Presently, state agencies have established several methods for verifying compliance with state-imposed ''no free liquids'' standards for a container or individual wipe. The majority of states require the use of the Paint Filter Test (SW–846 Method 9095) though other specified methods include the Liquids Release Test (SW–846 Method 9096), and the Toxicity Characteristic Leaching Procedure (TCLP) (SW–846 Method 1311). The Commonwealth of Massachusetts has established a ''one drop'' standard, where generators must ensure that the wringing of a wipe will not result in a drop of liquid flowing from the material. We understand that, although these are by no means the only ways of meeting the ''no free liquids'' condition, if generators meet any of these state standards or if they hand wring wipes, it is unlikely that the ''no free liquids'' condition proposed today would be violated.

In this proposal, EPA intends for compliance with the ''no free liquids'' condition to be determined by a practical test. That is, does a wipe drip liquid from it when held for a short period of time, for example, when being

transferred from one container to another? One way a facility or an inspector could test for compliance with this condition would be to place two containers adjacent to one another and to transfer wipes from one container to the other. If they drip liquid during transfer, or if there are free liquids in the bottom of the container, they would not meet the ''no free liquids'' condition. Generators and inspectors would have to make sure they are checking the industrial wipes at the bottom of containers, as well as at the top for release of free liquids because percolation could cause solvents to sink and saturate the wipes at the bottom of any given container. Facilities could also check for compliance with the condition by using screen-bottomed drums and checking the bottom portion of the drum for liquid solvent.

As stated above, rather than checking all wipes for free liquids, generators could hand wring wipes before placement in containers or send wipes through a mechanical wringer, centrifuge, or use any other effective method as a way to ensure that free liquids are not present. Stakeholders from the printing industry have recommended to EPA that we specify a list of acceptable technologies that would meet the ''no free liquids'' condition for the proposed exclusion from the definition of hazardous waste, and that we also specify the above performance standard as a catch all to account for new technologies that are developed in the future. Printing industry stakeholders believe this option would clarify for them and other industrial sectors those technologies that would pass the ''no free liquids'' performance standard so that no uncertainty exists on the part of either generators or EPA and state inspectors. While understanding generator concerns, EPA is not proposing in today's **Federal Register** specific regulatory language which identifies those technologies that would presumptively meet the ''no free liquids'' condition. Nevertheless, the Agency provides some discussion of the specific technologies EPA has examined that can reduce the amount of solvents in industrial wipes to meet the ''no free liquid'' condition both in this Preamble and in the Technical Background Document for this proposal.

Generators also have the option to use their knowledge of their processes to determine that their wipes contain no free liquids. For example, a generator may know that a certain process requires only small amounts of solvent on each wipe and, therefore, free liquids are unlikely to be present.

e. Request for Comment

EPA is taking comment on our proposed approach to determining if the ''no free liquids'' condition is met. Are there other approaches EPA should have considered in this proposal? The Agency also solicits comment on the printing industry's suggestion that the final rule should specify a list of technologies that would be considered to meet the condition to assist in the implementation of and compliance with this rule.

7. ''Exotic'' Solvents

In the process of developing this proposed rulemaking, the Agency has learned that there are new, ''exotic'' solvents on the market, such as terpenes and citric acids, that, while labeled as non-hazardous, could actually be flammable. Although the solvents do not exhibit the ignitability characteristic in 40 CFR 261.21, stakeholders have told us that, under certain conditions that have yet to be determined, oxygen can mix with the industrial wipes that contain these exotic solvents and spontaneously combust. According to some representatives of industrial laundries and fire marshals, resulting fires have caused major damage to facilities. Some stakeholders have suggested that EPA propose that generating facilities be allowed to transport their industrial wipes off site with free liquids if the facility is using one of these ''exotic'' solvents that could react or spontaneously combust, so that generators can wet down the wipes with water prior to sending them off site. They explain that this is consistent with what laundries do now with their customers.

We request information and comments on these ''exotic'' solvents and how they are presently managed. We would like to know which solvents that would currently be considered hazardous wastes are viewed as ''exotic'' and for which solvents commenters believe a ''no free liquids'' condition would be problematic. We request information on documented cases of combustion caused by a lack of free liquids. We also request comments on whether the final rule should give containers with wipes contaminated with exotic solvents special consideration, particularly, allowing the solvents to be wetted down with water during accumulation and transportation and, further, what other conditions should be placed on management of these materials if special consideration were to be given.

8. Generators That Remove Solvent From Industrial Wipes

a. Regulatory Status of Removed Solvent

Any solvent removed from an industrial wipe by a generator may be subject to regulation as a hazardous waste. Therefore, the generating facility would be required to determine whether the solvent removed from the industrial wipe, if it is not reused, is listed as a hazardous waste or exhibits a characteristic of a hazardous waste as defined in 40 CFR part 261, and, if so, manage the solvent according to prescribed RCRA regulations under 40 CFR parts 260–268 and 270.

b. Regulatory Status of Solvent Removal Technologies

Under today's proposed exclusion from the definition of hazardous waste, the solvent-contaminated wipes would not be hazardous waste at the time they undergo solvent-removal. Therefore, solvent removal technologies would not be considered treatment of hazardous waste under RCRA and such operations, whether they be conducted by generators or handling facilities, would not be considered to be treating hazardous waste and would not require a RCRA permit. Because under today's proposed rule solvent extraction would not trigger RCRA treatment standards, generators may be more likely to recover solvent for reuse and reduce the amount of solvent that they purchase.

9. Proposed Conditions for Intra-Company Transfers

a. Proposed Condition

Several stakeholders, particularly those who use large numbers of wipes daily with large amounts of solvent on each wipe, would like the flexibility of not having to meet the ''no free liquids'' condition when transferring their wipes off site to an intra-company facility that would extract the solvents from the wipes. Several states already allow these kinds of transfers to be made when both the generating facility and the extracting facility are part of the same company. Under the proposed condition, the extracted solvent at this point could either be returned to the originating customer or sold to another manufacturer for reuse as a feedstock in a manufacturing or service operation. Alternatively, when the economics of solvent recycling are not favorable, the extracted solvents could be disposed of as a hazardous waste.

To encourage reclamation and recycling of the solvents in the wipes, today we are proposing to allow industrial wipes to qualify for the exclusion from the definition of

hazardous waste if the generator transfers solvent-contaminated industrial wipes containing free liquids between their own facilities and if the receiving facility has a solvent-extraction and/or -recovery process that will remove sufficient solvent to ensure the wipes meet either the ''dry'' condition or the ''no free liquids'' condition. Generators taking advantage of this part of the rule could then use one piece of solvent-extraction equipment to serve industrial wipes from several of the company's generators. EPA hopes that allowing intra-company transfers of free liquid under these conditions would encourage companies to obtain advanced solvent recovery equipment that they would not purchase for use at just one of their facilities.

Of course, to be eligible for the exclusion from the definition of hazardous waste, the industrial wipes must meet the other conditions described in this notice. Specifically, the generators would be required to manage the wipes and free liquids in the same way as they would when they are under the hazardous waste exclusion. They would be required to accumulate the wipes and solvents in non-leaking covered containers and to transport the industrial wipes in containers that are designed, constructed and managed to minimize loss to the environment and labeled ''Excluded Solvent-Contaminated Wipes.'' EPA is proposing the same performance standards as for wipes meeting the ''dry'' and the ''no free liquids'' conditions, but note that because of the free liquids transported with these wipes, not all types of containers are likely to be appropriate (*e.g.*, cloth bags are not likely to minimize loss for wipes containing free liquids). The solvent, once extracted, would have to be managed as a RCRA hazardous waste if going to disposal. In the end, we believe this option would result in substantial savings for generators of solvent-contaminated industrial wipes, as well as in increased solvent recovery by generators.

As stated above, generators can only take advantage of this condition when the handling facility is in the same company as the generator. EPA is seeking comment on whether intra-company transfers should include affiliates, subsidiaries, and parent companies as eligible for this provision.

EPA is making this condition applicable to just intra-company transfers because the Agency believes the management of the free liquids in transportation to prevent loss or spills is likely to be more comprehensive when the whole transaction occurs within one company. Communication is likely to be better between the entities transporting and receiving the waste if they are in one company, as would oversight over the entire generation, transportation, and recovery system to ensure that solvents are being recovered.

Several potential benefits to allowing such shipments under the conditional exclusion from hazardous waste include the additional opportunities for increased recycling because some generating facilities would find recycling solvent more convenient when not having to meet the ''no free liquids'' condition. As stated elsewhere in this proposal, several technologies already exist to extract and/or recover the spent solvent contained on industrial wipes both economically and safely. In addition, there are likely to be environmental benefits because solvent that would have been sent to combustion or disposal in a landfill would be recovered and reused.

b. Other Options

Additional Conditions for Intra-Company Transfers

On the basis of discussions with state implementors and stakeholders, EPA is considering adding conditions to this provision in the proposed rule. Specifically, we are considering:

(i) Requiring a one-time notification to the state to alert the state that the generator is taking advantage of the intra-company transport allowed under this exclusion;

(ii) Maintenance of appropriate business records that identify where the industrial wipes are being managed and where the recovered solvent is being sent;

(iii) Compliance with RCRA's employee training and emergency response requirements in 40 CFR part 262, and

(iv) Transfer of the industrial wipes with free liquids in closed (*i.e.*, sealed) containers.

Inter-Company Transfers

Some stakeholders have also suggested that EPA propose to allow transfers of solvent-contaminated industrial wipes with free liquids between companies for solvent extraction. This option would allow generators to ship solvent-contaminated industrial wipes with free liquids to any facility if the receiving facility uses solvent extraction to remove enough solvent from the industrial wipes for them to meet the ''no free liquids'' condition required for shipment to a laundry. This option would allow more facilities to take advantage of this provision than the intra-company provision would allow and may encourage more use of advanced solvent-extraction technologies on these materials resulting in more potential recovery and reuse of solvents. EPA did not propose this option because it believes currently that intra-company transfers would maintain better control of the industrial wipes during transportation and would better prevent releases than transfers between different companies. However, we request comment on this premise and this option for transfer of industrial wipes.

c. Request for Comment

EPA seeks comment on whether intra-company shipments of industrial wipes containing free liquids should be allowed under the conditions of the exclusion from the definition of hazardous waste and whether this provision would be likely to facilitate the recovery of hazardous solvents.

As stated above, we seek comment on whether EPA should consider parent companies, subsidiaries, and affiliates as eligible for the intra-company transfer provision. EPA also seeks comment on whether the intra-company transfer provision should include a distance limit, such that only facilities shipping their wipes and solvents the prescribed distance or less would be eligible for the intra-company transfer option.

EPA also seeks comment both on whether the additional conditions discussed in Section V.B.9.b. should be included and also on whether we should expand the provision to allow industrial wipes, under the conditional exclusion from hazardous waste, to be sent with free liquids to third-party solvent-extraction facilities.

10. Proposed Conditions for Management at Handling Facilities

a. Proposed Conditions

Of all the handlers, generators have the primary responsibility for assuring that the industrial wipes they transport off site meet the conditions for the hazardous waste exclusion, but non-landfill facilities which receive disposable industrial wipes, such as combustors or handling facilities that perform further solvent removal, would also need to meet certain minimum conditions for the wipes to remain excluded from the definition of hazardous waste. First, during the time between when the wipes arrive on site and when the facility first introduces them into their process (*e.g.*, when the wipes are removed from their container and placed in a solvent-extractor), these facilities must store solvent-

contaminated industrial wipes either (a) in containers that are designed, constructed, and managed to minimize loss to the environment that would meet the transportation conditions in today's proposal, or (b) in non-leaking covered containers that would meet the generator conditions in today's proposal.

The second condition is that if facilities (other than those intra-company facilities where solvent is removed) receive solvent-contaminated industrial wipes with free liquids, in order to retain the exclusion from the definition of hazardous waste for the wipes, the facility would be required to either (a) return the container (with the wipes and liquid) to the generator as soon as reasonably practicable (*e.g.*, with the next scheduled delivery), or (b) recover any liquid solvent that arrives at the facility and properly manage it under federal or state hazardous waste regulations, as applicable. When returning the wipes and liquid to the generator, the facility would have to transport them in containers that meet the original shipment condition, but would not be required to use a hazardous waste manifest.

The objective of this condition is to address situations where free liquids arrive with industrial wipes at a handling facility through no fault of the handling facility. A shipment of industrial wipes would be considered to contain free liquids either if solvent drips from the wipes or if there are free liquids in the bottom of the container of industrial wipes. Rather than subject the industrial wipes to RCRA hazardous waste requirements in this situation, EPA is proposing that they be allowed to be further processed to ensure that the conditions of the hazardous waste exclusion are met and that removed solvents are appropriately managed either by the receiving facility or the original generator. We believe this can be done safely and we also believe that this will provide additional incentive for solvent recovery. At any time that hazardous solvents are spilled or leaked from a barrel of excluded wipes at a laundry or handling facility, or are otherwise mismanaged, we would consider this to be disposal and the handling facility managing the solvents would be responsible for cleaning up the spill.

b. Request for Comment

EPA seeks comment on the above conditions for handling facilities that manage industrial wipes. EPA also requests comment on whether handling facilities receiving shipments of wipes that do not meet the ''no free liquids'' condition should be required, as in the case of some other conditional exclusions, to submit a notification to the state or EPA region implementing RCRA to inform them that the ''no free liquids'' condition had not been met.

11. Management of Industrial Wipes Containing Co-Contaminants

Today's proposed rule is not intended to override EPA's mixture and derived-from rule regarding contaminants on industrial wipes other than the solvents specified in this proposal. In addition to these solvents, spent industrial wipes from industrial applications may be contaminated with material removed during the industrial process—anything from dirt and grease to listed hazardous wastes. The presence of these co-contaminants may make the industrial wipes subject to the hazardous waste mixture rule (40 CFR 261.3(a)(2)(iv)), which states that a mixture made up of any amount of a nonhazardous solid waste and any amount of a listed hazardous waste is a listed hazardous waste. Therefore, if the wipe contains a listed waste other than the identified solvents, it would still be considered a listed hazardous waste and would no longer be eligible for the conditional exclusion from the definition of hazardous waste being proposed today.

Solvent-contaminated industrial wipes that exhibit a characteristic of hazardous waste due to co-contaminants also are not eligible for the hazardous waste exclusion, unless the characteristic is ignitability. Specifically, EPA is proposing that industrial wipes that would exhibit the characteristics of toxicity, corrosivity, or reactivity because of wastes with which they are co-contaminated would not be eligible for the conditional exclusion. On the other hand, because the industrial wipes are already likely to be ignitable because of the nature of the solvents on them, and because this risk is managed by the conditions of the exclusion from hazardous waste, wipes co-contaminated with ignitable waste would remain eligible for the exclusion if they meet its other conditions.

12. Proposed Conditions for Burning Solvent-Contaminated Industrial Wipes in Combustors

a. Proposed Condition

Based on the results of our risk screening analysis discussed in Section VII of this preamble, we are proposing that municipal and other non-hazardous waste combustors be allowed to burn solvent-contaminated industrial wipes that meet the proposed conditions for the exclusion from the definition of hazardous waste. Facilities managing these wipes would have to ensure that the wipes remain in containers that meet today's proposed transportation condition until they enter the combustion process. Also, if a combustion facility finds wipes with free liquids when it initiates processing of the wipes, like other handlers, it would have the choice of removing the free liquids and managing them as a hazardous waste or closing the container and sending the wipes back to the originating generator. When returning the wipes and liquid to the generator, the combustor would have to transport them in containers that meet the original shipment condition, but would not need to use a hazardous waste manifest.

b. Basis for Condition

Allowing combustion of industrial wipes in municipal waste combustors (MWCs) and other non-hazardous waste combustion units, such as commercial and industrial solid waste incinerators (circumstances when the industrial wipes are used as a fuel are included) is a viable alternative for managing conditionally-excluded industrial wipes. First, combustion facility owners/operators should be screening industrial wipes contaminated with hazardous solvents that arrive at their facilities to ensure they do not violate local permit conditions. In addition, these combustors are easily capable of destroying the solvent in contaminated industrial wipes. As described in more detail in Section IV.F.11 of the Technical Background Document, EPA has promulgated revised air emission requirements under the New Source Performance Standards (NSPS) for large new and existing MWCs (facilities managing more than 250 tons of waste per day) and revised NSPS air emission requirements for smaller MWCs (facilities managing less than 250 tons of waste per day). EPA has also promulgated NSPS for commercial and industrial solid waste incinerators (65 FR 75338, December 1, 2000). These NSPS standards for non-hazardous waste combustors provide a level of protection comparable to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for hazardous waste incinerators and should ensure that at least 99.99 percent of the solvent in contaminated industrial wipes is removed or destroyed. Also, as stated in Section VII.C.2., the risk analysis for this proposal indicated that none of the solvents would exceed health benchmarks if the ash were disposed in a landfill.

c. Request for Comment

We request comment on our approach of allowing solvent-contaminated wipes to be managed in Municipal Waste Combustors and other non-hazardous waste combustors provided they meet the other conditions described in today's Preamble.

13. Disposal of Treatment Residuals From Municipal Waste and Other Combustion Facilities

Under today's proposed rule, when solvent-contaminated industrial wipes meet the conditions of the exclusion from the definition of hazardous waste before being combusted, they would not be considered a hazardous waste. Therefore, the mixture- and derived-from rule does not apply to the ash derived from the burning of these materials. In other words, the ash generated by a MWC or other combustion facility is a newly-generated waste and is subject to the waste identification requirements of 40 CFR parts 261 and 262. Owners and operators of MWCs and other combustion facilities must determine whether or not the ash generated at their facilities exhibits one or more of the characteristics of hazardous waste. They may do so by knowledge of the wastes they receive and/or generate, coupled with knowledge of the capability of their combustor facility or by testing. If they determine that MWC ash exhibits the hazardous characteristic, the ash must be managed as a hazardous waste in compliance with all applicable subtitle C management requirements, including the land disposal restrictions.

C. Conditions for the Exclusion From the Definition of Solid Waste for Reusable Industrial Wipes

1. Why Is EPA Proposing To Exclude Reusable Solvent-Contaminated Industrial Wipes From the Definition of Solid Waste?

EPA is proposing today to conditionally exclude reusable solvent-contaminated industrial wipes from the regulatory definition of solid waste. One of the reasons EPA is proposing an exclusion from solid waste for these materials, as opposed to the definition of hazardous waste exclusion proposed for disposable industrial wipes, is that the Agency believes that reusable solvent-contaminated industrial wipes are commodity-like. (*See* Section IV.B.2 for a detailed explanation of the Agency's basis for this.) Those wipes that have had free liquids removed are similar to partially-reclaimed materials because solvent removal, reclamation, laundering or dry cleaning of wipes removes solvent from the wipe. EPA believes that the conditions for the exclusion from solid waste are appropriate because they ensure that the manner in which generators and laundries manage these materials is consistent with how companies would manage a valuable commodity. For these reasons, today's proposed exclusion from the definition of solid waste is applicable only to industrial wipes that are being reclaimed for reuse through a cleaning or laundering process. EPA does not consider other types of recycling or reclamation, such as blending wipes into a fuel, as being eligible for this proposed exclusion from solid waste. Note, however, that as discussed in Section IV of today's preamble, any solvent-contaminated industrial wipe which will be reused as a wipe can be managed under the conditions for reusable wipes even if it was manufactured for one-time use. Likewise, any solvent-contaminated industrial wipe not being sent for reuse must be managed as a disposable industrial wipe.

EPA believes that the conditions proposed for management of disposable solvent-contaminated industrial wipes, described in detail above, in addition to ensuring that wipes don't pose a substantial hazard, are what generators and handlers would do in handling valuable commodities. Because of this, EPA is proposing many of the same conditions for the exclusion from the definition of solid waste for reusable wipes as we are proposing for the exclusion from the definition of hazardous waste for disposable industrial wipes. Nevertheless, in several places where it is appropriate, as described below, we are proposing different conditions for reusable wipes.

This section details a number of proposed conditions that specifically would ensure that reusable solvent-contaminated industrial wipes are handled as valuable commodities, such as the condition that industrial wipes must not contain free liquids and the container conditions for accumulation, transportation, and handling of solvent-contaminated industrial wipes. Solvent spillage from free liquids or leaking containers would increase the costs of managing industrial wipes incurred by laundries both during transportation and at the cleaning plant, thus devaluing the overall worth of reusable industrial wipes. In addition, free liquids arriving with the wipes would require laundries to incur the increased costs of disposing or otherwise managing the contaminated solvents, again reducing the overall value of the reusable industrial wipes. Additionally, because of the flammable nature of many of the solvents to which this proposal applies, proper containers and the reduction of free liquids reduces the fire hazard posed by industrial wipes. We believe that companies which value their industrial wipes would be likely to manage them in a manner that protects their facility from fire damage and that protects them from loss of value, which would occur if the wipes were to catch on fire.

Some laundries recover solvents from the industrial wipes, but their economic interest lies principally in the wipes themselves. Management of free liquids to ensure compliance with pretreatment standards established by local sewer authorities and to guard against fire hazards could increase overall operating costs. However, conditions that ensure the use of appropriate containers and that restrict the amount of solvents coming into the laundries, as described above, always enhance the value of solvent-contaminated industrial wipes to the laundries.

2. Applicable Solvents

Unlike the proposed exclusion from the definition of hazardous waste for industrial wipes sent for disposal in municipal or other non-hazardous waste landfills, which is not applicable to 11 of the listed solvents, the proposed exclusion from the definition of solid waste is applicable to wipes contaminated with all hazardous solvents. The central question in solid waste determinations is whether the material has been discarded and, therefore, because EPA believes reusable industrial wipes containing solvents would be commodity-like when generators meet the proposed conditions, the conditional exclusion from the definition of solid waste would apply to wipes contaminated with all hazardous solvents. Therefore, wipes containing the solvents in Table 4, which are not eligible for the exclusion from the definition of hazardous waste, would be eligible for the exclusion from the definition of solid waste.

3. Proposed Conditions for Initial Storage and Accumulation

a. Proposed Condition

The proposed conditional exclusion from the regulatory definition of solid waste would apply to solvent-contaminated industrial wipes at the point where the generator ceases using them. If the wipes are managed according to the proposed conditions, they are not considered solid waste.

The first condition the industrial wipes must meet is an accumulation

condition. For the exclusion from the definition of solid waste, EPA is proposing the same performance-based on site management condition as for the exclusion of disposable industrial wipes from the definition of hazardous waste: For reusable industrial wipes, the user must place them in a non-leaking, covered container. This condition is more fully described above in Section V.B.2.

One point that would differ for reusable solvent-contaminated industrial wipes is that under an exclusion from the definition of solid waste, speculative accumulation would apply for these materials. This means that in any calendar year, 75 percent of the material accumulated for recycling must actually be recycled. If this percentage of recycling is not fulfilled, the material becomes classified as a solid waste. The speculative accumulation provision ensures that materials that have been excluded from the definition of solid waste, such as solvent-contaminated industrial wipes, are not collected indefinitely under that exclusion instead of being recycled. However, because of the business practices between industrial launderers and users of reusable industrial wipes described above, we believe that excluded reusable industrial wipes will be traveling between users and the laundries often enough that the speculative accumulation provision will not be a concern.

Currently, management standards for accumulation of reusable industrial wipes differ from state to state due to varying state policies. Some states require that the reusable wipes be handled as hazardous waste prior to laundering, some require the use of best management standards or the use of closed containers, and other states simply exclude reusable industrial wipes from meeting any requirements. However, some trade associations and industrial laundries already encourage their members and customers to use closed or sealed containers during storage and transportation of solvent-contaminated wipes.

EPA believes that the proposed condition, designed to minimize loss of solvents into the environment, ensures responsible management of the wipes in a manner that is commodity-like by preventing the loss of wipes, preventing the loss of solvent which could be recovered and reused, and protecting against risks from fires. At the same time, by being performance-based, this approach allows for a wide variety of containers to be acceptable for accumulation of reusable wipes.

b. Other Option

As with disposable industrial wipes, EPA is considering not requiring a RCRA-specific condition to be met for accumulation of reusable solvent-contaminated industrial wipes and instead relying on OSHA regulations and any other applicable statutes. This option is fully described above in section V.B.2.b.

c. Request for Comment

We request comment on our proposed condition for accumulating reusable solvent-contaminated industrial wipes in covered containers while at the generator's facility, as well as the option of not proposing a RCRA standard, but relying on the OSHA regulations.

4. Proposed Conditions for Containers Used for Transportation

a. Proposed Condition

For transportation of reusable industrial wipes, we are proposing that facilities that transport reusable solvent-contaminated industrial wipes off site to an industrial laundry, a dry cleaner, or a facility that removes solvents from industrial wipes prior to cleaning must do so in containers that are designed, constructed and managed to minimize loss to the environment; this is the same condition we are proposing for disposable industrial wipes that are conditionally excluded from the definition of hazardous waste. We believe this condition reflects the manner in which a commodity would be transported because it minimizes the possibility that valuable material would be spilled, lost or damaged during transportation.

This condition is more fully described above in Section V.B.3. Its main advantage is that it allows for flexibility while assuring that losses are minimized.

b. Plastic and Cloth Bags

Used reusable wipes are often transported from the generator to the laundry in either plastic or cloth bags and throughout the development of this proposal, there has been much discussion with stakeholders about the use of such bags for transportation of industrial wipes and for management of them once they arrive at the laundry. Stakeholders have asked whether these bags could continue to be used under the proposed exclusion from the definition of solid waste.

EPA has chosen to propose a performance standard for this condition because it provides industry the ability to be creative in developing less expensive ways to reach a desired outcome. A performance standard allows for use of a wide variety of containers so many generators could continue with current practices. For example, while we would consider closed, sealed, impermeable containers to meet this condition, plastic or cloth bags that were cinched shut could also potentially meet this condition. Cinched bags would reduce exposed surface area and evaporative loss and, provided no free liquids were present, might not allow liquid solvents to leak. However, at any time that hazardous solvents are spilled or leaked during transportation, we would consider this to be disposal of a hazardous waste and those managing the industrial wipes at the time the spill occurred would be responsible for cleaning up the spill and returning the wipes to compliance with the conditions of the exclusion (*i.e.*, the performance standard).

c. Other Options

For reusable industrial wipes, EPA is considering two alternatives during transportation: (1) requiring transportation of the industrial wipes in impermeable closed containers, or (2) the addition of a provision that allows wipes containing less than five grams of solvent to be transported without any management standards.

EPA initially considered proposing that all generators of reusable industrial wipes would be required to transport them in impermeable, ''closed'' containers (*e.g.*, containers with the lids screwed on). Representatives of the industrial laundries (the Uniform Textiles Trade Association) questioned the need to require closed containers because they believe it would require them to purchase new and larger trucks for storage during transit. In addition, they expressed concern that those transporting industrial wipes would not be able to determine if free liquids were present within a closed container with a lid screwed on without further handling of the container and wipes. Unlike checking the bottom of a bag for liquids, unsealing these containers would be time consuming and would expose more of the solvents to the air. In addition, they argue that if the transporters of the wipes are unable to determine at the time of pick-up whether there are free liquids in the container, this may result in an unnecessary burden falling on the handlers were free liquids to arrive at their site. Based on these concerns, we are not proposing this alternative, but believe the approach taken in today's proposed regulation addresses these concerns and will ensure protection of human health and the environment.

The second alternative, regarding allowing wipes that contain less than five grams of solvent to be transported without management controls, is more fully described above in section V.B.3.b.

d. Request for Comment

We request comment on the proposed transportation condition, the alternatives considered, and on the ability of cloth bags to meet the proposed performance standard.

5. Proposed Condition for Transportation to Laundry, Dry Cleaner, or Handler

a. Proposed Condition

Today, we are proposing that generators meet the ''no free liquids'' condition prior to solvent-contaminated reusable industrial wipes being transported off site to be cleaned for reuse or being laundered on site. This is the same as the condition for disposable industrial wipes being transported for disposal at a non-land disposal facility, such as a municipal solid waste combustor, and is consistent with what state programs have required for their exclusions for reusable industrial wipes. For wipes to meet the federal ''no free liquid'' condition, no liquid solvent could drip from the wipes when sent off site. In addition, no free liquids could be present in the bottom of the container in which the wipes are transported.

EPA has tentatively concluded that the ''dry'' condition, proposed as a condition for disposable industrial wipes going to municipal or other non-hazardous waste landfills, is overly-stringent for the management of reusable industrial wipes. We believe this to be the case because, throughout the solvent removal and cleaning process, the conditions established for eligibility for the exclusion from the definition of solid waste are already consistent with the existing hazardous waste regulations. For example, solvents removed prior to cleaning at a laundry must be managed as hazardous waste. In addition, solvent discharges to POTWs are allowed under the wastewater exclusion found at 40 CFR 261.4(a)(2). Local POTWs have the authority to set limits applicable to individual indirect dischargers to prevent releases and to prevent interference with operations at the POTW; solvent discharges are often subject to these limits.

We believe the ''no free liquids'' condition helps ensure that reusable industrial wipes that are saturated with solvent are partially reclaimed before they are shipped for cleaning or laundry and helps ensure that they are handled as valuable commodities by reducing the risk of losing valuable wipes as the result of fires caused by ignitable solvents. Therefore, it may lead to resource conservation by encouraging recovery of solvent by the generator.

The ''no free liquids'' condition is more fully described above in Section V.B.6. As mentioned in that section, solvents removed from wipes are solid wastes and may be characteristic or listed hazardous wastes and must be managed accordingly.

For reusables going to laundries, dry cleaners and industrial wipes handlers, we are not proposing a labeling condition that parallels the one described in Section V.B.4. for disposable industrial wipes. EPA decided not to propose a labeling condition in this case because the commodity-like nature of reusable wipes means that, in general, laundries have agreements with their customers and already know what is in the containers of wipes that arrive. Therefore, containers of reusable industrial wipes do not require a label to provide this information or to notify the transporters or laundries how the wipes should be handled. EPA believes that because these materials are managed as commodities by the generators and the handlers, previously existing business documents should provide sufficient information to ensure proper handling.

b. Other Option

EPA is also considering a ''no free liquids when wrung'' condition instead of the ''no free liquids'' condition. This condition would differ from what we are proposing in that it would require that each wipe, when hand wrung at any time after its use until it is laundered, could not drip solvent. *See* section V.B.6.b. for further description of this option.

c. Request for Comment

We request comment on the ''no free liquids'' condition and the ''no free liquids when wrung'' option, as well as on whether EPA should include a labeling requirement as a condition for sending reusable wipes to laundries or industrial wipes handlers. In addition, we also specifically request comment on the information submitted by the Association of Nonwoven Fabrics Industry and the Secondary Materials and Recycled Textiles Association (which is available in the docket to this proposal) regarding whether to place a specific limit on either the maximum amount of solvent or the concentration of solvent on reusable wipes sent to a laundering or dry cleaning facility or a numerical limit on the number of shop towels launderers or dry cleaners can accept on an annual basis for cleaning.

d. How Can Generators Meet the ''No Free Liquids'' Condition?

The measures that a generator can take to meet a ''no free liquids'' condition are the same for reusable wipes as for disposable wipes. For more information on these measures, see Section V.B.6.d. above.

e. Request for Comment

EPA is taking comment on our proposed approach to determining if the ''no free liquids'' condition is being met. Additionally, we request comment on whether there are other approaches EPA should have considered in this proposal.

6. ''Exotic'' Solvents

In the process of developing this proposed rulemaking, the Agency has learned that there are new, ''exotic'' solvents on the market, such as terpenes and citric acids, that, while labeled as non-hazardous, could actually be flammable. Some stakeholders have suggested that we propose to allow generating facilities to add water to the containers used to transport their industrial wipes off site when these facilities are using one of these ''exotic'' solvents. For more information on this issue see Section V.B.7. above. In that section, we also request information and comments on these solvents, and on whether special conditions should be established for ''exotic'' solvents.

7. Generators That Remove Solvent From Industrial Wipes

a. Regulatory Status of Removed Solvent

Any solvent removed from an industrial wipe by a generator when using solvents in conjunction with industrial wipes may be subject to regulation as a hazardous waste. Therefore, the generating facility must determine whether the solvent removed from the industrial wipe is listed as a hazardous waste or exhibits a characteristic of a hazardous waste as defined in 40 CFR part 261, and, if so, manage it according to prescribed RCRA regulations under 40 CFR parts 260–268 and 270.

b. Regulatory Status of Solvent Removal Technologies

Under today's proposed exclusion from the definition of solid waste, the solvent-contaminated wipes would not be a solid or a hazardous waste at the time they undergo solvent-removal. Therefore, as discussed in Section V.B.8.b., solvent removal technologies would not be considered treatment

under RCRA and such operations, whether they were conducted at generating or handling facilities, would not be considered to be treating hazardous waste and would not require a RCRA permit.

8. Proposed Conditions for Intra-Company Transfers

a. Proposed Condition

EPA is proposing that wipes can qualify for the exclusion from the definition of solid waste when transferring solvent-contaminated reusable industrial wipes containing ''free liquids,'' provided the transfer is between facilities within the same company, and the receiving facility has a solvent-extraction and/or -recovery process that removes enough solvent from industrial wipes for them to meet the ''no free liquid'' condition. Generators must transport the industrial wipes in containers that are designed, constructed, and managed to minimize loss to the environment. This provision encourages use of technologies that remove more solvent than processes such as hand wringing would; it is an effort to increase solvent recovery and resource conservation, as well as a way to minimize solvent going into laundries' wastewater or into landfills. As we are proposing a similar condition for conditionally-excluded industrial wipes going to disposal, more detailed discussion of this provision, as well as other options EPA is considering can be found above in Section V.B.9. Note, however, that reusable solvent-contaminated wipes would not be required to meet the labeling requirement described in that section, as labels are not required for reusable wipes elsewhere.

b. Request for Comment

EPA seeks comment on whether intra-company shipments of industrial wipes containing free liquids should be allowed under the conditions of the exclusion from the definition of solid waste and whether this provision would be likely to facilitate the recovery of hazardous solvents. EPA also seeks comment both on whether the additional conditions should be included and on whether we should expand the provision to allow industrial wipes, under the conditional exclusion from the definition of solid waste, to be sent with free liquids to third-party solvent-extraction facilities. Both options are discussed in Section V.B.9.

9. Proposed Conditions for Management at Handling Facilities

a. Proposed Condition

As described for disposable industrial wipes, generators would have the primary responsibility for assuring that their industrial wipes meet the conditions for the proposed exclusion from the definition of solid waste. Additionally, handling facilities which receive and process reusable industrial wipes, such as industrial laundries, would also need to meet certain minimum conditions for the wipes to remain excluded from the definition of solid waste. The first condition is a container standard for the time between when the industrial wipes arrive on site and when the facility first introduces them into their process. The laundry's process begins when the laundry begins to handle the wipes. For example, at many laundries, the wipes are sent through a counting machine first, before they are cleaned, to record how many wipes the generator has sent to be cleaned. In this example, wipes would enter the handling process when they are counted.

We are proposing today that, to qualify for the exclusion from the definition of solid waste for industrial wipes, the wipes would have to be stored either (a) in containers that are designed, constructed and managed to minimize loss to the environment that would meet the transportation condition in today's proposal, or (b) in non-leaking covered containers that would meet the generator accumulation conditions in today's proposal. From site visits, we expect that at the laundries, the solvent-contaminated industrial wipes will generally remain in the containers in which they were transported. However, in the case where a facility chooses to transfer the industrial wipes into another container before the wipes enter the handling process, we are proposing that industrial wipes meeting the generator condition, placement in a non-leaking covered container, would also maintain the exclusion from the definition of solid waste.

Handling facilities would also not be allowed to mismanage free liquids. For example, an industrial laundry may not introduce free liquids into their laundering process. A shipment of industrial wipes would be considered to contain free liquids either if solvent drips from the wipes or if there are free liquids in the bottom of the container of wipes. Facilities that happen to receive solvent-contaminated industrial wipes in containers with free liquids (unless they are being transported intra-company) would be required to either (a) return the container (with the wipes and liquid) to the user as soon as practicable (*e.g.*, with the next scheduled delivery), or (b) recover and properly manage any liquid solvent that arrives at the facility under federal or state hazardous waste regulations if applicable. When returning the wipes and liquids to the user, the laundry would have to transport them in the containers that meet the original shipment conditions, but would not be required to use a hazardous waste manifest.

The conditions of this proposal would require a laundry or handling facility to take necessary steps to return the wipes to compliance with the conditions of the exclusion, as described above. The mismanagement of free liquid solvents by the laundry, either by illegal disposal, by adding them to the wash, or other means, would be a violation of the conditions of the exclusion. If the exclusion is not maintained by either of the ways described above, we would consider the wipes and solvent to be a solid waste and possibly a hazardous waste and would consider the laundry to be mismanaging the wipes and/or free liquids. In addition, because the generator is originally responsible for the existence of the free liquids in wipes, it would also be potentially responsible for wipes having lost the exclusion at the handler despite the wipes being out of the generator's control at that moment.

The objective of this condition is to address situations where free liquids arrive at a handling facility such as an industrial launderer, either (a) because of percolation and gravity effects during transportation, causing the solvents to sink and saturate the wipes at the bottom of any given container; or (b) because of mismanagement of the wipes by the generator. We believe that over time this approach will ensure that wipes are handled in the most efficient manner possible to minimize the need to return wipes and free liquids to users' facilities.

b. Request for Comment

EPA seeks comment on the above conditions for reusable industrial wipes managed at handling facilities to be excluded from the definition of solid waste. EPA also requests comment on whether laundries receiving shipments of wipes that contain free liquids should be required to submit a notification to the state or EPA region implementing RCRA to inform them that the ''no free liquids'' condition, and therefore a condition of the exclusion, had not been met.

D. Recordkeeping

EPA is not proposing any specific recordkeeping requirements for either the proposed exclusion from the definition of hazardous waste for disposable industrial wipes or for the proposed exclusion from the definition of solid waste for reusable industrial wipes, since 40 CFR 261.2(f) already requires persons to provide appropriate documentation that would demonstrate that the industrial wipes are not a solid waste, or are excluded from the hazardous waste regulations.

Nevertheless, we are considering whether specific recordkeeping requirements should be included in the conditions to qualify for the exclusions proposed today for the purpose of improving implementation by the relevant regulatory authority. We are asking for comment on a number of related issues. For example, should EPA require generators to keep basic information, such as the number or volume of industrial wipes generated, where the industrial wipes were sent, and how many shipments were sent off site? In addition, should EPA require generators to certify that their shipments of industrial wipes meet either the ''no free liquids'' or the ''dry'' condition, as appropriate, and maintain those records for three years? [14] Finally, should EPA require that the generators certify that their employees are adequately trained to manage wipes stored and handled on site through compliance with generator employee training and emergency response requirements in 40 CFR part 262. Should those records be maintained for three years if such requirements were ultimately promulgated? We request information on whether the certification could easily be added onto regular business records such as a transporter's pick-up sheets or shipping papers. In addition, would such a provision increase the likelihood that generators would ensure that the processes, techniques or technologies they use would meet the applicable ''no free liquids'' or ''dry'' condition?

EPA also seeks comment on whether industrial laundries, dry cleaners, and industrial wipes handling and disposal facilities should be required to certify the condition of wipes that arrive at their facility, such as whether or not they contain free liquids. If the wipes contain free liquids, should handlers be required to record what steps they took to address this problem (such as documenting whether they removed the free liquids and properly managed the solvents or returned the saturated wipes and free liquids to the generator) and maintain these records for three years? In addition, EPA seeks comment on whether, when returning industrial wipes to their customers, handlers should be required to use a ''streamlined'' manifest to reflect the type of solvents enclosed, the weight or volume of the free liquids, the date and destination of the shipment, and acknowledgment of receipt by the generator.

Finally, EPA requests comment on whether the inclusion of these recordkeeping requirements in the rule would improve compliance with the conditions of the rule and, therefore, improve implementation of the provisions of the rule.

E. Enforcement

Under today's proposed rule, reusable industrial wipes are excluded from the definition of solid waste and disposable industrial wipes are excluded from the definition of hazardous waste if certain accumulation, transportation, and handling conditions are met. The party operating under either conditional exclusion will be responsible for maintaining the exclusion by ensuring that all the conditions are met. In the event that a condition is not met, the party managing the wipes at that time will need to remedy the situation as soon as possible in order not to jeopardize the exclusion. Facilities taking advantage of the exclusion that fail to meet one or more of its conditions may be subject to enforcement action, and the wipes may be considered to be hazardous waste from the point of their generation (*i.e.*, from the point when the generator had finished using them). EPA could choose to bring an enforcement action under RCRA § 3008(a) for all violations of the hazardous waste requirements occurring from the time the industrial wipes are generated through the time they are finally disposed of, reclaimed, or reused. States could choose to enforce for violations of state hazardous waste requirements under state authorities.

EPA believes that this approach, which treats solvent-contaminated industrial wipes that do not conform to the conditions of the exclusions as either solid waste or hazardous waste from their point of generation, provides generators, disposers, and other handlers with an incentive to handle the industrial wipes in a manner that prevents the loss of the exclusion. It also encourages each person to take appropriate steps to see that others in the management chain handle the industrial wipes so that they are legitimately disposed of, reclaimed, or reused.

For example, if a laundry operating under the exclusion from the definition of solid waste receives a barrel of reusable industrial wipes containing free liquids and mixes them with other industrial wipes without removing the free liquids, then those industrial wipes would not be excluded. Likewise, if a municipal solid waste landfill disposes of industrial wipes containing a prohibited solvent such as trichloroethylene, the disposables would not be excluded. In both cases, EPA and an authorized state could choose to bring an enforcement action against those in the management chain, including the generator, transporter, and/or receiving facility, for violations of applicable RCRA hazardous waste requirements. In these cases, the material would be a hazardous waste from the time the generator first generated it.

As with any violation, EPA and authorized states would have enforcement mechanisms available that range in severity. In addition, EPA and authorized states would have flexibility in applying these mechanisms to the various responsible parties. Enforcing agencies would use their discretion to select the enforcement mechanisms and the parties that are appropriate to a specific case and its factual circumstances. Some of the enforcement mechanisms include sending a notice of violation, ordering that the situation be remedied, or assessing fines or other penalties as appropriate.

Generators and recycling, disposal, or handling facilities claiming the exclusion must be able to demonstrate to the appropriate regulatory agency that the conditions of the exclusion are being met. In an enforcement action, the facility claiming the exclusion bears the burden of proof pursuant to 40 CFR 261.2(f), to demonstrate conformance with the conditions specified in the regulation. For disposable industrial wipes, the burden of proof falls on the generator, commercial transporter, municipal solid waste landfill, municipal waste combustor, combustion facility, or handling facility claiming the exclusion, and for reusable industrial wipes, it falls on the generator, laundry, dry cleaner, or handling facility claiming the exclusion.

Additionally, the exclusions in today's rule would not affect the obligation to promptly respond to and remediate any releases that may occur of solvents and wipes managed within the exclusion. If, for example, a hazardous solvent is spilled or released, then the solvent would be discarded. Any

[14] Three years is the standard period of time that EPA usually requires for the maintenance of records.

management of the released material not in compliance with the applicable federal and state hazardous waste requirements could result in an enforcement action. For example, a person who spilled or released a hazardous solvent, and failed to immediately clean it up, could potentially be subject to enforcement for illegal disposal of the waste. The waste could also potentially be addressed through enforcement orders, such as orders under RCRA sections 3013 and 7003.

F. Alternative Options to the Approach in Today's Proposed Rule

The approach taken in today's proposed rule, the exclusion from the regulatory definition of hazardous waste for disposable wipes and the exclusion from the regulatory definition of solid waste for reusable wipes, is one of a few that EPA is considering. The others are described below.

1. Exclusion From the Definition of Hazardous Waste for Disposable and Reusable Solvent-Contaminated Industrial Wipes

We are considering an option that would exclude reusable industrial wipes from the regulatory definition of hazardous waste rather than exclude them from the regulatory definition of solid waste, using the same conditions as those specified in today's proposed rule. This approach would not differentiate the regulatory status of solvent-contaminated industrial wipes whether they are being sent for recycling or for disposal.

Under this approach, the provisions of the rule concerning disposable solvent-contaminated industrial wipes would remain the same as in today's proposed option. For reusable solvent-contaminated industrial wipes, the conditions for complying with the rule would be the same as in today's proposed option, but the reusable solvent-contaminated industrial wipes would remain solid wastes (though not hazardous wastes) when the conditions were met.

Some stakeholders, particularly laundries and other handlers of reusable wipes, are strongly opposed to this option. They believe that they manage a commodity rather than a waste and argue that an exclusion from the definition of hazardous waste would inappropriately classify them under the regulatory definition of solid waste. These stakeholders are also concerned that if contaminated wipes being laundered and reused were to be considered a solid waste by EPA, they may become subject to state solid waste fees if states were to decide to collect such fees.

EPA requests comment on the appropriateness of this option relative to today's proposal.

2. Exclusion From the Definition of Hazardous Waste for All Disposable Solvent-Contaminated Industrial Wipes Under a Single Set of Conditions

An additional option we are considering would provide an exclusion from the definition of hazardous waste for all disposable wipes under the same conditions. The option affects only the exclusion from the definition of hazardous waste proposed today; all provisions for reusable solvent-contaminated industrial wipes described in Section V.C. would remain the same. Under this option, the Agency would not differentiate between wipes managed in municipal and other non-hazardous waste landfills or non-landfill facilities—the conditions necessary for industrial wipes to obtain an exclusion from hazardous waste regulations would be the same for both types of management. For example, solvent-contaminated wipes would not need to be ''dry'' prior to landfill disposal; rather, they would be required to contain no free liquids.

We are carefully considering this option, since it would be simpler and easier to implement and would simplify the regulations for generators of solvent-contaminated disposable industrial wipes. However, we are concerned with this option because it would allow solvents that may pose an environmental and human health risk to be placed in municipal or other non-hazardous waste landfills without meeting the 5-gram condition (*i.e.*, the ''dry'' condition) that would reduce risks. The Agency requests comment on this approach and on the assumptions we used in our landfill risk screening analyses. Specifically, are there assumptions or parameters that should be modified to reflect a more accurate estimate of the level of risk posed by contaminated wipes in landfills?

VI. Additional Benefit of the Proposed Rule: Fostering Pollution Prevention

In addition to regulatory reform in response to stakeholder concerns, we believe this proposed rule will foster pollution prevention and recycling opportunities by encouraging users of disposable industrial wipes who desire less stringent management requirements to use alternative solvents, use less solvent, or remove solvents to achieve the ''no free liquids'' or ''dry'' conditions. For instance, generators desiring to dispose of wipes in municipal or other non-hazardous waste landfills must use solvents other than the 11 specified listed spent solvents and must reduce the amount of solvent which is contained in them to a ''dry'' state. In many instances, reduction and/or substitution can result in overall cost savings to a company. In a recent study, the Chemical Strategies Partnership found that the cost of managing chemicals ranges from $1 to $10 for every dollar of chemical purchased. These management costs include liability, safety training, compliance efforts, and collection and disposal costs that would not accrue to the company if they were purchasing a non-hazardous solvent.[15] A company could also achieve savings if they were to reduce the amount of solvent they use to meet the conditions of this proposed rule.

EPA strongly encourages companies to examine the feasibility of using less solvent and/or substituting non-hazardous solvents for hazardous solvents. Various industry and government sources might be able to assist in identifying alternative sources. (*See,* for instance, EPA's Design for the Environment Web site at *www.epa.gov/dfe* or contact your EPA region or state for technical assistance.)

This proposed rule would also have the potential to increase pollution prevention because it may increase the incentive to control the amount of solvent applied to industrial wipes. For example, the use of less solvent might make it easier to meet the conditions of either exclusion. In addition, generators using significant amounts of solvent on their disposable wipes would need to extract the solvent using solvent-extraction processes in order to meet the proposed ''dry'' or ''no free liquids'' conditions, increasing the likelihood of additional solvent reuse and recovery. Opportunities already exist in the marketplace to recover and reuse the extracted solvent by either establishing an on-site solvent-extraction process or by sending the industrial wipes to an off-site solvent-extraction facility. Technologies have emerged that primarily dry clean contaminated materials and, once dry cleaned, recover excess spent solvents through reclamation. Such technologies may offer alternatives to generators for recycling or reusing both the spent solvents and the used industrial wipes. In many instances, use of these technologies can result not only in

[15] *See* Chemical Strategies Partnership Manual, *Tools for Optimizing Chemical Management.* Copies can be obtained by e-mail at: *inquiry@csp.sfex.com* or *www.chemicalstrategies.org.*

opportunities to reduce pollution, but also to reduce disposal costs.

VII. Risk Screening Analysis

A. Introduction

The discussion below summarizes the Agency's risk screening analysis for disposable and reusable industrial wipes. For specifics regarding the risk analysis or details on how it was conducted, please see the background documents in the docket for today's proposed rulemaking, particularly the risk screening assessment document, ''Estimating Risk from Disposal of Solvent Contaminated Shop Towels and Wipes in Municipal Landfills,'' March 1999.

As previously stated, several stakeholders have argued that disposing of industrial wipes containing small amounts of solvent in municipal or other non-hazardous waste landfills would not pose a substantial hazard to human health and the environment and have submitted rulemaking petitions to the Agency on this matter. Similarly, they argued that disposal of treatment residues, such as ash from incineration of disposable wipes and sludges from wastewater treatment at laundries washing industrial wipes, would not pose a substantial hazard. In response to these arguments, EPA conducted risk screening analyses for the following scenarios to evaluate the potential risks to human health and the environment:

- Direct landfilling of disposable industrial wipes,
- Landfilling of combustor ash generated from burning disposable industrial wipes in a municipal waste combustion facility, and
- Landfilling of industrial laundry wastewater treatment sludges generated from washing reusable industrial wipes.

B. What Analyses Did EPA Do?

EPA first estimated risks from exposure to the 30 F-listed solvents commonly used on industrial wipes assuming they were directly disposed of in an unlined municipal landfill. We looked at potential risks from inhalation of the solvents volatilizing from the landfill, from ingestion of groundwater contaminated by solvents leaching from the landfill, and from inhalation of solvent vapors released from contaminated groundwater during showering and other uses. We evaluated exposure to solvents volatilizing from landfills using a partitioning model to determine solvent releases and an air dispersion model to determine the air concentration at a point of exposure 75 meters from the landfill. The partitioning model estimates what fraction of the total mass of solvent degrades, volatilizes, leaches, and adheres to the material in the landfill.

The evaluation of risks from groundwater incorporated previous probabilistic analyses of groundwater fate and transport to determine the relative concentrations of contaminants in the landfill leachate and at a nearby well. The 5th percentile value from the distribution of results, which is a conservatively low ratio of leachate concentration to well concentration (*i.e.*, indicates a high well concentration relative to a given leachate concentration), was used for the analysis. The results of the probabilistic groundwater analyses were combined with partitioning model results, which determined the initial leachate concentrations, and with standard default exposure assumptions, which determined the exposure to individuals from the calculated well concentrations.

The exposure evaluation examined the sensitivity of the results to different parameters such as the size of the landfill and climatic conditions. EPA determined that the most sensitive set of conditions was exposure to children due to releases to groundwater from a small landfill in a wet climate. This worst-case scenario was used to estimate maximum allowable daily loadings for each solvent, based on not exceeding specified risk levels.

In particular, to evaluate risks, EPA used health benchmarks from its Integrated Risk Information System (IRIS), supplemented with other sources as necessary. Benchmarks for noncarcinogenic solvents are presented as reference doses (RfD) for exposures through ingestion and as reference air concentrations (RfC) for exposures through inhalation. These are concentrations which are considered to be protective of human health; therefore, the calculated exposures were compared directly to these values to determine whether there was a potential human health risk for the noncarcinogenic solvents. For carcinogens, IRIS presents cancer slope factors, which are used to calculate risk as a function of exposure dose. For this analysis, EPA used the exposure dose corresponding to a cancer risk of 1 in 100,000 (10–5) as the health benchmark for an acceptable cancer risk level.

We initially evaluated disposal of industrial wipes from one generating facility sent to one landfill. EPA then evaluated various factors, such as the number of facilities likely to use one landfill for disposal, percentage of facilities using F-listed solvents, and the percentage of facilities sending their disposable industrial wipes to landfills rather than combustors in order to extrapolate the results from the initial analysis into results which would be representative of potential actual exposures.

EPA's second analysis estimated risks from disposal of ash from incinerators burning disposable industrial wipes. EPA assumed that 99.99% of the solvent was destroyed in the incinerator (with the remainder going into the ash) to derive a solvent loading in ash for each of the 30 F-listed solvents. We then used the same landfill analysis described above to determine how much solvent would be partitioned to leachate, transported to the receiving well, and exposed to the receptor. As in the above landfill analysis, EPA then calculated what the allowable solvent loadings to an incinerator could be to determine which listed solvent ash residues could safely be disposed of in a municipal or other non-hazardous waste landfill.

EPA's third analysis was of potential risks from disposal of sludge from wastewater treatment at laundries which clean solvent-contaminated industrial wipes. For this analysis, we used the maximum of a very limited number of wastewater concentrations collected from industrial laundries by the Office of Water as part of their effluent guidelines development process. We estimated the sludge concentrations of different solvents using a partitioning model to estimate the mass of solvent in the wastewater that partitions to air, water, and sludge. Since we had wastewater data for only a limited number of solvents, we extrapolated that data to the other solvents. Once we had a solvent loading in the sludge going to a landfill, we used the same analysis described above to estimate risks.

Finally, EPA examined potential ecological risks by estimating solvent concentrations in surface water streams which are affected by groundwater contamination from landfills with solvent wastes. These estimated concentrations were then compared to available water quality criteria. The analysis was very conservative in that 100% of the solvent in groundwater was assumed to be discharged into a small stream; however, water quality criteria were available for only ten of the solvents, so the other 20 were not evaluated for ecological risks. More information on the analysis can be found in Section V of the Technical Background Document for this proposal, available in the Docket.

C. What Were the Results of the Analyses, and What Do They Mean?

1. Disposable Solvent-Contaminated Industrial Wipes Managed in Landfills

The results of the risk screening analysis for each solvent are presented as a comparison of the allowable loading to a landfill (based on meeting the previously described risk thresholds) with the projected loadings under two possible conditions: (1) Untreated industrial wipes and, (2) industrial wipes treated by a technique such as centrifuging which was assumed to remove 90% of the solvent. The detailed results are presented below in Table 6 and show that:

- 16 listed solvent constituents would not exceed risk thresholds, even without treatment,
- 8 additional listed solvent constituents would not exceed the risk thresholds if wipes were processed by solvent extraction, and
- 6 remaining listed solvent constituents would exceed the risk thresholds even if wipes were processed by solvent extraction.

As indicated earlier, there are a number of conservative factors included in the analysis. Factors which would tend to increase our estimate of risk include the use of the 5th percentile value from the distribution of ratios of leachate concentrations to well concentrations, the assumption of a small landfill in a wet climate, and the assumption that the receptor for inhalation risks is only 75 meters from the landfill. On the other hand, the use of standard default exposure assumptions, as well as some of the loading assumptions were based on best estimates, not conservative assumptions. While EPA has not done a comprehensive sensitivity analysis of all risk factors, the analysis is generally consistent with the Agency policy of using high end risk estimates (above the 90th percentile, but on the real risk distribution) as one factor in its decision making.

Another factor to note is that there is considerable uncertainty in a large number of the parameters used in the analysis. For example, there was wide variability in the estimates of how much solvent would be on each industrial wipe; the estimates of how many facilities would use a particular landfill were based on general demographic data; and the fate and transport models, as well as some of the health benchmarks, have some degree of uncertainty. While the Agency has not conducted a detailed quantitative uncertainty analysis, it is likely that the range of the uncertainty in this risk analysis covers an order of magnitude or more. The Agency specifically solicits comments on the results and the assumptions and decisions made in conducting the risk screening analysis. More information on the analysis can be found in the Technical Background Document for this proposal, available in the Docket.

TABLE 6.—EVALUATION OF SOLVENT-CONTAMINATED DISPOSABLE WIPES FOR LANDFILLING

CAS No.	Constituent (RCRA waste codes)	Loading to meet the health benchmark (kg/day, per landfill)	Loading (kg/day, per landfill)	Loading assuming centrifuging (kg/day, per landfill)	Conclusion [1]
	Noncarcinogens				
67–64–1	Acetone (F003)	1.73	4.32	0.432	Centrifuge required.
71–36–3	Butanol (F003)	1.61	1.88	0.188	Centrifuge required.
75–15–0	Carbon disulfide (F005)	0.62	1.03	0.103	Centrifuge required.
108–90–7	Chlorobenzene [2] (F002) and (D021)	0.36	1.03	0.103	Centrifuge required.
108–94–1	Cyclohexanone (F003)	64.55	1.88	0.188	Acceptable.
1319–77–3	Cresols (F004) and (D026) [2]	0.41	1.03	0.103	Centrifuge required.
75–71–8	Dichlorodifluoromethane (F001)	2.16	1.03	0.103	Acceptable.
95–50–1	1,2-Dichlorobenzene (F002) and (D070)	12.84	1.03	0.103	Acceptable.
141–78–6	Ethyl acetate (F003)	16.17	2.26	0.226	Acceptable.
100–41–4	Ethyl benzene (F003)	11.95	1.88	0.188	Acceptable.
60–29–7	Ethyl ether (F003)	4.30	1.03	0.103	Acceptable.
110–80–5	2-Ethoxyethanol (F005)	3.82	1.03	0.103	Acceptable.
78–83–1	Isobutyl alcohol (F005)	4.31	1.88	0.188	Acceptable.
67–56–1	Methanol (F003)	5.90	3.20	0.320	Acceptable.
78–93–3	Methyl ethyl ketone (F005) (D035)	0.32	3.67	0.367	Unacceptable.
108–10–1	Methyl isobutyl ketone (F003)	0.03	1.03	0.103	Unacceptable.[3]
98–95–3	Nitrobenzene (F004) and (U169)	0.043	1.03	0.103	Unacceptable.
110–86–1	Pyridine (F005) (D038)	0.006	1.03	0.103	Unacceptable.
127–18–4	Tetrachloroethylene (F002) [2] (D039)	5.83	4.42	0.442	Acceptable.
108–88–3	Toluene (F005)	2.14	5.08	0.508	Centrifuge required.
71–55–6	1,1,1-Trichloroethane (F002)	15.81	9.02	0.902	Acceptable.
76–13–1	1,1,2-Trichlorotrifluoroethane (F002)	403.37	5.17	0.517	Acceptable.
75–69–4	Trichlorofluoromethane (F002) and (U121)	16.05	3.48	0.348	Acceptable.
1330–20–7	Xylenes (total) (F003)	6.18	1.88	0.188	Acceptable.
	Carcinogens				
71–43–2	Benzene (F005) (D018) [2]	0.24	1.03	0.103	Centrifuge required.
56–23–5	Carbon tetrachloride (F001) (D019) [2]	3.0	1.03	0.103	Acceptable.
75–09–2	Methylene chloride (F002)	0.39	9.54	0.954	Unacceptable.
79–46–9	2-Nitropropane (F005)	0.003	1.03	0.103	Unacceptable.
79–01–6	Trichloroethylene (F002) (D040) [2]	27.66	1.03	0.103	Acceptable.
79–00–5	1,1,2-Trichloroethane (F002)	0.83	1.03	0.103	Centrifuge required.

[1] For this analysis, the human health benchmarks were a hazard quotient of 1 for a non-carcinogen or a carcinogenic risk of 10^{-5}. Values above these numbers were deemed to pose an unacceptable risk to human health.

[2] One of those constituents which cannot be disposed of in a municipal or other non-hazardous waste landfill under today's proposal because they exhibit the toxicity characteristic instead of because of the outcome of the risk screening analysis. For further discussion, see Section V.B.5.

[3] Methyl isobutyl ketone is listed for its characteristic of ignitability and, therefore, when it is mixed with solid waste, is no longer considered hazardous waste unless it continues to display its characteristic. Therefore, although this risk screening analysis lists MIBK as Unacceptable, a wipe containing it can be disposed of in a municipal or other non-hazardous waste landfill if it meets the other conditions.

2. Ash From Incineration of Disposable Solvent-Contaminated Industrial Wipes Managed in Landfills

Even though the analysis of risks from disposing of incinerator ash in landfills was conservative by assuming that all of the solvent that was not destroyed went into the ash (as opposed to some of it being emitted from the stack) and that the ash was from a small combustion unit (meaning that a higher percentage of the total amount of material being burned consisted of wipes), the analysis still indicated that none of the solvents would exceed the health benchmarks if the ash were disposed of in a landfill.

3. Sludge From Wastewater Treatment at Industrial Laundries and Managed in Landfills

This analysis indicated that only one constituent, 2-nitropropane, would be present in sludge at a level which would reach the allowable health benchmark. Even for this highly toxic solvent, the loading in sludge (0.004 kg/day) just barely exceeded the allowable loading (0.0033 kg/day). In this case, the exposure route of concern is inhalation of the solvent which has volatilized from the landfill. For the reasons previously cited (receptor only 75 meters from the landfill, selection of the highest wastewater concentration value, etc.), we believe that a more rigorous risk assessment would determine that 2-nitropropane would not have exceeded the allowable loading for sludge from wastewater treatment.

An August 15, 2002 letter from representatives of the Association of Nonwoven Fabrics Industry (INDA) and the Secondary Materials and Recycled Textiles Association (SMART) provides information that suggests that the amount of solvent in reusable industrial wipes is substantially greater than the amount EPA used in conducting our risk screening analysis for this proposed rulemaking.[16] Based on this information, the letter questions whether a specific concentration limit should be placed on the amount of solvent remaining in reusable industrial wipes rather than relying on the ''no free liquids'' condition. It also suggests that most of this solvent will end up in the sludge that is generated from the treatment of wastewater from industrial launderers and will present more of a risk than EPA's risk screening assessment would indicate. Accordingly, the Agency is evaluating the issues raised in the letter to determine if there is a need to impose additional conditions to address risks posed by the disposal in municipal or other non-hazardous waste landfills of sludges generated by industrial laundries.

4. Ecological Assessment

The analysis projected that none of the solvents would exceed their respective water quality criteria despite the conservative assumptions that all of the solvent released in landfill leachate would reach a small stream.

D. What External Review Was Done of the Risk Screening Analysis?

In addition to conducting and reviewing the risk screening analysis internal to EPA, three independent experts provided an external peer review of the analysis of risks from constituents once they had been disposed of in a landfill. These reviewers did not evaluate the assumptions behind the loadings of solvents assumed to be sent to the landfill.

These reviewers indicated that the analysis could over predict risk because (1) the partitioning model accounts for too little degradation in a landfill, (2) degradation once a constituent leaves the landfill is not considered, and (3) the toxicity of trichloroethylene[17] may be overestimated. On the other hand, the reviewers indicated that the analysis could under predict risks because (1) parameters other than the ones for which a sensitivity analysis was conducted could be more sensitive in predicting risk, (2) effects from solubilization by organic compounds were not considered, (3) additional exposure pathways could contribute additional risk, and (4) the carcinogenicity of tetrachloroethylene was not considered. The peer reviewers full comments are presented in the docket. EPA has not yet addressed these comments, but will address them in concert with addressing public comments on the risk screening analysis, including the public's comments on the peer reviewers' comments.

In addition, the Integrated Waste Services Association commented on the analysis of risks from ash disposal. They found the analysis overly conservative; however, since the analysis did not indicate any risks from this waste, EPA does not believe it is necessary at this time to further refine this part of the risk analysis since further refinement would not change our general conclusions.

We request comment on the risk screening analysis discussed in this section of the preamble and discussed in more detail in Section V of the Technical Background Document. In particular, we seek comment concerning:

—The assumptions used in each of these analyses; *i.e.,* landfill, ash and sludges
—The data used in modeling risks
—The methodology used in each of these analyses
—Conclusions and recommendations
—The comments provided by the three external peer reviews
—Or any specific aspect of the risk screening analyses.

VIII. History and Relationship to Other Rulemakings

A. Proposed Effluent Guidelines for Industrial Laundries

On December 17, 1997, EPA proposed to establish pretreatment standards and effluent limitations guidelines (ELGs) for industrial laundries (62 FR 66181).[18] In conducting investigations of effluents discharged from industrial laundries to support the development of the proposed rulemaking, EPA found that the effluent from many industrial laundries contain concentrations of solvents known from site visits to be

[16] *See* ''8/15/02 letter from Bourdeau to Dellinger;'' ''Assessing Management of Sludge Generated by Industrial Laundries,'' EPA OSW, May 9, 2000; and our final risk screening analysis document, ''Estimating the Risk from the Disposal of Solvent Contaminated Shop Towels and Wipes in Municipal Landfills,'' USEPA, March 1999.

[17] EPA's Office of Research and Development is currently in the process of developing a new toxicity assessment for trichloroethylene.

[18] The proposed effluent guidelines would have established numerical limitations that are based on technology treatment of industrial laundry wastewater for 11 priority and non-conventional pollutants. These standards were based on a determination of the degree to which pollutants pass through or interfere with POTWs; the best available technology economically achievable for Pretreatment Standards for Existing Sources; and the best demonstrated available control technology for Pretreatment Standards for New Sources. The proposal also provided regulatory relief for facilities which launder less than 1 million pounds of incoming laundry per calendar year and less than 255,000 pounds of industrial wipes.

used in conjunction with industrial wipes identified as generators of solvent-contaminated wipes. Under the proposed effluent guideline rule, EPA proposed to limit the discharge of certain pollutants from existing and new industrial laundries into U.S. waters and POTWs. The proposed rule applied to ''any facility that launders industrial textile items from off site as a business activity.''

On August 18, 1999, EPA published a **Federal Register** notice withdrawing its proposed rule for the industrial laundry sector (64 FR 45072). EPA's primary basis for the withdrawal was that indirect discharges from industrial laundries contain very small amounts of toxic pollutants that are not removed by POTWs. Comments on the proposed rule and subsequent data collection resulted in the following conclusions: (1) Laundry discharges are not as toxic as estimated at proposal, (2) POTWs provide better treatment of the toxic pollutants remaining in laundry discharges than estimated at proposal, and (3) many former problems have been resolved by local pretreatment authorities.

EPA concluded that to the extent isolated problem discharges occur, existing pretreatment authority allows local POTWs to respond to problems effectively. Local POTWs have the authority to set local limits for individual indirect dischargers to prevent (1) pass through of pollutants through the POTW into waters of the U.S. and (2) interference both with POTW operations and sludge disposal options. EPA's pass-through analysis for the rulemaking determined that there is not significant pass-through of pollutants from industrial laundries to waters of the U.S. EPA also concluded that removing certain organic pollutants from industrial wipes before they are washed would be a better way to control their presence in effluent discharges.

B. Hazardous Waste Listing Determination for Spent Solvents

Five hazardous waste listings for specific spent solvents have been promulgated by EPA to date: F001, F002, F003, F004, and F005. These listings are found in 40 CFR 261.31. The criteria used by the Agency to determine whether or not a waste is hazardous are explained in the December 31, 1985 **Federal Register** notice (50 FR 53316). This rule also applies to P- and U-listed commercial chemical products that correspond with the F001–F005 listings when those products are spilled and, therefore, become waste.

The December 1985 **Federal Register** notice amended the original solvent listings to include spent solvent mixtures when the solvent, before it is used, contains 10 percent or more of total listed solvents. In addition, the notice clarified that the listings apply to ''spent'' solvents—those that are no longer fit for use without being regenerated, reclaimed, or otherwise processed, and clarified that the listings cover only solvents used for their solvent properties (*i.e.,* ''to solubilize (dissolve) or mobilize other constituents'').

On November 19, 1998, EPA published a determination not to list as hazardous wastes 14 chemicals that are used as solvents. These 14 chemicals are cumene, phenol, isophorone, acetonitrile, furfural, epichlorohydrin, methyl chloride, ethylene dibromide, benzyl chloride, p-dichlorobenzene, 2-methoxyethanol, 2-methoxyethanol acetate, 2-ethoxyethanol acetate, and cyclohexanol. EPA determined that waste solvents containing these chemicals are often hazardous wastes because they exhibit a characteristic under 40 CFR part 261, subpart C, or because they contain other solvent wastes that are listed as hazardous and, therefore, did not believe it was necessary to list them separately. However, in some cases, EPA determined that the solvent waste did not meet the criteria for listing as a hazardous waste. For additional detail regarding the technical basis for the decision, *see* 63 FR 64371, November 19, 1998.

IX. State Authorization

A. Applicability of Rule in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer their own hazardous waste programs in lieu of the federal program within the state and to issue and enforce hazardous waste permits. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for state authorization are found at 40 CFR part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When new, more stringent Federal requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new Federal requirements did not take effect in an authorized state until the state adopted the federal requirements as state law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by the statute to implement these requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states do so.

B. Effect on State Authorizations

The proposed conditional exclusions would not be HSWA regulations. Therefore, the conditional exclusions would not be immediately effective in authorized states. They would be applicable only in those states that do not have final authorization for the base (non-HSWA) portion of the RCRA program.

Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (*see also* 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations. Today's proposed conditional exclusion from the definition of hazardous waste for disposable solvent-contaminated industrial wipes is considered less stringent than the existing federal regulations because it would exclude certain materials now regulated by RCRA subtitle C. Thus, states, except as described below, would not be required to adopt the conditional exclusion from the definition of hazardous waste if the proposal is finalized. However, because EPA believes that today's proposal is a better approach to controlling industrial wipes, the Agency would encourage states to adopt this rule, if promulgated, as soon as possible.

The current federal policy with regard to reusable solvent-contaminated

industrial wipes has been to defer the determination of their regulatory status to the states and EPA regions. This deferral has resulted in the development of various state programs. Today's proposal is generally consistent with these state policies. However, it is possible that conditions that would be imposed by the proposed rule could be more stringent than some existing state programs. As a result, these authorized states would be required to modify their programs when we promulgate a final rule. We seek comment on whether states consider the conditions posed by today's proposed rule to be more stringent than their current approaches to regulating reusable solvent-contaminated industrial wipes.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

1. Economic Analysis

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is ''significant'' and, therefore, subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of the proposed regulatory action. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of Executive Order 12866, the Agency has determined that today's proposed rulemaking is a ''significant regulatory action'' because it raises novel legal or policy issues and because of its significance to a large number of interested stakeholders.

2. Affected Economic Sub-Sectors

We estimated the potential national economic impacts of today's proposal. Our ''Economics Background Document'' is available for public review and comment from the RCRA Docket (see public access instructions at the introduction to this notice). The document presents the methodology, detailed computation spreadsheets, and sources of the data applied in our economic analysis. We welcome the general public and affected industries to provide us with comments and questions about our economic analysis, in the interest of improving the key data elements and assumptions.

The scope of the expected economic impacts modeled in our study includes (i) potential cost savings, as well as (ii) potential implementation costs, for both the ''disposable'' and ''reusable'' industrial wipes markets. Our economic study models these impacts as potentially affecting seven economic sectors (manufacturing, retail trade, information, administrative services, other services, public administration, and transportation & utilities). These economic sectors consist of 15 economic sub-sectors, representing 121 industries which we suspect may in part or in whole generate or manage spent solvent industrial wipes in the U.S. economy. As enumerated in an introductory section of this notice, most of the industries which use industrial wipes are in the manufacturing sector, and use industrial wipes primarily for degreasing and cleaning operations.

Today's proposal could potentially affect 13 of these 15 sub-sectors as generators of spent solvent industrial wipes. These 13 sub-sectors consist of a total of 471,000 facilities, 13.2 million employees, and $2.7 trillion in annual revenues. Ninety-six percent of the companies affected are small businesses and they own 83% of the facilities in these sub-sectors. We estimate that a subset of 215,000 of these facilities use RCRA-regulated solvents in conjunction with industrial wiping operations. Introducing an uncertainty range of 50% to 100% as to how many states may ultimately adopt these program changes and counting only facilities which may be regulated as ''small quantity'' or ''large quantity'' generators (according to the calendar month waste generation quantity categories defined in the RCRA hazardous waste regulations at 40 CFR 262) produces an estimated range of 63,000 to 153,000 potentially affected spent solvent industrial wipes generators.

In addition to generators of industrial wipes, up to 1,175 industrial laundries supply and launder reusable industrial wipes, employing 60,000 workers and earning $2.9 billion in annual revenue (of which $408 million is from the industrial wipes business). Industrial launderers are primarily small businesses (94%) which operate 47% of this industry's facilities. Furthermore, up to 10,600 solid waste management establishments (which have 210,000 employees, earn $31 billion in annual revenue, and are 95% small business owned) could also be affected by these proposed changes. Introducing an uncertainty range of 50% to 100% for state adoption of these changes produces an estimated range of 590 to 1,175 industrial laundries, and 5,300 to 10,600 solid waste management establishments potentially affected by the proposed regulations. Adding these ranges together produces a total estimated count of 68,000 to 164,000 potentially affected solvent industrial wipes generator and management facilities.

a. Industrial Wipes Market

We estimate the size of the U.S. industrial wipes market at 9.6 billion wipes used in 2001. Our economic study characterizes this market as consisting of two sub-markets of industrial wipes products with respective annual market share of 88% reusable wipes (8.5 billion uses) and 12% disposable wipes (1.1 billion sold). In some industrial wiping operations, these two product lines may be price-competitive substitutes, but other factors such as lint content, absorbency, and durability often outweigh price as a factor in determining wipes selection for any particular industrial wiping operation.

b. Economic Analysis Framework

The proposed rule will affect these two sub-markets differentially relative to the current regime because of the significant difference in the current state-level and EPA regional-level regulatory status of each respective sub-market category. Spent disposable industrial wipes are currently managed as RCRA hazardous waste, whereas reusable industrial wipes are not usually managed as RCRA hazardous wastes or even solid wastes, depending on state regulations. Consequently, an exclusion from RCRA hazardous waste regulation is expected to provide the disposable wipes market with an annual net cost savings benefit relative to current RCRA regulatory compliance costs, whereas the solid waste exclusion will not provide the reusable wipes market with similar economic benefit, depending on the extent of free liquid solvents captured and recycled from solvent-contaminated reusable industrial wipes.

For the purpose of estimating this differential economic impact outcome

and potential net national economic effect on the industrial wipes market, our economic study included modeling the anticipated induced shift in respective wipes market share, resulting from direct cost savings and direct implementation cost pass-through on the respective wipes prices (*i.e.,* on wipes' life cycle usage costs, including costs of spent wipes disposal). In support of modeling induced market impacts, our economics study presents the findings of a meta-analysis of published own- and cross-price elasticity of demand coefficients, as applied in our study for purpose of simulating potential changes in wipes' market share. Our economic analysis also examined the potential composite outcome of direct and induced impacts of the solid waste exclusion on the industrial laundry industry, as suppliers of reusable industrial wipes.

Because we do not have exact information for every key data element applied, the economic study presents a sensitivity analysis over a ''lower-bound,'' ''most-likely,'' and ''upper-bound'' range in numerical values assigned to key baseline and exclusion compliance parameters, such as number of facilities using solvent wipes, percentage of solvent wipes not currently stored and transported in closed containers, percentage of solvent wipes generated which are not ''dry'' (*i.e.,* contain less than five grams solvent per wipe), price-elasticity of demand for industrial wipes, percentage of states which may adopt the proposed exclusions, and percentage of solvent wipes containers containing free liquids.

c. Impact Estimation Findings

The anticipated national net effect of the proposal is to provide the U.S. economy with $28 million to $72 million in average annual net benefits, consisting of four impact components: (1) $13 million to $20 million in annualized incremental cost for compliance with the conditions of the exclusions (*e.g.,* costs for purchasing accumulation and transportation containers for used industrial wipes); (2) $40 million reduction in annual direct costs for RCRA regulatory compliance; (3) $8 million to $36 million per year in avoided air pollution from increase in capture of free liquid solvents from used industrial wipes; and (4) $0.3 million to $9 million per year in avoided fire damages to facilities from spontaneous combustion of solvent-contaminated industrial wipes. Compared to annualized implementation costs as a numerical ratio, the $8 million to $85 million in annualized total benefits represent a benefit-cost ratio of 2.4 to 6.5. The annualized net benefits consist of $33 million to $37 million to generators for managing spent disposable industrial wipes and an uncertainty range of $35 million in annual benefits to $4 million in annual cost to generators managing reusable industrial wipes (depending upon the extent these costs may be shared with industrial laundries and the extent of reuse of captured solvents).[19]

The induced market impact simulated in the economic analysis estimates a potential 53% to 59% decrease in the life-cycle unit cost for using disposable industrial wipes (taking into account the cost of new wipes purchase plus spent wipes disposal), and a 0% to 17% increase in the effective unit cost of reusable wipes, associated with a potential induced reduction in reusable wipes' national market share of 3% to 15% for the fraction of the industrial wipes market potentially affected by the exclusions.

3. Economic Impact of Today's Other Proposed Exclusion Options

For the reasons explained below and in the ''Economics Background Document,'' we did not prepare a separate quantitative estimate of each of the following alternative options, because they are expected to fall incrementally within or near the impact estimation range for the main option. Below we describe the potential impacts of each of these options in qualitative terms.

a. Exclusion From the Definition of Hazardous Waste for Disposable and Reusable Solvent-Contaminated Industrial Wipes

This option would exclude both disposable and reusable solvent-contaminated industrial wipes from the definition of hazardous waste instead of making a distinction between the types of wipes and excluding disposable industrial wipes from the definition of hazardous waste while excluding reusable solvent-contaminated industrial wipes from the definition of solid waste. No aspect of the proposed rule would change for generators and handlers of disposable wipes. Generators and handlers of reusable solvent-contaminated wipes would be managing a solid waste under this option, but would be subject to the same conditions as those proposed today for the exclusion from the definition of solid waste and, therefore, anticipated net cost savings for this option would remain the same relative to the main option proposed today.

b. Exclusion for All Disposable Solvent-Contaminated Industrial Wipes Under a Single Set of Conditions

This option would not differentiate between disposable wipes managed at a landfill compared to a non-landfill facility. Disposable solvent-contaminated wipes would be excluded from hazardous waste regulations provided the wipes were stored in covered containers while on site, and as long as the wipes do not contain free liquids prior to sending them off site in closed containers that are marked ''Excluded Solvent-Contaminated Wipes.''

Under this option, greater regulatory relief would occur for generators of disposable industrial wipes relative to the main option because (1) they would not have to meet the ''dry'' condition that is proposed under our main option and (2) they would not have to worry about the types of solvent they used. Therefore, some number of generators would not have to spend additional resources to meet this ''dry'' condition (relative to the ''no free liquids'' condition), or switch to other solvents if they so desired to manage their wipes in a municipal or other non-hazardous waste landfill.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2127.01.

The information requirements established for this action, and identified in the Information Collection Request (ICR) supporting today's proposed rule, are largely a self-implementing process. This process would ensure that: (i) Handlers of solvent-contaminated industrial wipes are held accountable to the proposed requirements of the conditional exclusions; and (ii) inspectors can verify compliance when needed. For example, the proposal would require that solvent-contaminated industrial wipes contain no free liquids prior to being transported off site by generators for subsequent management. The conditions would also require

[19] EPA's cost estimates assumed that generators would transport solvent-contaminated wipes to laundries in closed containers despite the proposed performance standard. If industry can find cheaper methods of meeting the performance standard, the costs of reusable wipes management will be less than this estimate.

generators to properly label all containers of wipes sent for disposal.

In estimating ICR burden, EPA used the current state policies as the baseline since most states have specific policies addressing these materials. ICR burden is reduced because generators of solvent-contaminated wipes obtain regulatory relief from existing subtitle C hazardous waste regulatory requirements, such as use of a manifest in transporting these materials off site to a handling facility.

EPA has carefully considered the burden imposed upon the regulated community by the proposed regulation. We estimate a burden savings of 48,000 hours and approximately $1.9 million annually. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID Number RCRA–2003–0004. The public docket is available for viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at <*http://www.epa.gov/edocket*>. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number RCRA–2003–0004. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after November 20, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by December 22, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts on small entities of today's rule, *small entity* is defined as (1) a small business as defined by the Small Business Administration at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that about 83% of the 63,000 to 153,000 establishments in the 13 industries which use industrial wipes and which are potentially subject to today's proposed rulemaking are owned and operated by small companies. In addition, approximately 47% of the 1,175 industrial laundry establishments which supply reusable industrial wipes are owned by small companies. Based on the economic analysis summarized elsewhere in this preamble, we have estimated that a relatively small proportion of potentially affected small businesses (*i.e.*, up to 3% or 16 small industrial laundries) may be adversely impacted by this proposed solid waste exclusion at or above a 3% threshold of annual business receipts (revenues).

Although this proposed rule will not have a significant impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. In addition to the economic analysis, we conducted outreach activities to ensure that small business interests were informed of our potential actions, and to solicit input and comment from small business interests during our development of the proposal. We had a number of meetings with small business stakeholders, including representatives of the industrial laundries trade associations, to discuss the formulation of this proposed rule, and to obtain small business feedback. In these meetings, stakeholders expressed concerns about the implementation of this rule, and asked questions about the conditions being considered for the proposed regulation.

As part of these outreach efforts, the Agency held a meeting with members of the small business community on August 10, 1998. Following EPA's presentation, the stakeholders attending the meeting discussed potential issues and concerns they envisioned could arise with regard to the implementation of the Agency's preliminary options, particularly with regard to the ability of small businesses to comply with the options. Participants provided their initial reactions to the preliminary options, identified potential issues of concern and, in some cases, offered potential changes or improvements. A summary of the August 10, 1998 meeting can be found in the docket for today's proposed rulemaking.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may

result in expenditures by state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before a Federal regulatory agency such as EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments. In addition, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Furthermore, today's proposed regulation will not impose incremental costs in excess of $100 million to the private sector, or to state, local, or tribal governments in the aggregate, in any one year, as based on the findings of the ''Economics Background Document,'' described elsewhere in this preamble.

Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule would provide a net reduction in RCRA regulatory burden to generators and handlers of solvent industrial wipes. For the proposed exclusions, both the annual direct implementation costs to affected private sector entities and the potential impact on annual state government revenues do not exceed the ''substantial'' compliance cost threshold defined in this Executive Order. This proposal would preempt state and local law that is less stringent for solvent-contaminated wipes. Under the RCRA, 42 U.S.C. 6901 to 6992k, the relationship between the states and the national government with respect to hazardous waste management is established for authorized state hazardous waste programs, 42 U.S.C. 6926 (section 3006), and retention of state authority, 42 U.S.C. 6929 (section 3009). Under section 3009 of RCRA, states and their political subdivisions may not impose requirements less stringent for hazardous waste management than the national government. Thus, Executive Order 13132 does not apply to this rule.

However, to incorporate the state perspective in the proposal, Agency personnel met with state representatives from the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) in July of 1998 to review, discuss and obtain feedback from them on EPA thinking at the time. The state representatives recommended that solvent-contaminated reusable wipes contain no free liquids when transported off site to an industrial laundry or dry cleaner and that the wipes be transported in closed containers that meet DOT requirements. Similarly, most states recommended that disposable wipes continue to be regulated under RCRA subtitle C (hazardous waste) regulations. The states continued to participate on the workgroup developing today's proposal and their input was received and considered throughout the regulation development process.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comments on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have tribal implications.''

EPA has concluded that this proposed rule may have tribal implications to the extent that generating facilities on tribal lands using solvent-contaminated industrial wipes or handlers of these materials located on tribal lands could be affected. However, this proposed rule will neither impose substantial direct compliance costs on tribal governments nor preempt tribal law.

EPA did not consult directly with representatives of Tribal governments early in the process of developing this regulation.[20] However, as described above, EPA did conduct an extensive outreach process with industry, including small business. Thus, we believe we have captured concerns that also would have been expressed by representatives of Tribal governments.

EPA specifically solicits additional comment on this proposed rule from Tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonable alternatives considered by the Agency.

The proposed rule is not subject to the Executive Order because it is not

[20] ''Representatives of Tribal governments'' include non-elected officials of Tribal governments and representative authorized national organizations.

economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. EPA believes that this proposal will not increase exposure of solvents to the public, adults or children.

The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assess results of early life exposure to solvent-contaminated industrial wipes.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, Section 12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves environmental monitoring or measurement consistent with the Agency's Performance Based Measurement System (PBMS). EPA proposes not to require the use of specific, prescribed analytic methods. Rather, the Agency plans to allow the use of any method that meets the prescribed performance criteria. The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the performance criteria specified.

EPA welcomes comment on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

Appendix A to Preamble—Demographics of the Industrial Wipes Industry

I. General Description of the Industrial Wipes Industry

A. Types of Industrial Wipes

The term ''industrial wipes'' as used in this preamble represents a heterogeneous group of products which come in a wide variety of types and brands to meet a broad range of application needs. The major division is between reusable shop towels, which are laundered or dry cleaned and used again, and disposable wipes and rags that are used for a limited number of applications and then discarded. Disposable wipes include both non-woven wipes and woven rags. The universe of materials affected by this proposed rule encompasses both reusable and disposable industrial wipes which are used by numerous industries in conjunction with solvents to clean surfaces, parts, accessories, and equipment. Industrial wipes are distinguished by their respective composition, durability, uses, and disposal methods.

The Agency has chosen to use the term ''industrial wipe'' throughout the preamble for the sake of simplicity. However, because of the many terms currently used throughout industry to identify industrial wipes, EPA believes it is helpful to provide an explanation of industry terms to set forth the Agency's understanding as we developed this proposal:

An *industrial shop towel* is a woven textile consisting of cotton or polyester blends. These materials are reusable items and are generally laundered or dry-cleaned a number of times before they have outlived their useful life and must be discarded. Shop towels are rented by industrial launderers to manufacturing, automotive, chemical, and other similar facilities to use for heavy-duty cleaning and wiping. Soiled shop towels are either washed or dry-cleaned at commercial laundry facilities.

An *industrial wipe* is a non-woven towel consisting of wood pulp, polyester blends or 100 percent polypropylene. These materials come in all sizes and thicknesses. They generally are designed for one time use and are used to wipe small quantities of solvents off hands, tools, equipment, or floors.

An *industrial rag* is a non-homogeneous material consisting of cotton or polyester blends. Rags are made from old clothing or from cloth remnants from textile mills, and vary in size and type of fabric.

Paper towels also are sometimes used in conjunction with solvents in the workplace. These materials are made from wood pulp with binders.

The wipe suitable for each application depends on a number of factors. The amount of lint allowed in a task plays a large role, because some electronic or printing applications cannot tolerate any lint, while other applications can tolerate large amounts of lint. Absorbent capacity is also another important factor in some tasks, while not in others. Durability is important in some tasks, such as those that require heavy scrubbing, while often not important in tasks where lint or absorbency is more important. Durability does not only refer to the physical strength of the wipe, towel, or rag, but also to its ability to withstand strong solvents.

B. Additional Data

Additional data collected from site visits, literature searches, and industry include information regarding the numbers of wipes used daily, types of solvents used, type of operation (*i.e.,* whether cleaning operations involve the use of small or considerable amounts of solvent per wipe); preference for disposable versus reusable wipes; and estimated total volumes of wipes used annually. A detailed discussion of these findings can be found in the Technical Background Document for this proposed rule, as well as other documents supporting this rule that are found in the Docket. Key findings include:

- Number of wipes used daily by a facility can vary from 50 to 6,000.
- Many facilities appear to use ignitable-only solvents (D001) that could be classified as characteristically hazardous when the wipes no longer can be used; most facilities also appear to use solvent blends consisting of two or more constituents.
- Most industrial sectors appear to only use a small amount of solvent per wipe: Auto body repair; electronics; furniture manufacturers; fabricated metals; and organic and inorganic chemical manufacturers. Conversely, the printing sectors, automobile manufacturers, parts of the military, and defense industries often use large amounts of solvent on each wipe.
- Using wipes sales and usage volume figures provided by wipes suppliers and industry users, coupled with U.S. Bureau of Census counts of related facilities, EPA estimates that approximately 9.6 billion industrial wipes are used by industry annually (88 percent reusable wipes and 12 percent disposable wipes) in 13 different industries. EPA further estimates that approximately 3.8 billion of these industrial wipes are used in conjunction with solvents in industrial cleaning and degreasing operations.

Appendix B to Preamble—Memorandum From Michael Shapiro

February 14, 1994

Memorandum

Subject: Industrial Wipers and Shop Towels under the Hazardous Waste Regulations

From: Michael Shapiro, Director, Office of Solid Waste

To: Waste Management Division Directors Regions I–X

We have received numerous questions about the regulatory status of used industrial wipers and shop towels (''wipers'') under the Resource Conservation and Recovery Act (RCRA) regulations from the users and launderers of these wipers, and the

regulatory agencies responsible for implementing the RCRA regulations. In addition, manufacturers, marketers and users of non-reusable wipers (*i.e.,* wipers that are not laundered, such as paper or other on-textile products) have been requesting clarification on the status of these materials as well. The purpose of this memorandum is to update you on this issue, and to reaffirm our policy regarding the regulatory status of these materials.

Ongoing Efforts

There are currently several activities within EPA that may affect wipers. The Definition of Solid Waste Task Force, as part of their dialogue with industry, environmental groups, State agencies, and EPA Regions, has been evaluating the RCRA regulations affecting launderable and disposable wipers. In addition, OSW has been dealing with the issue of wipers as we continue our efforts with the Hazardous Waste Identification Rule. As you may recall, EPA requested and received comment on alternative approaches for addressing wipers contaminated with listed solvent (May 20, 1992 **Federal Register;** 57 FR 21474); this proposal was later withdrawn. Finally, the Office of Water will be gathering data to support the development of effluent guidelines for industrial launderers, which handle certain types of reusable wipers.

Status of Used Wipers

Whether or not the used wipers are hazardous waste under the RCRA regulations has been a recurring question. Because there are many applications of wipers, we cannot at this time make any generic statements that all wipers are hazardous waste, or that all are not. A material that is a solid waste is by definition hazardous waste if it either (1) meets one of the listings in 40 CFR part 261, subpart D, or (2) exhibits one or more of the characteristics described in 40 CFR part 261, subpart C. Because there are no explicit listings for ''used wipers'' in part 261, subpart D, a wiper can only be defined as listed hazardous waste if the wiper either contains listed waste, or is otherwise mixed with hazardous waste. Whether or not a used wiper contains listed hazardous waste, is mixed with listed hazardous waste, only exhibits a characteristic of hazardous waste, or is not a waste at all, is dependent on site-specific factors; this is not a new policy. As a result, any determinations or interpretations regarding this diverse and variable wastestream should be made by the regulatory agency (*i.e.,* EPA Region or State) implementing the RCRA program for a particular State. This has been our long-standing policy.

One of EPA's concerns in determining whether the hazardous waste regulations apply to wipers in specific cases should be to prevent situations where someone is improperly disposing of spent solvents (or other hazardous wastes) by mixing them in with wipers, and then sending the wipers to a laundering facility or municipal landfill. This activity is clearly not allowed under the federal regulations. However, wipers that merely pick up incidental amounts of solvents may be handled in a number of ways. I have enclosed policy documents from several States and one EPA Region regarding the identification and/or management of wipers, that provide examples of how some implementing agencies have developed workable approaches to this issue. If you have additional information, or have questions, please contact Charlotte Mooney or Ross Elliott at (202) 260–8551.

Enclosures (4)
cc: RCRA Enforcement Branch Chiefs, Regions I–X
Regional Counsel, Regions I–X

List of Subjects

40 CFR Part 260

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous materials, Recycling, Reporting and recordkeeping, Waste treatment or disposal.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and record keeping requirements, Waste treatment and disposal.

Dated: November 10, 2003.

Michael O. Leavitt,

Administrator.

For the reasons set out in the preamble, title 40, Chapter I of the Code of Federal Regulations, parts 260 and 261, are proposed to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

2. Section 260.10 is amended by adding in alphabetical order the definitions of *Disposable industrial wipe, Industrial wipe, Industrial wipes handling facility, Intra-company transfer of industrial wipes, No free liquids, Reusable industrial wipe, and Solvent extraction* to read as follows:

§ 260.10 Definitions.

* * * * *

Disposable industrial wipe means an industrial wipe that is disposed after use without being sent to a laundry or dry cleaner for cleaning and reuse.

* * * * *

Industrial wipe means non-woven industrial wipes made of wood pulp or polyester blends; industrial shop towels, a woven textile made of cotton or polyester blends; and industrial rags, non-homogenous materials consisting of cotton or polyester blends. Industrial wipes of all kinds are used for a variety of purposes, including removing small quantities of solvents from machinery parts, hands, tools, and the floor.

* * * * *

Industrial wipes handling facility means a facility that removes solvents from industrial wipes prior to them being sent either to a laundry or dry cleaner for cleaning or to a municipal or other non-hazardous waste landfill that meets the standards under 40 CFR part 257, subpart B, municipal waste combustor, or other combustion facility.

* * * * *

Intra-company transfer of industrial wipes means the off site transportation of industrial wipes from a generator facility to another generator-owned facility that has a solvent extraction and/or recovery process for the purpose of removing sufficient solvent to ensure that the wipes contain no free liquids or less than 5 grams of solvent, as appropriate.

* * * * *

No free liquids, as used in 40 CFR 261.4(a)(24) and 40 CFR 261.4(b)(19), means that no liquid solvent may drip from industrial wipes, and that there is no liquid solvent in the container holding the wipes. Wipes that have been subjected to solvent extraction are presumed to contain no free liquids.

* * * * *

Reusable industrial wipe means an industrial wipe that after being used is sent to a laundry or dry cleaner for cleaning and reuse.

* * * * *

Solvent extraction, as used in 40 CFR 261.4(a)(24) and 40 CFR 261.4(b)(19), means an advanced extraction process such as mechanical wringers, centrifuges, or any other similarly effective method to remove solvent from industrial wipes.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6838.

Subpart A—General

4. Section 261.4 is amended by adding new paragraphs (a)(22) and (b)(19) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(22) Industrial wipes that are sent to an industrial laundry, to a dry cleaner for cleaning, or to an industrial wipes

handling facility when they contain an F-listed spent solvent, a corresponding spilled P- or U-listed commercial chemical product, or when they exhibit the hazardous characteristic of ignitability, corrosivity, reactivity or toxicity when that characteristic results from the F-listed spent solvent or corresponding P- or U-listed commercial chemical products, provided that the conditions specified below are satisfied by the facility claiming the exclusion:

(i) Solvent-contaminated industrial wipes must be accumulated, stored and managed in non-leaking, covered containers;

(ii) Solvent-contaminated industrial wipes, if transported off site, must be transported in containers that are designed, constructed, and managed to minimize loss to the environment;

(iii) When laundered or dry cleaned on site or transported off site to a laundry, dry cleaner, or industrial wipes handling facility, solvent-contaminated industrial wipes must contain no free liquids or must have been treated by solvent extraction, except as stated in paragraph (a)(24)(iv) of this section. Any liquids removed from the industrial wipes must be managed according to the regulations found under 40 CFR parts 261 through 268 and 270 if discarded;

(iv) Intra-company transfer of solvent-contaminated industrial wipes containing free liquids may occur provided that the following conditions are satisfied:

(A) The transfer must occur in order to remove sufficient solvent from the industrial wipes so they meet the ''no free liquids'' condition; and

(B) The receiving facility must manage the extracted solvent according to regulations found under 40 CFR parts 261 through 268 and 270.

(v) Laundries, dry cleaners and industrial wipes handling facilities must manage the solvent-contaminated industrial wipes in non-leaking covered containers or in containers that are designed, constructed, and managed to minimize loss to the environment before the industrial wipes enter the handling process; and

(vi) If free liquids are in containers that arrive at a laundry, dry cleaner, or industrial wipes handling facility, the receiving facility must either:

(A) Remove the free liquids and manage them according to the regulations found under 40 CFR parts 261 through 268 and 270; or

(B) Return the closed container with the wipes and free liquids to the generator as soon as reasonably practicable, but no later than the next scheduled delivery.

(vii) Industrial laundries and dry cleaners may dispose of sludge from cleaning industrial wipes in solid waste landfills if the sludge does not exhibit a hazardous waste characteristic.

(b) * * *

(19) Industrial wipes that are sent for disposal to a municipal waste landfill or other non-hazardous waste landfill that meets the standards under 40 CFR part 257, subpart B, to a municipal waste combustor or other combustion facility, or to an industrial wipes handling facility when they contain an F-listed spent solvent, a corresponding spilled P- or U-listed commercial chemical product, or when they exhibit the hazardous characteristics of ignitability, corrosivity, reactivity, or toxicity when that characteristic results from the F-listed spent solvent or corresponding P- or U-listed commercial chemical products, providing that the conditions specified below are satisfied by the facilities claiming the exclusion:

(i) Solvent-contaminated industrial wipes must be accumulated, stored, and managed in non-leaking, covered containers;

(ii) Solvent-contaminated industrial wipes, if transported off site, must be transported in containers that are designed, constructed, and managed to minimize loss to the environment;

(iii) Solvent-contaminated industrial wipes, if transported, must be transported in containers labeled ''Exempt Solvent-Contaminated Wipes'';

(iv) When transported to a municipal waste landfill or other non-hazardous waste landfill that meets the standards under 40 CFR part 257, subpart B, solvent-contaminated industrial wipes:

(A) Must contain less than 5 grams of solvent each, or must have been treated by solvent extraction; and

(B) Must not contain the following solvents: 2-nitropropane, nitrobenzene, methyl ethyl ketone (MEK), methylene chloride, pyridine, benzene, cresols (o,m,p), carbon tetrachloride, chlorobenzene, tetrachloroethylene, trichloroethylene;

(v) When transported to a municipal waste combustor, other combustion facility, or industrial wipes handling facility, solvent-contaminated industrial wipes must not contain free liquids or must have been treated by solvent extraction. Any liquids removed from the wipes must be managed as hazardous wastes according to regulations found under 40 CFR parts 261 through 268 and 270 if disposed;

(vi) Intra-company transfer of solvent-contaminated industrial wipes containing free liquids may occur provided that the following conditions are satisfied:

(A) The transfer must occur in order to remove sufficient solvent from the industrial wipes so they meet the 5-gram condition or the ''no free liquids'' condition, as appropriate; and

(B) The receiving facility must manage the extracted solvent according to regulations found under 40 CFR parts 261 through 268 and 270;

(vii) Combustion and industrial wipes handling facilities must manage solvent-contaminated industrial wipes in non-leaking covered containers or in containers that are designed, constructed, and managed to minimize loss to the environment before the industrial wipes enter the handling process; and

(viii) If free liquids are in containers that arrive at combustion and industrial wipes handling facilities, the receiving facility must:

(A) Remove the free liquids and manage them as hazardous wastes according to regulations found under 40 CFR parts 261 through 268 and 270; or

(B) Return the closed container with the industrial wipes and free liquid to the generator as soon as reasonably practicable, but no later than the next scheduled delivery;

(xi) Combustion facilities may dispose of residuals from combustion of industrial wipes in solid waste landfills if residuals do not exhibit a hazardous waste characteristic.

* * * * *

[FR Doc. 03–28652 Filed 11–19–03; 8:45 am]

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Federal Register

Thursday,
November 20, 2003

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 707

Abandoned Mine Land (AML) Reclamation Program; Enhancing AML Reclamation; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 707

RIN 1029–AC07

Abandoned Mine Land (AML) Reclamation Program; Enhancing AML Reclamation

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: We are publishing a final rule in response to the decision by the United States Court of Appeals, District of Columbia Circuit, remanding the February 12, 1999, Enhancing AML Reclamation Rule for further explanation as to the types of government expenses that will qualify as government financing under the rule. This rulemaking provides the requested explanation and represents a clarification and not a substantive change to the Abandoned Mine Land (AML) program authorized by the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). We are also taking this opportunity to explain what is meant by the prohibition in the rule against ''in-kind'' payments being counted towards the government financing of a ''government-financed'' construction.

DATES: Effective November 20, 2003.

FOR FURTHER INFORMATION CONTACT: Danny Lytton, Chief, Division of Abandoned Mine Lands, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., ms 120–SIB, Washington, DC 20240; Telephone: 202–208–2788. E-Mail: *dlytton@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Why are we publishing this rule?
B. What is the exemption for ''government-financed'' construction?
C. What is the AML Reclamation Program?
D. How is AML reclamation funded and how do States and Indian Tribes implement their programs?
E. What types of abandoned sites does the Enhancing AML Reclamation Rule target?

II. Discussion of the Final Rule

III. Procedural Determinations

I. Background

A. Why Are We Publishing This Rule?

On March 13, 1979, OSM published rules implementing the exemption from SMCRA provisions provided by section 528 of the Act when the extraction of coal is an incidental part of Federal, State, or local government-financed construction. These regulations, codified at 30 CFR part 707 (44 FR 15322), defined ''government-financed construction'' as meaning ''construction funded 50 percent or more by [government] funds. * * *'' 30 CFR 707.5. On February 12, 1999, we published the Enhancing AML Reclamation Rule (''Enhancing AML Rule'') which amended this definition of ''government-financed construction to allow less than 50 percent government financing when the construction project is an approved AML project. (64 FR 7470). The Kentucky Resources Council (KRC) challenged the rule on several counts. *KRC* v. *Norton,* No. 99–00892 (D.D.C.). In its September 22, 2000 slip opinion, the district court granted the government summary judgment. The KRC appealed that decision to the United States Court of Appeals for the District of Columbia Circuit.

On May 30, 2002, the court of appeals concluded that the Department had not only reasonably interpreted the term ''construction'' to include AML reclamation projects that involve the incidental extraction of coal but also reasonably determined that, in some circumstances, AML projects to which the government provides less than 50 percent of the financing may qualify as ''government-financed'' construction. Notwithstanding these conclusions, the court remanded the rule for further explanation as to which government administrative expenses will qualify as ''government financing'' for the purposes of the exemption from the provisions of the Act. *KRC* v. *Norton,* No. 01–5263, 2002 WL 1359455 at *2 (D.C. Cir.).

The court further noted that, even though ''in kind'' payments do not qualify as government financing under 30 CFR 707.5, our 1999 **Federal Register** notice appeared to accept a commenter's suggestion that qualifying government financing includes ''in kind payments such as administrative expenses incurred by the AML agency in reviewing and approving the project.'' *KRC* v. *Norton* at *2.

We are publishing this rulemaking to provide the explanation required by the court as to which government administrative expenses qualify as ''government financing'' under 30 CFR 707.5. In addition, we are taking this opportunity to explain what the agency has historically meant by the prohibition in section 707.5 against ''in-kind'' payments being counted towards the government financing of a ''government-financed'' construction. Further, editorial changes have also been made to the definition for clarity.

The preamble to the February 12, 1999, Enhancing AML Rule should be consulted for additional background information. 64 FR 7470.

B. What Is the Statutory Exemption for ''Government-Financed'' Construction?

Title V of SMCRA, 30 U.S.C. 1251–1279, has regulated surface coal mining operations since 1977 though stringent standards regarding the permitting, mining, and reclamation of such sites. Title V prescribes that ''no person shall engage in or carry out on lands within a State any surface coal mining operations unless such person has first obtained a permit issued by such State pursuant to an approved State program or by the Secretary pursuant to a Federal program.'' 30 U.S.C. 1256. Applicants for a Title V permit must pay a fee to cover all or some of the costs of reviewing, administering, and enforcing the permit (30 U.S.C. 1257). They must submit a reclamation plan (30 U.S.C. 1258) and, after the permit has been approved but prior to issuance of the permit, must file with the regulatory authority a bond to ensure performance of the reclamation plan (30 U.S.C. 1259). Congress, however, exempted some activities from the Title V requirements by providing:

> The provisions of this chapter *shall not apply* to any of the following activities:
> (1) the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him; and (2) the extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction under regulations established by the regulatory authority.

30 U.S.C. 1278. (Emphasis added).

C. What Is the AML Reclamation Program?

Tile IV of SMCRA (30 U.S.C. 1231–1243) established the AML Reclamation Program in response to concern about extensive environmental damage caused by past coal mining activities. The program is funded primarily from a fee collected on each ton of coal mined in the country. This fee is deposited into a special fund, the Abandoned Mine Land Fund (Fund), and is appropriated annually to address abandoned and inadequately reclaimed mining areas where there is no continuing reclamation responsibility by any person under State or Federal law. Under Title IV, the financing of reclamation projects is subject to a priority schedule with emphasis on sites

affecting public health, safety, general welfare and property.

In most cases, the implementation of Title IV authority has been delegated to States. Currently, 23 States and 3 Indian Tribes (the Hopi, the Navajo and the Crow) have authority to receive grants from the Fund. They are implementing Title IV reclamation programs in accordance with 30 CFR Subchapter R, and through implementing guidelines published in the **Federal Register** on March 6, 1980 (45 FR 27123), and revised on December 30, 1996 (45 FR 68777). In States and on Indian lands that do not have a Title IV program, reclamation is carried out by OSM.

D. How Is AML Reclamation Funded and How Do States and Indian Tribes Implement Their Programs?

State and Indian Tribal AML programs are funded at 100 percent by OSM from money appropriated annually from the AML Fund. The States and Indian Tribes must submit grant applications in accordance with procedures established by OSM and existing grant regulations found at 30 CFR part 886. They may undertake only projects that are eligible for financing as described in either section 404 or section 411 of SMCRA and that meet the priorities established in section 403 of SMCRA. OSM requires that the State Attorney General or other chief legal officer certify that each reclamation project to be undertaken is an eligible site. Certain environmental, fiscal, administrative, and legal requirements must be in place in order for a program to receive grants for reclamation. An extensive description of these requirements can be found at 30 CFR part 884.

E. What Types of Abandoned Sites Does the Enhancing AML Rule Target?

As discussed in substantial detail in the February 12, 1999, **Federal Register** notice, the Enhancing AML Rule will facilitate the reclamation of certain abandoned mine lands that have little likelihood of being remined by the private sector or being reclaimed under the current Title IV program because of severely limited program funds. 64 FR 7471.

II. Discussion of the Final Rule

We are publishing this rulemaking in response to the D.C. Circuit's remand of our Enhancing AML Reclamation Rule for further explanation as to which government expenses will qualify as government-financing under the rule. We are doing this to address the concern expressed by the court regarding our preamble discussion interpreting the statutory term ''government-financed construction.'' In our preamble discussion we stated that all expenses incurred by the AML agency such as project design, project solicitation, project management, and project oversight qualify as government financing under the rule. 64 FR 7474. The court found that it was ''counter-intuitive'' to suggest that Congress intended traditional government functions ''such as ''oversight'' to ensure that a contractor complies with the law, or reviewing and approving proposed Title IV projects—would qualify as government financing. The court continued that even though § 707.5 clearly states that ''in kind'' payments do not qualify as government-financed construction, our **Federal Register** notice appeared to accept a commenter's suggestion that an agency's administrative expenses were a form of ''in kind'' payments.

Finally, the court posited a permissible interpretation of the rule under which the traditional oversight and compliance-review functions of an AML agency would not be counted as government financing. The court concluded with two scenarios in which agency expenses would reasonably count as government financing. *KRC* v. *Norton* at *2. It is our intent to interpret the rule consistently with this interpretation and these two scenarios. Therefore, agency administrative expenses that are traditionally attributed to a particular type of government construction project will not count towards the ''government financing'' of that project. In other words, the only administrative expenses incurred by a government agency that can count as part of the ''government financing'' of a project are those expenses that are outside the normal scope of that agency's cost of doing business.

As an example, most AML agencies accomplish reclamation work through contractors. Depending upon an agency's internal procedures, some agencies regularly require the contractor to perform all engineering and design work. Other agencies may regularly hire an outside engineering firm or do the work themselves. Should a government agency that regularly requires the contractor to perform project engineering and design work decide to do such work itself on a specific project, the expense of that project's engineering and design work would qualify towards the ''government financing'' of that project. This expense qualifies as ''government financing'' because it is a government expense not regularly attributable to such projects. In contrast, a government agency that regularly does its own engineering and design work cannot consider those expenses towards qualifying the project as being ''government-financed'' for they are expenses that the agency regularly attributes to such projects.

Critics of the 1999 Enhancing AML Rule were concerned that if the expenses of traditional government functions such as oversight and project review counted towards ''government financing,'' there might be a large number of government-financed construction projects where the government would do no actual financing towards the physical reclamation of the site. In light of that concern, we reviewed the instances where the 1999 rule has been used to allow for less than 50 percent government financing of approved AML construction projects. Thus far, four projects have been completed in three different states. In each case, a tremendous savings was realized at relatively little cost to the government reclamation authority through the sale of coal whose extraction was an incidental part of the required reclamation. Reclamation that would have otherwise cost the Title IV authorities an estimated $1.5 million was accomplished at a total cost to those authorities of somewhat less than $200,000. It is significant that in each case, the AML authority paid substantial monies to the contractor to physically reclaim the site. While OSM anticipates that other projects will be conducted under the Enhancing AML rule, the agency does not expect the number of such projects to be large.

We would next like to take this opportunity to explain what OSM has always intended by the regulatory prohibition in 30 CFR 707.5 against ''in kind'' payments being counted towards the government financing of ''government-financed'' construction. This prohibition first appeared in the March 13, 1979, rulemaking and continued substantially unchanged in the 1999 Enhancing AML Reclamation Rule. As discussed above, the 2002 Circuit Court decision noted that the 1999 preamble appeared to accept a commenter's suggestion that qualifying government financing includes ''in kind'' payments such as administrative expenses incurred by the AML agency in reviewing and approving the project. *Id.* at *2. The cited preamble language response was not, however, intended to address the commenter's suggestion that administrative expenses incurred by the agency in reviewing and approving a project were ''in kind'' payments. Rather, it was OSM's intent to address commenter's concern that these

administrative expenses would not qualify as government financing under § 707.5. OSM has never considered the administrative expenses attributed by the government to a particular project to be a form of ''in kind'' payments. Instead, OSM has always considered ''in kind'' payments to be contributions to the government by third parties of labor, materials, equipment or services that are used by the government to accomplish required reclamation. As an example of such ''in kind'' payments to the government, a not-for-profit watershed group might volunteer to plant trees as part of a reclamation project and a local nursery might contribute the trees. Pursuant to OSM's longstanding interpretation of the ''in-kind'' payment prohibition of § 707.5, neither the value of the contributed planting services nor trees could ever count towards the government financing of the project.

Finally, for clarity, we are also making non-substantive revisions to the definition of ''government-financed construction'' at 30 CFR 707.5. We have substituted the words ''Government financing'' for the word ''Funding.'' The definition will then read in pertinent part, as follows: ''*Government financing* at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of the Act.'' (Revision in italics.) The limitation of the provision to government financing is already implicit in the definition but now is made explicit.

III. Procedural Determinations

1. Executive Order 12866—Regulatory Planning and Review

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

a. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

b. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

c. This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

d. This rule does raise legal or policy issues.

These determinations are based on the analysis performed for the Enhancing AML Reclamation Rule (RIN 1029–AB89) published on February 12, 1999, at 64 FR 7470.

2. Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This determination is based on the analysis performed for the Enhancing AML Reclamation Rule (RIN 1029–AB89) published on February 12, 1999, at 64 FR 7470. At that time it was determined that the rule, when implemented, would slightly improve business opportunities for all entities, small and large, by increasing the likelihood that additional reclamation projects would be undertaken each year. Further, the economic impact of the rule on small businesses was determined to be minimal. This determination was based on the facts that:

—the rule would not increase the cost or burden on businesses reclaiming sites eligible under the existing regulations;

—the rule makes it possible for businesses to undertake the reclamation of areas not previously remined or reclaimed under existing regulations;

—the undertaking of the reclamation projects opened up by the rule is entirely voluntary; and

—the only increase in cost due to these new projects will be that for documentation related to the removal and sale of coal as an incidental part of the reclamation project. This incremental cost will be factored into the cost of the project bid submitted to the Title IV governmental authority and should prove to be an insignificant percentage of the total bid. Those who do participate and bid on reclamation projects resulting from the rule will do so to reap an economic benefit in the form of a profit on the sale of coal incidentally mined during the reclamation of the site. The total amount of Federal money that will be available each year for AML projects will neither increase nor decrease as a result of this rule.

3. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. It would allow AML agencies to work in partnership with contractors to leverage finite AML Reclamation Fund dollars to accomplish more reclamation. To offset the reduction in government financing, the contractor would be allowed to sell coal found incidental to the project and recovered as part of the reclamation. Participation under the rule change is strictly voluntary and those participating are expected to do so because of the economic benefit.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions because the rule does not impose any new requirements on the coal mining industry or consumers, and State and Indian AML program administration is funded at 100 percent by the Federal government.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises for the reasons stated above.

These determinations are based on the analysis performed for the Enhancing AML Reclamation Rule (RIN 1029–AB89) published on February 12, 1999, at 64 FR 7470.

4. Unfunded Mandates

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or Tribal governments or the private sector. The administration of the AML program by a State or Indian Tribe is funded at 100 percent by the Federal Government and the decision by a State or Indian Tribe to participate is voluntary. A statement containing the information required by the Unfunded Mandates Reform Act (1 U.S.C. 1531, *et seq.*) is not required.

5. Executive Order 12630—Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. The rule would allow AML agencies to work in partnership with contractors to leverage finite AML Reclamation Fund dollars to accomplish more reclamation. To offset the reduction in government financing, the contractor would be allowed to sell coal found incidental to the project and recovered as part of the reclamation.

6. Executive Order 13132—Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment for the reasons discussed above.

7.Executive Order 12988—Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

8. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. As previously stated, three tribes will be affected by the rule, the Hopi, the Navajo and the Crow. The administration of the AML program by a State or Indian Tribe is funded at 100 percent by the Federal Government and the decision by a State or Indian Tribe to participate is voluntary.

9. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not considered a ''significant energy action'' under Executive Order 13211. The administration of the AML program will not have a significant effect on the supply, distribution, or use of energy.

10. Paperwork Reduction Act

This rule does not contain a collection of information requiring clearance under the Paperwork Reduction Act by the Office of Management and Budget.

11. National Environmental Policy Act

OSM prepared an environmental assessment (EA) for the Enhancing AML Reclamation Rule (RIN 1029–AB89) published on February 12, 1999, at 64 FR 7470 and made a Finding of No Significant Impact (FONSI) on the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The EA and FONSI are on file in the OSM Administrative Record for the rule. That determination is valid for the publication of this rule.

12. Administrative Procedure Act

This final rule has been issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (APA) (5 U.S.C. 553) provides an exception to the notice and comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary or contrary to the public interest OSM has determined that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically, this rulemaking clarifies the implementation of existing regulatory language and does not add or remove any substantive requirements. For the same reasons, OSM has good cause under 5 U.S.C. 553(d) of the APA to have the regulation become effective on a date that is less than 30 days after the date of publication in the **Federal Register**.

List of Subjects in 30 CFR Part 707

Highways and roads, Incidental mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: November 3, 2003.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

For the reasons given in the preamble, 30 CFR part 707 is amended as set forth below:

PART 707—EXEMPTION FOR COAL EXTRACTION INCIDENT TO GOVERNMENT-FINANCED HIGHWAY OR OTHER CONSTRUCTION

■ 1. The authority citation for part 707 continues to read as follows:

Authority: Secs. 102, 201, 501, and 528 of Pub. L. 95–87, 91 Stat. 448, 449, 467, and 514 (30 U.S.C. 1202, 1211, 1251, 1278).

■ 2. In § 707.5, the definition of *Government-financed construction* is revised to read as follows:

§ 707.5 Definitions.

* * * * *

Government-financed construction means construction funded at 50 percent or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Government financing at less than 50 percent may qualify if the construction is undertaken as an approved reclamation project under Title IV of the Act. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Poultry classes; comments due by 11-28-03; published 9-29-03 [FR 03-24536]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 1442/P.L. 108–126

To authorize the design and construction of a visitor center for the Vietnam Veterans Memorial. (Nov. 17, 2003; 117 Stat. 1348)

H.R. 3288/P.L. 108–127

To amend title XXI of the Social Security Act to make technical corrections with respect to the definition of qualifying State. (Nov. 17, 2003; 117 Stat. 1354)

S. 677/P.L. 108–128

Black Canyon of the Gunnison Boundary Revision Act of 2003 (Nov. 17, 2003; 117 Stat. 1355)

S. 924/P.L. 108–129

To authorize the exchange of lands between an Alaska Native Village Corporation and the Department of the Interior, and for other purposes. (Nov. 17, 2003; 117 Stat. 1358)

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