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Presidential Documents

Title 3—

The President

Executive Order 15323 of December 11, 2009

Half-Day Closing of Executive Departments and Agencies on Thursday, December 24, 2009

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. All executive branch departments and agencies of the Federal Government shall be closed and their employees excused from duty for the last half of the scheduled workday on Thursday, December 24, 2009, the day before Christmas Day, except as provided in section 2 of this order.

Sec. 2. The heads of executive branch departments and agencies may determine that certain offices and installations of their organizations, or parts thereof, must remain open and that certain employees must remain on duty for the full scheduled workday on December 24, 2009, for reasons of national security, defense, or other public need.

Sec. 3. Thursday, December 24, 2009, shall be considered as falling within the scope of Executive Order 11582 of February 11, 1971, and of 5 U.S.C. 5546 and 6103(b) and other similar statutes insofar as they relate to the pay and leave of employees of the United States.

Sec. 4. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
December 11, 2009.

[FR Doc. E9–30020
Filed 12–15–09; 8:45 am]
Billing code 3195–W0–P

Rules and Regulations

Federal Register
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 831, 842, 870, and 890

RIN 3206–AJ55

Continuation of Eligibility for Certain Civil Service Benefits for Former Federal Employees of the Civilian Marksmanship Program

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing final regulations to describe conditions and procedures applicable to the continuation of eligibility for certain civil service benefits for former Federal employees of the Civilian Marksmanship Program.

DATES: *Effective Date:* December 16, 2009.

FOR FURTHER INFORMATION CONTACT: Kristine Prentice or Roxann Johnson, 202–606–0299.

SUPPLEMENTARY INFORMATION: On June 3, 2002, the Office of Personnel Management (OPM) published (at 67 FR 38210) proposed regulations to implement the benefit-related provisions of the ''Corporation for the Promotion of Rifle Practice and Firearms Safety Act,'' Public Law 104–106, 110 Stat. 515, by amending parts 831, 842, 870, and 890 of title 5, Code of Federal Regulations. The Act created a private, non-profit corporation, and transferred the Civilian Marksmanship Program from the Department of Defense to the new corporation. Section 1622 of the Act provides that individuals employed by the Department of Defense to support the Civilian Marksmanship Program as of the day before the date of the transfer of the Program to the Corporation who were offered and accepted employment by the Corporation as part of the transition would continue to be eligible, during continuous employment with the Corporation, for the Federal health, retirement, and similar benefits (including life insurance) for which the employee would have been eligible had the employee continued to be employed by the Department of Defense. The final rule provides that the affected employees will be treated under all of the applicable benefits programs on the same basis as if the individuals had remained as employees of the Federal Government.

OPM received no comments on the proposed rule. Since publication of the proposed rule, OPM has further updated each of the authority citations to reflect other changes in the law. Accordingly, we are issuing the proposed regulations as final with only a few minor editorial and formatting changes for clarity.

Regulatory Flexibility Act

I certify that this rule will not have a significant economic impact on a substantial number of small entities because the proposed rule only affects the employment benefits of a small number (estimated to be fewer than a dozen) former Federal employees now employed by the Corporation for the Promotion of Rifle Practice and Firearms Safety.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

List of Subjects in 5 CFR Part 842

Air traffic controllers, Alimony, Firefighters, Government employees, Law enforcement officers, Pensions, Retirement.

List of Subjects in 5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

Office of Personnel Management.

John Berry,

Director.

■ The Office of Personnel Management is amending 5 CFR parts 831, 842, 870, and 890, as follows:

PART 831—RETIREMENT

■ 1. The authority citation for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; Sec. 831.102 also issued under 5 U.S.C. 8334; Sec. 831.106 also issued under 5 U.S.C. 552a; Sec. 831.108 also issued under 5 U.S.C. 8336(d)(2); Sec. 831.114 also issued under 5 U.S.C. 8336(d)(2), and Sec. 1313(b)(5) of Public Law 107–296, 116 Stat. 2135; Sec. 831.201(b)(1) also issued under 5 U.S.C. 8347(g); Sec. 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); Sec. 831.201(g) also issued under Secs. 11202(f), 11232(e), and 11246(b) of Public Law 105–33, 111 Stat. 251; Sec. 831.201(g) also issued under Secs. 7(b) and (e) of Public Law 105–274, 112 Stat. 2419; Sec. 831.201(i) also issued under Secs. 3 and 7(c) of Public Law 105–274, 112 Stat. 2419; Sec. 831.204 also issued under Sec. 102(e) of Public Law 104–8, 109 Stat. 102, as amended by Sec. 153 of Public Law 104–134, 110 Stat. 1321; Sec. 831.205 also issued under Sec. 2207 of Public Law 106–265, 114 Stat. 784; Sec. 831.206 also issued under Sec. 1622(b) of Public Law 104–106, 110 Stat. 515; Sec. 831.301 also issued under Sec. 2203 of Public Law 106–265, 114 Stat. 780; Sec. 831.303 also issued under 5 U.S.C. 8334(d)(2) and Sec. 2203 of Public Law 106–235, 114 Stat. 780; Sec. 831.502 also issued under 5 U.S.C. 8337; Sec. 831.502 also issued under Sec. 1(3), E.O. 11228, 3 CFR 1965–1965 Comp. p. 317; Sec. 831.663 also issued under Secs. 8339(j) and (k)(2); Secs. 831.663 and 831.664 also issued under Sec. 11004(c)(2) of Public Law 103–66, 107 Stat. 412; Sec. 831.682 also issued under Sec. 201(d) of Public Law 99–251, 100 Stat. 23; Sec. 831.912 also issued under Sec. 636 of Appendix C to Public Law 106–554, 114 Stat. 2763A–164; Subpart V also issued under 5 U.S.C. 8343a and Sec. 6001 of Public Law 100–203, 101 Stat. 1330–275; Sec. 831.2203 also issued under Sec. 7001(a)(4) of Public Law 101–508, 104 Stat. 1388–328.

Subpart B—Coverage

■ 2. Add § 831.206 to subpart B to read as follows:

§ 831.206 Continuation of coverage for former Federal employees of the Civilian Marksmanship Program.

(a) A Federal employee who—

(1) Was covered under CSRS;

(2) Was employed by the Department of Defense to support the Civilian Marksmanship Program as of the day before the date of the transfer of the Program to the Corporation for the Promotion of Rifle Practice and Firearms Safety; and

(3) Was offered and accepted employment by the Corporation as part of the transition described in section 1612(d) of Public Law 104–106, 110 Stat. 517—remains covered by CSRS during continuous employment with the Corporation unless the individual files an election under paragraph (c) of this section. Such a covered individual is treated as if he or she were a Federal employee for purposes of this part, and of any other part within this title relating to CSRS. The individual is entitled to the benefits of, and is subject to all conditions under, CSRS on the same basis as if the individual were an employee of the Federal Government.

(b) Cessation of employment with the Corporation for any period terminates eligibility for coverage under CSRS during any subsequent employment by the Corporation.

(c) An individual described by paragraph (a) of this section may at any time file an election to terminate continued coverage under the Federal benefits described in § 1622(a) of Public Law 104–106, 110 Stat. 521. Such an election must be in writing and filed with the Corporation. It takes effect immediately when received by the Corporation. The election applies to all Federal benefits described by § 1622(a) of Public Law 104–106, 110 Stat. 521, and is irrevocable. Upon receipt of an election, the Corporation must transmit the election to OPM with the individual's retirement records.

(d) The Corporation must withhold from the pay of an individual described by paragraph (a) of this section an amount equal to the percentage withheld from the pay of a Federal employee for periods of service covered by CSRS and, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund the amounts deducted from the individual's pay.

(e) The Corporation must, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund amounts equal to any agency contributions required under CSRS.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

■ 3. The authority citation for part 842 is revised to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under Secs. 3 and 7(c) of Public Law 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under Sec. 102(e) of Public Law 104–8, 109 Stat. 102, as amended by Sec. 153 of Public Law 104–134, 110 Stat. 1321–102; Sec. 842.107 also issued under Secs. 11202(f), 11232(e), and 11246(b) of Public Law 105–33, 111 Stat. 251, and Sec. 7(b) of Public Law 105–274, 112 Stat. 2419; Sec. 842.108 also issued under Sec. 7(e) of Public Law 105–274, 112 Stat. 2419; Sec. 842.109 also issued under Sec. 1622(b) of Public Law 104–106, 110 Stat. 515; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and Sec.1313(b)(5) of Public Law 107–296, 116 Stat. 2135; Secs. 842.304 and 842.305 also issued under Sec. 321(f) of Public Law 107–228, 116 Stat. 1383, Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under Sec. 7001(a)(4) of Public Law 101–508, 104 Stat. 1388; Sec. 842.707 also issued under Sec. 6001 of Public Law 100–203, 101 Stat. 1300; Sec. 842.708 also issued under Sec. 4005 of Public Law 101–239, 103 Stat. 2106 and Sec. 7001 of Public Law 101–508, 104 Stat. 1388; Subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under Sec. 636 of Appendix C to Public Law 106–554 at 114 Stat. 2763A–164; Sec. 842.811 also issued under Sec. 226(c)(2) of Public Law 108–176, 117 Stat. 2529.

Subpart A—Coverage

■ 4. Add § 842.109 to read as follows:

§ 842.109 Continuation of coverage for former Federal employees of the Civilian Marksmanship Program.

(a) A Federal employee who was covered under FERS;

(1) Was employed by the Department of Defense to support the Civilian Marksmanship Program as of the day before the date of the transfer of the Program to the Corporation for the Promotion of Rifle Practice and Firearms Safety; and

(2) Was offered and accepted employment by the Corporation as part of the transition described in section 1612(d) of Public Law 104–106, 110 Stat. 517—remains covered by FERS during continuous employment with the Corporation unless the individual files an election under paragraph (c) of this section. Such a covered individual is treated as if he or she were a Federal employee for purposes of this part, and of any other part within this title relating to FERS. The individual is entitled to the benefits of, and is subject to all conditions under, FERS on the same basis as if the individual were an employee of the Federal Government.

(b) Cessation of employment with the Corporation for any period terminates eligibility for coverage under FERS during any subsequent employment by the Corporation.

(c) An individual described by paragraph (a) of this section may at any time file an election to terminate continued coverage under the Federal benefits described in § 1622(a) of Public Law 104–106, 110 Stat. 521. Such an election must be in writing and filed with the Corporation. It takes effect immediately when received by the Corporation. The election applies to any and all Federal benefits described by section 1622(a) of Public Law 104–106, 110 Stat. 521, and is irrevocable. The Corporation must transmit the election to OPM with the individual's retirement records.

(d) The Corporation must withhold from the pay of an individual described by paragraph (a) of this section an amount equal to the percentage withheld from the pay of a Federal employee for periods of service covered by FERS and, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund the amounts deducted from the individual's pay.

(e) The Corporation must, in accordance with procedures established by OPM, pay into the Civil Service Retirement and Disability Fund amounts equal to any agency contributions required under FERS.

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

■ 5. The authority citation for part 870 is revised to read as follows:

Authority: 5 U.S.C. 8716; Subpart J also issued under Sec. 599C, Public Law 101–513, 104 Stat. 2064, as amended; Sec. 870.302(a)(3)(ii) also issued under Sec.153, Public Law 104–134, 110 Stat. 1321; Sec. 870.302(a)(3) also issued under Secs. 11202(f), 11232(e), and 11246(b) and (c) of Public Law 105–33, 111 Stat. 251 and Sec. 7(e), Public Law 105–274, 112 Stat. 2419; Sec. 870.510 also issued under Sec. 1622(b) of Public Law 104–106, 110 Stat. 515.

Subpart E—Coverage

■ 6. Add § 870.510 to read as follows:

§ 870.510 Continuation of eligibility for former Federal employees of the Civilian Marksmanship Program.

(a) A Federal employee who was employed by the Department of Defense

to support the Civilian Marksmanship Program as of the day before the date of the transfer of the Program to the Corporation for the Promotion of Rifle Practice and Firearms Safety, and was offered and accepted employment by the Corporation as part of the transition described in section 1612(d) of Public Law 104–106, 110 Stat. 517, is deemed to be an employee for purposes of this part during continuous employment with the Corporation unless the individual files an election under § 831.206(c) or § 842.109(c) of this title. Such a covered individual is treated as if he or she were a Federal employee for purposes of this part, and of any other part within this title relating to FEGLI. The individual is entitled to the benefits of, and is subject to all conditions under, FEGLI on the same basis as if the individual were an employee of the Federal Government.

(b) Cessation of employment with the Corporation for any period terminates eligibility for coverage under FEGLI as an employee during any subsequent employment by the Corporation.

(c) The Corporation must withhold from the pay of an individual described by paragraph (a) of this section an amount equal to the premiums withheld from the pay of a Federal employee for FEGLI coverage and, in accordance with procedures established by OPM, pay into the Employees' Life Insurance Fund the amounts deducted from the individual's pay.

(d) The Corporation must, in accordance with procedures established by OPM, pay into the Employees' Life Insurance Fund amounts equal to any agency contributions required under FEGLI.

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

■ 7. The authority citation for part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913; Sec. 890.303 also issued under Sec. 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; Subpart L also issued under Sec. 599C of Public Law 101–513, 104 Stat. 2064, as amended; Sec. 890.102 also issued under Secs. 11202(f), 11232(e), 11246(b) and (c) of Public Law 105–33, 111 Stat. 251; Sec. 721 of Public Law 105–261, 112 Stat. 2061 unless otherwise noted; Sec. 890.111 also issued under Sec. 1622(b) of Public Law 104–106, 110 Stat. 515.

Subpart A—Administration and General Provisions

■ 8. Add § 890.111 to read as follows:

§ 890.111 Continuation of eligibility for former Federal employees of the Civilian Marksmanship Program.

(a) A Federal employee who was employed by the Department of Defense to support the Civilian Marksmanship Program as of the day before the date of the transfer of the Program to the Corporation for the Promotion of Rifle Practice and Firearms Safety, and was offered and accepted employment by the Corporation as part of the transition described in section 1612(d) of Public Law 104–106, 110 Stat. 517, is deemed to be an employee for purposes of this part during continuous employment with the Corporation unless the individual files an election under § 831.206(c) or § 842.109(c) of this title. Such a covered individual is treated as if he or she were a Federal employee for purposes of this part, and of any other part within this title relating to the FEHB Program. The individual is entitled to the benefits of, and is subject to all conditions under, the FEHB Program on the same basis as if the individual were an employee of the Federal Government.

(b) Cessation of employment with the Corporation for any period terminates eligibility for coverage under the FEHB Program as an employee during any subsequent employment by the Corporation.

(c) The Corporation must withhold from the pay of an individual described by paragraph (a) of this section an amount equal to the premiums withheld from the pay of a Federal employee for FEHB coverage and, in accordance with procedures established by OPM, pay into the Employees Health Benefits Fund the amounts deducted from the individual's pay.

(d) The Corporation must, in accordance with procedures established by OPM, pay into the Employees Health Benefits Fund amounts equal to any agency contributions required under the FEHB Program.

[FR Doc. E9–29878 Filed 12–15–09; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

Sugar Program Definitions

CFR Correction

In Title 7 of the Code of Federal Regulations, Parts 1200 to 1599, revised as of January 1, 2009, on page 617, in § 1435.2, following the definition of ''ability to market'', reinstate the definition of ''allocation'' to read as follows:

§ 1435.2 Definitions.

* * * * *

Allocation means the division of the beet sugar allotment among the sugar beet processors in the United States and the division of each State's cane sugar allotment among the State's sugarcane processors.

* * * * *

[FR Doc. E9–30019 Filed 12–15–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 151

Recognition of Breeds and Books of Record of Purebred Animals

CFR Correction

In Title 9 of the Code of Federal Regulations, Parts 1 to 199, revised as of January 1, 2009, on page 961, in § 151.1, remove the paragraph designation from the definition of ''The Act'' and place the definition in alphabetical order; and on page 970, remove the sectional authority citation at the end of § 151.9.

[FR Doc. E9–30036 Filed 12–15–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE304; Special Conditions No. 23–244–SC]

Special Conditions: Embraer (Empresa Brasileira de Aeronautica S.A.), Model EMB–505; Automatic Inhibition of Ice Protection System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Embraer model EMB–505 airplane. This airplane will have a novel or unusual design feature(s) associated with operation of the airframe ice protection system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator

considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 8, 2009. We must receive your comments by January 15, 2010.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Regional Counsel, ACE–7, Attn: Rules Docket No. CE304, 901 Locust, Kansas City, MO 64106. You may deliver two copies to the Regional Counsel at the above address. You must mark your comments: Docket No. CE304. You may inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Paul Pellicano, Standards Staff, ACE–111, Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, 901 Locust, Kansas City, MO 64106; telephone (404) 474–5558; facsimile (816) 329–4090.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, although the substance of these special conditions has not been subject to the public comment process in prior instances, the FAA anticipates no adverse comments will be received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want us to let you know we received your comments on these special conditions, send us a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On October 9, 2006, Embraer applied for a type certificate for their new model EMB–505. The EMB–505, is a 9 seat, pressurized, retractable-gear, twin turbofan-powered aircraft. It will be certified in the commuter category with a takeoff gross weight of 17,968 pounds. The Embraer model 505 will be certified for flight in icing conditions and uses engine bleed air to provide ice protection for the wings and empennage. It will have an altitude capability of 45,000 feet.

The ice protection system is designed to inhibit operation at altitudes above 30,000 feet or at high ambient temperatures (for example, above +8 °C at altitudes up to 12,000 feet), even if there are ice accretions on the airframe. If the pilot selects the airframe ice protection on in these conditions, the airframe ice protection system operation will be inhibited and an annunciation will be provided to the pilot. The proposed procedure is to exit icing conditions. There is no means for the pilot to override the system and select the airframe ''anti-ice on'' in these conditions. Icing conditions can exist at altitudes where the model 505 wing and empennage ice protection system is inhibited. It must be shown that the Embraer model 505 airplane can operate safely in icing conditions at altitudes above 30,000 feet, or approval for flight in icing must be restricted to operations below that altitude. Since the certification icing standards defined in Appendix C of part 25 do not define icing conditions above 30,000 feet, icing conditions standards above 30,000 feet and the standards to show safe operation must be defined.

Although the intent of § 23.1419 is for the airplane to safely operate in icing conditions, the regulation only requires that ''* * * the airplane must be able to safely operate in the continuous maximum and intermittent maximum icing conditions of part 25, Appendix C.'' 14 CFR part 25, Appendix C lists atmospheric icing conditions for a maximum of 30,000 feet. However, icing conditions can exist above this altitude. For example, FAA technical report ADS–4, figure 1–21 includes three reported icing encounters above 30,000 feet. These examples include a severe icing encounter at 37,000 feet and a light icing encounter at 39,000 feet. These data were solicited from operators because the data that forms the basis of part 25, Appendix C were obtained with aircraft with an operational ceiling of 22,000 feet. FAA technical report ADS–4 concludes that icing above 30,000 is infrequent and not likely to be severe, and airplanes with ice protection systems designed to part 25, Appendix C ''will probably have no difficulties when icing is encountered at high altitudes.'' However, this assumes the ice protection system is available.

The system inhibit at high outside air temperature is not an issue since ice accretion is not expected at these temperatures. Section 23.1309 is adequate to assure adequate system reliability, in other words, the system will not be inhibited in conditions in which it is required.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Embraer must show that the model EMB–505 meets the applicable provisions of part 23, as amended by Amendments 23–1 through 23–55 thereto, and the special conditions adopted by this rulemaking action.

In addition, the certification basis includes certain ''exemptions, equivalent level of safety findings, and special conditions that are not relevant to the special conditions adopted by this rulemaking action.''

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the model EMB–505 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the model EMB–505 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36 and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in § 11.19, under § 11.38 and they become part of the type certification basis under § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

The model EMB–505 will incorporate the following novel or unusual design features: Due to the potential to overtemp the engines, the ice protection system is designed to inhibit operation at altitudes above 30,000 feet or at high ambient temperatures (for example, above +8 °C at altitudes up to 12,000 feet with both bleed systems operating), even if there are ice accretions on the airframe. If the pilot selects the WINGSTAB switch ON in these conditions, the airframe anti-ice valves will remain closed. The pilot will receive a caution CAS message ''A–I WINGSTB OFF'' making the pilot aware that the wing and horizontal stabilizer anti-ice system (WHSAIS) is not operational. The proposed procedure is to exit icing conditions. There is no means for the pilot to override the system and select the airframe ''anti-ice on'' in these conditions. Icing conditions can exist at altitudes where the model 505 wing and empennage ice protection system is inhibited. It must be shown that the Embraer model 505 airplane can operate safely in icing conditions at altitudes above 30,000 feet, or approval for flight in icing must be restricted to operations below that altitude. Special conditions are required to define the icing conditions above 30,000 feet and the standards to show safe operation above 30,000 feet after encountering icing conditions.

Discussion

The special conditions define the ice accretions that Embraer must consider. These ice accretions include a climb through continuous maximum conditions, plus an encounter above 30,000 feet with the ice protection system off through a continuous maximum cloud or intermittent maximum cloud. Safe operation must be shown with the critical encounter. The encounters are through standard cloud lengths defined in Appendix C at the critical altitude determined by Embraer. The liquid water content is defined at the coldest temperature defined for continuous maximum and intermittent maximum, respectively, in part 25, Appendix C. Although not defined in the special conditions, as is accomplished for icing certification, it is expected the median drop size will be chosen to provide the highest water catch on the wing leading edge.

The special conditions provide two options—prohibit flight in icing conditions above 30,000 feet, or have no restriction above 30,000 feet.

The first option allows Embraer to prohibit flight in icing above 30,000 feet. For this option, icing cues must be substantiated or an ice detector installed. The special condition requires an AFM limitation prohibiting flight in icing above 30,000 feet; however, a cockpit placard is also expected. Typically, there are no Subpart B requirements for airplanes with ice accretion if they are prohibited from flight in icing conditions. However, since the model EMB–505 is approved for flight in icing conditions for most of its operational envelope, it is necessary to have adequate stall warning if icing is inadvertently encountered above 30,000 feet. The requirement on stall warning must be the same as the requirement for pre-activation ice, as a minimum. The means of stall warning must be the same as for non-icing, and the margin must be adequate. This is shown by showing stalling or large roll excursion can be avoided if the pilot delays recovery one second after stall warning in a one-knot-per-second deceleration, wings level and turning flight. The recovery procedure assumes the pilot will attempt to minimize altitude loss.

The second option allows unrestricted flight in icing conditions above 30,000 feet. The requirements are the same as for flight in icing below 30,000 feet. The airplane must comply with Subpart B requirements with the defined ice accretions.

The special conditions prohibit automatic inhibition of engine ice protection and also address the issue of ice shedding into the engines. After accreting ice above inhibit altitudes, airframe ice protection will be activated once the airplane descends below the inhibit altitude. Past experience has shown all the accreted ice tends to shed at once for thermal ice protections systems. The special conditions for the engines are necessary since loss of thrust from both engines is classified as a hazard for the EMB–505 class of airplane.

Applicability

As discussed above, these special conditions are applicable to the model EMB–505. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Embraer EMB–505 is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16; and 14 CFR 11.38 and 11.19.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Embraer EMB–505 airplanes.

1. SC 23.1419:

Instead of compliance with § 23.1419, the Embraer EMB–505 must comply with the current version of § 23.1419 and the following additional paragraphs:

* * * * *

(e) If the wing or empennage anti-ice or de-icing systems are controlled in a manner that inhibit the system operation above certain altitudes automatically, with no means for the flight crew to override, the following applies:

(1) Flight in icing conditions will be restricted to altitudes below those where the system cannot be manually activated.

(i) Substantiated icing cues or an icing detector must be installed to allow exiting inadvertent icing encounters above the altitude where the system is automatically inhibited.

(ii) There must be a limitation in the Airplane Flight Manual stating that the airplane is not certificated for flight in icing at altitudes above the altitude in which system operation is automatically inhibited.

(iii) The stall warning must be provided by the same means as in non-icing conditions and must be shown to provide adequate margin to stall with the ice accretions defined in paragraphs (e)(2)(ii) and (e)(2)(iii).

As an alternate to complying with paragraph (e)(1), the provisions of paragraph (e)(2) apply:

(2) For certification without restrictions in icing conditions above

the system automatic shut off altitude, the airplane controllability, maneuverability, stability, stall characteristics and stall warning must not be less than required in part 23, Subpart B, with stall warning provided by the same means as in non-icing conditions, with the following ice accretions:

(i) The ice shape(s) that would be on the airplane after a climb through the critical icing conditions of 14 CFR part 25, Appendix C, Figure 1.

(ii) The critical ice shape(s) from paragraph (i) above, plus an exposure to one 17.4 nautical mile continuous maximum cloud at altitudes between the automatic shut off altitude feet and the maximum operating altitude with the ice protection system off. The ice shape(s) must be based on the liquid water content for the coldest temperature shown in 14 CFR part 25, Appendix C, Figure 1.

(iii) The critical ice shape(s) from paragraph (i) above plus an exposure to one 2.6 nautical mile intermittent maximum cloud at altitudes between 30,000 feet and the maximum operating altitude with the ice protection system off. The substantiation will assume the liquid water content for the coldest temperature shown in 14 CFR part 25, Appendix C, Figure 4.

The AFM must contain appropriate procedures for activating the airframe ice protection system at altitudes where the system can be activated, and for exiting icing conditions at altitudes where the system is inhibited.

(f) The engine anti-icing system must not be subject to the automatic shut off feature but must be operable at any altitude.

(g) It must be shown that engine operation is not affected by ice shedding from the inboard wing, with the ice accretions defined in paragraph (e)(2), after the airplane has descended below the inhibit altitude.

Issued in Kansas City, MO, on December 8, 2009.

Margaret Kline,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–29847 Filed 12–15–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0197; Airspace Docket No. 09–AAL–4]

Establishment of Class E Airspace; Clarks Point, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Clarks Point, AK, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Clarks Point Airport. The FAA is taking this action to enhance safety and management of Instrument Flight Rules (IFR) operations at Clarks Point Airport.

DATES: Effective 0901 UTC, February 11, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

History

On Wednesday, October 7, 2009, the FAA published a notice of proposed rulemaking in the **Federal Register** to establish Class E airspace at Clarks Point, AK (74 FR 51524).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed.

The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Clarks Point Airport, AK, to accommodate new RNAV SIAPs at Clarks Point Airport. This Class E airspace will provide adequate controlled airspace upward from 700 and 1,200 feet above the surface, for the safety and management of IFR operations at Clarks Point Airport.

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. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Clarks Point Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, 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; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR 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 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Clarks Point, AK [New]

Clarks Point Airport, AK
(Lat. 58°50′01″ N., long. 158°31′46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Clarks Point Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Clarks Point Airport, AK.

* * * * *

Issued in Anchorage, AK, on December 3, 2009.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. E9–29848 Filed 12–15–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0200; Airspace Docket No. 09–AAL–5]

Establishment of Class E Airspace; Elim, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Elim, AK, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Elim Airport. The FAA is taking this action to enhance safety and management of Instrument Flight Rules (IFR) operations at Elim Airport.

DATES: Effective 0901 UTC, February 11, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

History

On Thursday, August 27, 2009, the FAA published a notice of proposed rulemaking in the **Federal Register** to establish Class E airspace at Elim, AK (74 FR 43647).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed.

The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Elim Airport, AK, to accommodate new RNAV SIAPs at Elim Airport. This Class E airspace will provide adequate controlled airspace upward from 700 and 1,200 feet above the surface, for safety and management of IFR operations at Elim Airport.

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. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 1, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Elim Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, 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; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR 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 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Elim, AK [New]

Elim Airport, AK
(Lat. 64°36′54″ N., Long. 162°16′14″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile

radius of the Elim Airport, AK, and within 3.7 miles either side of the 015° bearing from the Elim Airport, AK, extending from the 6.8-mile radius, to 12.6 miles north of the Elim, Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 74-mile radius of the Elim Airport, AK.

* * * * *

Issued in Anchorage, AK, on December 3, 2009.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. E9–29849 Filed 12–15–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0694; Airspace Docket No. 09–AAL–15]

Revision of Class E Airspace; Manokotak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Manokotak, AK, to accommodate amended Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Manokotak Airport. The FAA is taking this action to enhance safety and management of Instrument Flight Rule (IFR) operations at Manokotak Airport.

DATES: Effective 0901 UTC, February 11, 2010. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

History

On Tuesday, September 1, 2009, the FAA published a notice of proposed rulemaking in the **Federal Register** to revise Class E airspace at Manokotak, AK (74 FR 45142).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. The rule is adopted as proposed.

The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Manokotak Airport, AK, to accommodate amended RNAV SIAPs at Manokotak Airport. This Class E airspace will provide adequate controlled airspace upward from 700 and 1,200 feet above the surface, for the safety and management of IFR operations at Manokotak Airport.

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. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Manokotak Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, 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; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR 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 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace Extending Upward From 700 feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Manokotak, AK [Revised]

Manokotak Airport, AK

(Lat. 58°55′55″ N., long. 158°54′07″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Manokotak Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 74-mile radius of the Manokotak Airport, AK.

* * * * *

Issued in Anchorage, AK, on December 3, 2009.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. E9–29851 Filed 12–15–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

[Docket No. FDA–2009–N–0665]

New Animal Drugs; Change of Sponsor; Ketamine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an abbreviated new animal drug application (ANADA) for ketamine hydrochloride injectable solution from Bioniche Animal Health USA, Inc., to Bioniche Teoranta.

DATES: This rule is effective December 16, 2009.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8307, e-mail: *david.newkirk@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Bioniche Animal Health USA, Inc., 119 Rowe Rd., Athens, GA 30601, has informed FDA that it has transferred ownership of, and all rights and interest in, ANADA 200–257 for Ketamine HCl (ketamine hydrochloride injection, USP) to Bioniche Teoranta, Inverin, County Galway, Ireland. Accordingly, the agency is amending the regulations in 21 CFR 522.1222a to reflect the transfer of ownership.

In addition, Bioniche Teoranta is not currently listed in the animal drug regulations as a sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to add entries for this sponsor.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1) alphabetically add a new entry for ''Bioniche Teoranta''; and in the table in paragraph (c)(2) numerically add a new entry for ''063286'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* *
Bioniche Teoranta, Inverin, County Galway, Ireland	063286
* * *	* *

(2) * * *

Drug labeler code	Firm name and address
* *	* * *
063286	Bioniche Teoranta, Inverin, County Galway, Ireland
* *	* * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1222a [Amended]

■ 4. In paragraph (b) of § 522.1222a, remove ''064847'' and add in its place ''063286''.

Dated: December 10, 2009.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E9–29888 Filed 12–15–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. FDA–2009–N–0665]

Implantation or Injectable Dosage Form New Animal Drugs; Florfenicol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Intervet, Inc. The supplemental NADA adds *Mycoplasma bovis* to the bovine respiratory disease pathogens for which florfenicol injectable solution is approved as a treatment.

DATES: This rule is effective December 16, 2009.

FOR FURTHER INFORMATION CONTACT: Cindy L. Burnsteel, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8341, e-mail: *cindy.burnsteel@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Intervet, Inc., 56 Livingston Ave., Roseland, NJ 07068, filed a supplement to NADA 141–265 that provides for use of NUFLOR GOLD (florfenicol) Injectable Solution for treatment of bovine respiratory disease in beef and non-lactating dairy cattle. The supplement adds *Mycoplasma bovis* to the list of pathogens for which use of this product is approved. The supplemental NADA is approved as of September 4, 2009, and the regulations are amended in 21 CFR 522.955 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning on the date of approval.

The agency has determined under 21 CFR 25.33 that this action is of a type

that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 522.955, revise paragraph (d)(1)(i)(B) and in paragraph (d)(1)(i)(C), in the first sentence, remove ''last'' to read as follows:

§ 522.955 Florfenicol.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(B) *Indications for use.* For treatment of bovine respiratory disease (BRD) associated with *Mannheimia haemolytica*, *Pasteurella multocida*, *Histophilus somni*, and *Mycoplasma bovis* in beef and non-lactating dairy cattle.

* * * * *

Dated: December 10, 2009.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E9–29875 Filed 12–15–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 260

Outer Continental Shelf Oil and Gas Leasing

CFR Correction

In Title 30 of the Code of Federal Regulations, Parts 200 to 699, revised as of July 1, 2009, on page 549, in § 260.122, reinstate paragraphs (b)(2) and (b)(3) to read as follows:

§ 260.122 How long will a royalty suspension volume be effective for a lease issued in a sale held after November 2000?

* * * * *

(b) * * *

(2) You must pay any royalty due under this paragraph, plus late payment interest under § 218.54 of this title, no later than 90 days after the end of the period for which royalty is owed.

(3) Any production on which you must pay royalty under this paragraph will count toward the production volume determined under §§ 260.120 through 260.124.

* * * * *

[FR Doc. E9–30016 Filed 12–15–09; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0802; FRL–8798–5]

2,6-Diisopropylnaphthalene (2,6-DIPN); Time-Limited Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of 2,6-diisopropylnaphthalene (2,6-DIPN), including its metabolites and degradates, resulting from post-harvest applications to potatoes, in or on various commodities. Loveland Products, Incorporated requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). The tolerances will expire on May 18, 2012.

DATES: This regulation is effective December 16, 2009. Objections and requests for hearings must be received on or before February 16, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0802. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document?

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0802 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 16, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2009–0802, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of October 21, 2009 (74 FR 54043) (FRL–8795–7), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F7626) by Loveland Products, Inc., 7251 W. 4th Street, Greeley, CO 80634. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of the biochemical pesticide 2,6-DIPN in or on the following food commodities: Cattle, fat at 0.8 ppm; cattle, liver at 0.3 ppm; cattle, meat at 0.1 ppm; cattle, meat byproducts at 0.1 ppm; goat, fat at 0.8 ppm; goat, liver at 0.3 ppm; goat, meat at 0.1 ppm; goat, meat byproducts at 0.1 ppm; hog, fat at 0.8 ppm; hog, liver at 0.3 ppm; hog, meat at 0.1 ppm; hog, meat byproducts at 0.1 ppm; horse, fat at 0.8 ppm; horse, liver at 0.3 ppm; horse, meat at 0.1 ppm; horse, meat byproducts at 0.1 ppm; milk at 0.1 ppm; potato at 2.0 ppm; potato, wet peel at 6.0 ppm; sheep, fat at 0.8 ppm; sheep, liver at 0.3 ppm; sheep, meat at 0.1 ppm; and sheep, meat byproducts at 0.1 ppm. The proposed tolerance levels were based on results of studies on the magnitude of 2,6-DIPN in potatoes and processed potatoes and in livestock edible commodities.

The Agency failed to include a summary of the petition prepared by Loveland Products, Incorporated, the petitioner, in the docket; therefore, the Agency placed the summary of the petition in the docket and reopened the comment period (74 FR 57467; November 6, 2009) (FRL–8798–4).

One comment was received in response to the October 21, 2009 notice. In general, a private citizen expressed opposition to the establishment of the numeric tolerances sought by the petitioner.

Comment: The commenter objected to the manufacture, sale, and use of pesticide products containing 2,6-DIPN in the United States (U.S.) and asserted that EPA does not possess sufficient data to ascertain whether 2,6-DIPN products are truly harmful to human health. Furthermore, the commenter articulated the following opinions: ''It is also clear that our waters are being deluged with toxic chemicals courtesy of this Agency approving 100% of all toxic chemicals that come before it. This Agency is harmfully impacting the people of the United States and this Agency needs to have fired many of its employees. Bush put lobbyists in charge of it and those guys just sank down to their knees for toxic chemical polluters. The situation is bad and desperately needs correction.''

EPA Response: The toxicity of 2,6-DIPN has been examined thoroughly by the Agency, and the data show that when 2,6-DIPN is used in accordance with EPA-approved labeling and good agricultural practices, there is a reasonable certainty of no harm to human health. Given the available data, the Agency has established numeric tolerances for 2,6-DIPN that are safe.

Based upon review of the data supporting the petition, EPA has increased the petitioned-for tolerance levels for all of the livestock commodities and added two new tolerances for ''milk, fat'' and ''potatoes, granules/flakes.'' EPA also revised commodity terms, as necessary, to agree with the Agency's Food and Feed Commodity Vocabulary. The Agency is also issuing time-limited tolerances at this time instead of permanent tolerances. The reasons for these changes are explained in Unit IV.E.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for time-limited tolerances for residues of 2,6-DIPN, including its metabolites and degradates, in or on cattle, fat at 1.0 ppm; cattle, liver at 0.5 ppm; cattle, meat at 0.2 ppm; cattle, meat byproducts (except liver) at 0.4 ppm; goat, fat at 1.0 ppm; goat, liver at 0.5 ppm; goat, meat at 0.2 ppm; goat, meat byproducts (except liver) at 0.4 ppm; hog, fat at 1.0 ppm; hog, liver at 0.5 ppm; hog, meat at 0.2 ppm; hog, meat byproducts (except liver) at 0.4

ppm; horse, fat at 1.0 ppm; horse, liver at 0.5 ppm; horse, meat at 0.2 ppm; horse, meat byproducts (except liver) at 0.4 ppm; milk at 0.2 ppm; milk, fat at 0.5 ppm; potato at 2.0 ppm; potato, wet peel at 6.0 ppm; potato, granules/flakes at 5.5 ppm; sheep, fat at 1.0 ppm; sheep, liver at 0.5 ppm; sheep, meat at 0.2 ppm; and sheep, meat byproducts (except liver) at 0.4 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the time-limited tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by 2,6-DIPN are discussed in this unit.

Time-limited tolerances for 2,6-DIPN expired on August 1, 2009 (40 CFR 180.590). To evaluate the tolerances requested in the subject petition, EPA reviewed data unavailable for the previous, time-limited tolerances. In support of this rule, EPA is providing a discussion of the toxicity of 2,6-DIPN in light of the newly submitted data. Evaluation of these data indicates that the toxicity profile of 2,6-DIPN has not been affected. Based on this finding, the Agency can make a determination of reasonable certainty of no harm to human health when residues of 2,6-DIPN, including its metabolites and degradates, within the tolerance levels established by this final rule are consumed from the aforementioned commodities.

2,6-DIPN is classified as a biochemical-like active ingredient, primarily based upon its structural and functional similarities to the following naturally occurring plant growth regulators: 1-Isopropyl-4,6-dimethylnaphthalene; 1-methyl-7-isopropylnaphthalene; and 4-isopropyl-1,6-dimethylnaphthalene. 2,6-DIPN behaves as a sprout inhibitor; therefore, the Agency considers this mode of action to be non-toxic. With regard to the toxicity of 2,6-DIPN to humans (including infants and children), as a result of consumption of potatoes treated with this active ingredient after harvest, the Agency has, since 2,6-DIPN's initial registration in 2003, continued to evaluate this active ingredient for its toxicity and safety to the general population. EPA's discussion and analysis of the toxicological profile of 2,6-DIPN can be found in the **Federal Register** of September 1, 2006 (71 FR 52003) (FRL–8081–9), and August 8, 2003 (68 FR 47246) (FRL–7321–6).

In support of these current time-limited tolerances, EPA did not assess any new toxicity data on 2,6-DIPN. EPA has previously conducted comprehensive evaluations of the potential human health and dietary toxicity of 2,6-DIPN. As mentioned above (see Unit III.A.2.), EPA reviewed newly submitted nature of residue data conducted on plants and livestock (For a detailed discussion of these data, see Unit IV.A.). These data are required by the Agency to demonstrate the fate and distribution of the active ingredient and its metabolites in plants and livestock. These data enable the Agency to better understand if any metabolites of the active ingredient contribute to the toxicity of the active ingredient being evaluated and require an increase or decrease in proposed tolerance levels. Moreover, this information ultimately may or may not impact the Agency's risk assessment. In the case of the evaluation of these newly submitted data in support of these time-limited tolerances and a reevaluation of field trial data on file (Master Record Identification Number (MRID No.) 451632–02), the Agency has concluded that the toxicity profile of 2,6-DIPN has not changed, nor does the original risk assessment for this active ingredient change. In further support of this assertion, the Agency also considered potato processing data, which demonstrates that residues of 2,6-DIPN were found not to concentrate in baked potatoes, boiled potatoes, and french fries (MRID No. 448660–01). In consideration of all of the previously explained information, EPA concludes that residues of 2,6-DIPN, including its metabolites and degradates within the tolerance limits established by this final rule will present no harm to human health when used in accordance with EPA-approved labeling and good agricultural practices. Included in this document is a summary of the toxicity findings to date from both acute and chronic perspectives (see Unit III.B.).

Additionally, EPA concludes that the analytical methods submitted to enforce the time-limited tolerance levels established for 2,6-DIPN residues in potato and potato peels (MRID Nos. 464749–01 and 464749–02, respectively) are adequate for the purpose of establishing these tolerances for 2,6-DIPN. But, a revised analytical method for the analysis of 2,6-DIPN and its metabolites in livestock commodities remains inadequate. Data reviewed in support of these time-limited tolerances support validation of the analytical method for the parent compound in livestock commodities only, while an independent laboratory validation demonstrating the suitability of the analytical method for the metabolites and degradates in livestock commodities and a radiovalidation are still required. The need for these data will be set as conditions of registration.

B. Toxicological Endpoints

1. *Acute toxicity*. While EPA's discussion and analysis of acute toxicity of 2,6-DIPN can be found in the **Federal Register** of August 8, 2003 (68 FR 47246), in summary, 2,6-DIPN is classified as Toxicity Category IV for the oral route of exposure (lethal dose $(LD)_{50}$ >5,000 milligrams/kilogram (mg/kg)).

2. *Short- and intermediate-term toxicity*. While EPA's complete discussion and analysis of short- and intermediate-term toxicity of 2,6-DIPN can be found in the **Federal Register** of August 8, 2003 (68 FR 47246), a summary is provided here. The subchronic toxicity study submitted and reviewed suggests the endpoint selection (value/dose at which an effect was observed) is the 104 milligrams/kilogram/day (mg/kg/day) no observable adverse effects level (NOAEL) based on reduced body weight, weight gain, and food consumption. Although the developmental toxicity study indicated a lower NOAEL (50 mg/kg/day) for the same toxicity, the maternal lowest observable adverse effects level (LOAEL) of 150 mg/kg/day is between the subchronic NOAEL of 104–121 mg/kg/day and the LOAEL of 208–245 mg/kg/day. The NOAEL of 50 mg/kg/day may have been appropriate for use in characterization of risks for the subpopulation of women of childbearing age; however, the response at 50 mg/kg/day in the developmental study was minimal and the observations for toxic effects were more thoroughly documented in the subchronic study.

3. *Chronic toxicity*. EPA has established the Reference Dose (RfD) for 2,6-DIPN at 1 mg/kg/day. This RfD is based on results from the subchronic and developmental toxicity studies described in the **Federal Register** of September 1, 2006 (71 FR 52003) (FRL–8081–9). In support of these tolerances, the RfD remains unchanged.

4. *Carcinogenicity*. No new study results suggest that 2,6-DIPN is carcinogenic. See EPA's discussion and analysis in the **Federal Register** of August 8, 2003 (68 FR 47246).

C. Exposures and Risks

1. *From food and feed uses.* The Agency is establishing time-limited tolerances for the residues of 2,6-DIPN, including its metabolites and degradates, in or on cattle, fat at 1.0 ppm; cattle, liver at 0.5 ppm; cattle, meat at 0.2 ppm; cattle, meat byproducts (except liver) at 0.4 ppm; goat, fat at 1.0 ppm; goat, liver at 0.5 ppm; goat, meat at 0.2 ppm; goat, meat byproducts (except liver) at 0.4 ppm; hog, fat at 1.0 ppm; hog liver at 0.5 ppm; hog, meat at 0.2 ppm; hog, meat byproducts (except liver) at 0.4 ppm; horse, fat at 1.0 ppm; horse, liver at 0.5 ppm; horse, meat at 0.2 ppm; horse, meat byproducts (except liver) at 0.4 ppm; milk at 0.2 ppm; milk, fat at 0.5 ppm; potato at 2.0 ppm; potato, granules/flakes at 5.5 ppm; potato, wet peel at 6.0 ppm; sheep, fat at 1.0 ppm; sheep, liver at 0.5 ppm; sheep, meat at 0.2 ppm; and sheep, meat byproducts (except liver) at 0.4 ppm.

Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. In the case of 2,6-DIPN, the toxicity data base did not indicate an acute endpoint, but the 100 mg/kg/day NOAEL from the subchronic toxicity study (rounded from 104 mg/kg/day) was used to evaluate potential acute dietary exposure as a conservative basis for risk characterization. Also, if the 50 mg/kg/day NOAEL from the developmental toxicity study had been used to establish an acute RfD, this choice would have been inconsistent with the use of the 100 mg/kg/day NOAEL since it implies that exposure to repeated daily doses at 100 mg/kg/day is potentially less hazardous than a single dose at 50 mg/kg/day. Given the minimal nature of the responses in the subchronic and developmental toxicity studies, and the fact that the NOAEL from the developmental study is only appropriate to the subgroup of females 13–49 years of age, using the 100 mg/kg/day RfD for the acute and chronic dietary assessments is more appropriate for assessing risk for other subgroups and the general population. Therefore, a conservative interpretation of these endpoints indicated the need for an acute dietary exposure assessment. The 100 mg/kg/day endpoint was also interpreted as requiring a chronic dietary exposure assessment.

Acute and chronic dietary exposure assessments for 2,6-DIPN were conducted using the Dietary Exposure Evaluation Model software (DEEM™ version 1.30), which incorporates consumption data from the United States Department of Agriculture's Continuing Surveys of Food Intakes by Individuals (CSFII, 1994–1996/1998).

For acute exposure assessments, individual 1–day food consumption data define an exposure distribution, which is expressed as a percentage of the acute population adjusted dose (aPAD) (for 2,6-DIPN, aPAD = 0.1 mg/kg/day). For chronic exposure and risk assessment, an estimate of the residue level in each food or food-form (e.g., orange or orange juice) on the commodity residue list is multiplied by the average daily consumption estimate for the food or food-form. The resulting residue consumption estimate for each food or food-form is summed with the residue consumption estimate for all other food or food-forms on the commodity residue list to arrive at the total estimated exposure. Exposure estimates are expressed as mg/kg body weight/day and as a percent of the 2,6-DIPN chronic population adjusted dose (cPAD) (0.1 mg/kg/day). These procedures are performed for each population subgroup.

2. *From drinking water.* Because 2,6-DIPN treatment of stored (i.e., post-harvest) potato occurs inside (in warehouses, for example), no concern from exposure through water is expected regarding acute and chronic dietary risk assessment. For this reason, the dietary risk assessment did not include drinking water values.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). 2,6-DIPN is not registered for use on any sites that would result in residential exposure. Furthermore, because the registered use involves applications via a closed system, no exposure of consequence is expected to mixers or loaders.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to 2,6-DIPN and any other substances. In this case, 2,6-DIPN, as well as the three functionally and structurally similar substances, all act as plant regulators by a ''mode of action'' that is specific to plants, and therefore, their common mode of action is unlikely to be relevant to a mechanism of toxicity in animals or humans. The comparison of 2,6-DIPN with three naturally occurring, alkyl-substituted naphthalenes is made to demonstrate biological activity (plant regulation, in this case), which the Agency has characterized as a non-toxic mode of action with respect to pesticidal activity. For the purposes of this tolerance action, therefore, EPA has not assumed that 2,6-DIPN has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Aggregate Risks and Determination of Safety for U.S. Population and for Infants and Children

1. *Acute risk.* Acute dietary exposure estimates were based on the tolerances (i.e., the tolerance levels as established in this final rule supported by the residue trial results) and worst-case assumptions.

As reported in the **Federal Register** of August 8, 2003 (68 FR 47246), EPA established a RfD of 1 mg/kg/day, and an aPAD and cPAD of 0.1 mg/kg/day.

The Acute Dietary Exposure Analysis was based on the following tolerance levels for the residues of 2,6-DIPN, including its metabolites and degradates: in or on cattle, fat at 1.0 ppm; cattle, liver at 0.5 ppm; cattle, meat at 0.2 ppm; cattle, meat byproducts (except liver) at 0.4 ppm; goat, fat at 1.0 ppm; goat, liver at 0.5 ppm; goat, meat at 0.2 ppm; goat, meat byproducts (except liver) at 0.4 ppm; hog, fat at 1.0 ppm; hog, liver at 0.5 ppm; hog, meat at 0.2 ppm; hog, meat byproducts (except liver) at 0.4 ppm; horse, fat at 1.0 ppm; horse, liver at 0.5 ppm; horse, meat at 0.2 ppm; horse, meat byproducts (except liver) at 0.4 ppm; milk at 0.2 ppm; milk, fat at 0.5 ppm; potato at 2.0 ppm; potato, granules/flakes at 5.5 ppm; potato, wet peel at 6.0 ppm; sheep, fat at 1.0 ppm; sheep, liver at 0.5 ppm; sheep, meat at 0.2 ppm; and sheep, meat byproducts (except liver) at 0.4 ppm;

For the U.S. population, acute dietary exposure was estimated to be 0.011459 mg/kg/day. This value represented

11.46% of the aPAD. The subpopulation with the highest acute dietary exposure estimate was children 1–2 years old (0.029362 mg/kg/day, 29.36% of the aPAD). Therefore, the acute dietary exposures to all the subpopulations in the analysis did not exceed EPA's level of concern (i.e., they did not exceed 100% of the aPAD).

2. *Chronic risk*. The chronic dietary risk estimates do not exceed EPA's level of concern (i.e., they do not exceed 100% of the cPAD). For the U.S. population, chronic dietary exposure was estimated to be 0.003516 mg/kg/day. This value represented 3.5% of the cPAD. The subpopulation with the highest chronic dietary exposure estimate was children 1–2 years old (0.012173 mg/kg/day, 12.2% of the cPAD).

3. *Determination of safety*. Based on these risk assessments and in consideration of new residue data, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of 2,6-DIPN and its metabolites and degradates within the established tolerance limits resulting from post-harvest applications, undertaken in accordance with good agricultural practices and EPA-approved labeling, to potatoes. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. In arriving at this conclusion, the Agency has retained the tenfold margin of safety in order to adequately account for potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children, pursuant to FFDCA section 408(b)(2)(C).

IV. Other Considerations

A. Metabolism in Plants and Animals

The metabolism study for stored potatoes treated with [^{14}C-]-DIPN is ACCEPTABLE. The results indicate that significant amounts of [^{14}C-]-DIPN were lost during storage. Total Radioactive Residues (TRR) of 2,6-DIPN decreased from 94.1% to 26.3% in whole potatoes from day 0 to 178 days. The percentages of the TRR identified in the whole potato samples ranged from 70.2% to 95.3% (70.6% to 95.3% for potato peels).

The four metabolites detected, which reached or exceeded 10% of the TRR in potato peels and whole potatoes, were M29, M22, M19, and M18. The metabolic pathway of 2,6-DIPN in potatoes demonstrates that these four metabolites are adequately understood. M29, a monohydroxy derivative of 2,6-DIPN, appeared first as a significant residue. The other major metabolites (M22, M19, and M18) were formed by metabolism of M29, which indicated that M29 was formed continuously throughout the study. However, based on residue declined data, these metabolites (M29, M22, M19, and M18) will not be included in tolerance setting because they showed an insignificant amount at day 0.

The nature of the residue study in a lactating goat indicated that residues of 2,6-DIPN and its metabolites were distributed in muscle loin, muscle flank, fat renal, fat omental, fat subcutaneous, liver, kidney, blood, skim milk, and milk fat. The Agency has considered this information in evaluating the levels of 2,6-DIPN in livestock commodities and has incorporated residues of metabolites that exceed 10% of the TRR in its risk assessment.

The qualitative nature of the 2,6-DIPN residues in livestock commodities is adequately understood, based on a metabolism study. The four major metabolites (i.e., M14, M19, M27, and M29) were identified by high performance liquid chromatography/mass spectrometry (HPLC/MS) from samples of milk, muscles, fat, liver, and kidney.

B. Analytical Enforcement Methodology

Loveland Products, Incorporated has proposed a liquid chromatographic/ultraviolet (LC/UV) detection analytical method for enforcement of tolerances for residues of 2,6-DIPN in potatoes and potato peels. The method (entitled, ''Liquid Chromatographic Analysis for the Determination of 2,6-Diisopropylnaphthalene (DIPN) in Potatoes and ''Liquid Chromatographic Analysis for the Determination of 2,6-Diisopropylnaphthalene (DIPN) in Potato Peels'' (Platte Report Number CARDC–1298–DIPN)) was used for the determination of residues of 2,6-DIPN in potatoes and potato peels.

The method includes instructions and chromatograms for analysis of samples of potatoes and potato peels. Briefly, samples are extracted with acetonitrile. The extracts are partitioned with hexane. The acetonitrile part is discarded. The hexane part is roto-evaporated to dryness. The residues are reconstituted in hexane and purified using a Florisil column. The residues are roto-evaporated to dryness and reconstituted in acetonitrile. The samples are filtered through Acrodisc® LC polyvinylidene difluoride (PVDF) 0.45 micrometer (µm) filters and analyzed by high performance liquid chromatography (HPLC) with ultraviolet (UV) detection at 254 nanometers (nm) using a Zorbax ODS column.

The validated limit of quantitation (LOQ) is 0.01 ppm for 2,6-DIPN in potatoes and 0.02 ppm in potato peels. The reported limits of detection (LODs) were 0.001 ppm for 2,6-DIPN in potatoes and potato peels. The method does not include instructions for confirmatory analysis. Method validation data for the LC/UV method demonstrated adequate method recoveries of residues of 2,6-DIPN. Potato samples were fortified with 2,6-DIPN at levels of 0.01 ppm, 0.02 ppm, 0.05 ppm, and 50 ppm. Samples were analyzed at the limit of quantitation of 0.01 ppm. Overall, recovery ranges (and CVs) from these matrices were 77.9–123.2 (13.9%) for 2,6-DIPN. Potato peel samples were fortified with 2,6-DIPN at levels of 0.02 ppm, 0.05 ppm, and 0.2 ppm. Samples were analyzed at the limit of quantitation of 0.02 ppm. Overall, recovery ranges (and CVs) from these matrices were 83.2–96.1 (5.3%) for 2,6-DIPN.

Acceptable independent laboratory validation is available for this method using potato and potato peel samples.

As described above, an adequate enforcement methodology (liquid chromatographic/ultraviolet detection analytical method) is available to enforce the tolerance expression for potatoes and potato peels only.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*. As conditions of registration, the Agency is requesting a revised analytical method for the analysis of the metabolites of 2,6-DIPN in livestock commodities, an associated independent laboratory validation, and radiovalidation of this method. As stated Unit III.A., the Agency is requesting these data since the study analyzed the parent compound only.

C. International Residue Limits

There are currently no established Codex Alimentarius Commission, Canadian, or Mexican Maximum Residue Levels (MRLs) for residues of 2,6-DIPN in/on plant or livestock commodities. Therefore, no compatibility issues exist with regard to the proposed U.S. tolerances.

D. Rotational Crop Restrictions

The rotational crop restrictions are not applicable for this petition because the commodity is for stored potatoes.

E. Revisions to the Requested Tolerances

Based upon review of the data supporting the petition, EPA has slightly increased the tolerance levels requested in the petition for all of the livestock commodities and added two new tolerances for ''milk, fat'' and ''potatoes, granules/flakes.'' EPA also revised commodity terms, as necessary, to agree with the Agency's Food and Feed Commodity Vocabulary.

In light of review of the submitted nature of the residue data (lactating goat), the Agency slightly increased all of the livestock commodity tolerance levels to fully account for metabolites that exceeded 10% of the TRR. Additionally, EPA has set tolerance levels for milk, fat and potatoes, granules/flakes because residues of 2,6-DIPN would normally be expected to be present in these byproducts.

While the petitioner requested permanent tolerances for residues of 2,6 DIPN in or on the food commodities listed in this document, the Agency has determined that time-limited tolerances with an expiration date is appropriate in the absence of an analytical method for metabolites of 2,6-DIPN in livestock.

V. Conclusion

Therefore, time-limited tolerances are established for residues of 2,6-DIPN, including its metabolites and degradates, when applied post-harvest to potatoes, in or on cattle, fat at 1.0 ppm; cattle, liver at 0.5 ppm; cattle, meat at 0.2 ppm; cattle, meat byproducts (except liver) at 0.4 ppm; goat, fat at 1.0 ppm; goat, liver at 0.5 ppm; goat, meat at 0.2 ppm; goat, meat byproducts (except liver) at 0.4 ppm; hog, fat at 1.0 ppm; hog, liver at 0.5 ppm; hog, meat at 0.2 ppm; hog, meat byproducts (except liver) at 0.4 ppm; horse, fat at 1.0 ppm; horse, liver at 0.5 ppm; horse, meat at 0.2 ppm; horse, meat byproducts (except liver) at 0.4 ppm; milk at 0.2 ppm; milk, fat at 0.5 ppm; potato at 2.0 ppm; potato, granules/flakes at 5.5 ppm; potato, wet peel at 6.0 ppm; sheep, fat at 1.0 ppm; sheep, liver at 0.5 ppm; sheep, meat at 0.2 ppm; and sheep, meat byproducts (except liver) at 0.4 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 18, 2009.

Keith A. Matthews,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.590 is amended by revising paragraph (a) to read as follows:

§ 180.590 2,6-Diisopropylnaphthalene (2,6-DIPN); tolerances for residues.

(a) *General.* (1) Time-limited tolerances are established for combined residues of 2,6-DIPN, including its metabolites and degradates, in or on the commodities in the table below as a result of the post-harvest application of 2,6-DIPN to potatoes, when 2,6-DIPN is used in accordance with good agricultural practices. Compliance with the tolerance levels specified below is to be determined by measuring only 2,6-DIPN in or on the commodities.

Commodity	Parts per million	Expiration/ revocation date
Potato, granules/ flakes	5.5	5/18/12
Potato, wet peel	6.0	5/18/12
Potato, whole	2.0	5/18/12

(2) Time-limited tolerances are established for combined residues of 2,6-DIPN, including its metabolites and degradates, in or on the commodities in

the table below as a result of the post-harvest application of 2,6-DIPN to potatoes, when 2,6-DIPN is used in accordance with good agricultural practices. Compliance with the tolerance levels specified below is to be determined by measuring only 2,6-DIPN and the metabolites M14, M19, M27, and M29 in or on the commodities.

Commodity	Parts per million	Revocation/ expiration date
Cattle, fat	1.0	5/18/12
Cattle, liver	0.5	5/18/12
Cattle, meat	0.2	5/18/12
Cattle, meat by-products	0.4	5/18/12
Goat, fat	1.0	5/18/12
Goat, liver	0.5	5/18/12
Goat, meat	0.2	5/18/12
Goat, meat by-products	0.4	5/18/12
Hog, fat	1.0	5/18/12
Hog, liver	0.5	5/18/12
Hog, meat	0.2	5/18/12
Hog, meat by-products	0.4	5/18/12
Horse, fat	1.0	5/18/12
Horse, liver	0.5	5/18/12
Horse, meat	0.2	5/18/12
Horse, meat by-products	0.4	5/18/12
Milk, fat	0.5	5/18/12
Sheep, fat	1.0	5/18/12
Sheep, liver	0.5	5/18/12
Sheep, meat	0.2	5/18/12
Sheep, meat by-products	0.4	5/18/12

* * * * *

[FR Doc. E9–29897 Filed 12–15–09; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–8107]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of

information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region III				
West Virginia:				
Charles Town, City of, Jefferson	540066	April 24, 1975, Emerg; December 4, 1979, Reg; December 18, 2009, Susp.	Dec. 18, 2009	Dec. 18, 2009.
Harpers Ferry, Town of, Jefferson	540067	September 25, 1975, Emerg; August 24, 1984, Reg; December 18, 2009, Susp.	.....do	Do.
Jefferson County, Unincorporated Areas.	540065	December 15, 1975, Emerg; October 15, 1980, Reg; December 18, 2009, Susp.	.....do	Do.
Ranson, City of, Jefferson	540068	April 2, 1975, Emerg; June 15, 1979, Reg; December 18, 2009, Susp.	.....do	Do.
Shepherdstown, Town of, Jefferson	540069	February 14, 1975, Emerg; March 18, 1980, Reg; December 18, 2009, Susp.	.....do	Do.
Region V				
Ohio:				
Amesville, Village of, Athens	390015	February 24, 1977, Emerg; September 29, 1989, Reg; December 18, 2009, Susp.	.....do	Do.
Athens, City of, Athens	390016	November 22, 1974, Emerg; March 28, 1980, Reg; December 18, 2009, Susp.	.....do	Do.
Athens County, Unincorporated Areas	390760	N/A, Emerg; October 31, 1991, Reg; December 18, 2009, Susp.	.....do	Do.
Buchtel, Village of, Athens	390728	October 9, 1992, Emerg; March 1, 1995, Reg; December 18, 2009, Susp.	.....do	Do.
Coalton, Village of, Jackson	390291	December 21, 1978, Emerg; May 2, 1991, Reg; December 18, 2009, Susp.	.....do	Do.
Glouster, Village of, Athens	390018	July 18, 1975, Emerg; July 19, 2001, Reg; December 18, 2009, Susp.	.....do	Do.
Jackson, City of, Jackson	390292	July 22, 1975, Emerg; June 1, 1984, Reg; December 18, 2009, Susp.	.....do	Do.
Jackson County, Unincorporated Areas	390290	March 19, 1976, Emerg; August 19, 1985, Reg; December 18, 2009, Susp.	.....do	Do.
Jacksonville, Village of, Athens	390019	March 21, 1977, Emerg; June 3, 1986, Reg; December 18, 2009, Susp.	.....do	Do.
Nelsonville, City of, Athens	390020	July 7, 1975, Emerg; January 17, 1986, Reg; December 18, 2009, Susp.	.....do	Do.
Trimble, Village of, Athens	390021	March 2, 1977, Emerg; November 1, 1995, Reg; December 18, 2009, Susp.	.....do	Do.
Wellston, City of, Jackson	390293	July 31, 1991, Emerg; February 1, 1994, Reg; December 18, 2009, Susp.	.....do	Do.
Wisconsin:				
Baraboo, City of, Sauk	550392	June 1, 1973, Emerg; August 1, 1979, Reg; December 18, 2009, Susp.	.....do	Do.
LaValle, Village of, Sauk	550395	March 5, 1975, Emerg; September 19, 1984, Reg; December 18, 2009, Susp.	.....do	Do.
Lake Delton, Village of, Sauk	550394	February 19, 1975, Emerg; September 4, 1985, Reg; December 18, 2009, Susp.	.....do	Do.
Lime Ridge, Village of, Sauk	550396	N/A, Emerg; September 1, 1987, Reg; December 18, 2009, Susp.	.....do	Do.
Merrimac, Village of, Sauk	550398	March 27, 1975, Emerg; March 7, 2001, Reg; December 18, 2009, Susp.	.....do	Do.
North Freedom, Village of, Sauk	550399	April 22, 1975, Emerg; September 19, 1984, Reg; December 18, 2009, Susp.	.....do	Do.
Plain, Village of, Sauk	550400	December 23, 1974, Emerg; September 30, 1988, Reg; December 18, 2009, Susp.	.....do	Do.
Prairie du Sac, Village of, Sauk	550401	September 29, 2000, Emerg; March 7, 2001, Reg; December 18, 2009, Susp.	.....do	Do.
Reedsburg, City of, Sauk	550402	May 21, 1975, Emerg; March 4, 1985, Reg; December 18, 2009, Susp.	.....do	Do.
Rock Springs, Village of, Sauk	550403	April 30, 1975, Emerg; September 18, 1985, Reg; December 18, 2009, Susp.	.....do	Do.
Sauk City, Village of, Sauk	550404	May 7, 1975, Emerg; March 7, 2001, Reg; December 18, 2009, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Sauk County, Unincorporated Areas	550391	September 7, 1973, Emerg; September 17, 1980, Reg; December 18, 2009, Susp.	.....do	Do.
Spring Green, Village of, Sauk	550405	August 27, 1975, Emerg; February 1, 1986, Reg; December 18, 2009, Susp.	.....do	Do.
West Baraboo, Village of, Sauk	550407	July 24, 1975, Emerg; September 19, 1984, Reg; December 18, 2009, Susp.	.....do	Do.
Wisconsin Dells, City of, Sauk	550065	July 17, 1975, Emerg; December 18, 1984, Reg; December 18, 2009, Susp.	.....do	Do.
Region VI				
Arkansas:				
Garland, City of, Miller	050138	April 1, 1975, Emerg; June 1, 1987, Reg; December 18, 2009, Susp.	.....do	Do.
Miller County, Unincorporated Areas	050451	March 31, 1983, Emerg; April 1, 1988, Reg; December 18, 2009, Susp.	.....do	Do.
Oklahoma:				
Arcadia, Town of, Oklahoma	400551	N/A, Emerg; August 15, 2005, Reg; December 18, 2009, Susp.	.....do	Do.
Bethany, City of, Oklahoma	400254	January 17, 1975, Emerg; July 31, 1979, Reg; December 18, 2009, Susp.	.....do	Do.
Choctaw, City of Oklahoma	400357	February 25, 1976, Emerg; April 15, 1981, Reg; December 18, 2009, Susp.	.....do	Do.
Del City, City of, Oklahoma	400233	November 23, 1973, Emerg; March 18, 1980, Reg; December 18, 2009, Susp.	.....do	Do.
Edmond, City of, Oklahoma	400252	June 18, 1974, Emerg; May 15, 1980, Reg; December 18, 2009, Susp.	.....do	Do.
Forest Park, City of, Oklahoma	400379	March 16, 1983, Emerg; July 3, 1985, Reg; December 18, 2009, Susp.	.....do	Do.
Harrah, City of, Oklahoma	400140	December 27, 1977, Emerg; July 16, 1980, Reg; December 18, 2009, Susp.	.....do	Do.
Jones City, Town of, Oklahoma	400141	June 30, 1976, Emerg; January 2, 1981, Reg; December 18, 2009, Susp.	.....do	Do.
Luther, Town of, Oklahoma	400396	July 8, 1975, Emerg; February 17, 1988, Reg; December 18, 2009, Susp.	.....do	Do.
Midwest City, City of, Oklahoma	400405	January 16, 1975, Emerg; May 19, 1981, Reg; December 18, 2009, Susp.	.....do	Do.
Nichols Hills, City of, Oklahoma	400423	December 19, 1974, Emerg; January 20, 1982, Reg; December 18, 2009, Susp.	.....do	Do.
Nicoma Park, Town of, Oklahoma	400424	July 8, 1980, Emerg; July 16, 1980, Reg; December 18, 2009, Susp.	.....do	Do.
Oklahoma City, City of, Oklahoma	405378	March 19, 1971, Emerg; July 14, 1972, Reg; December 18, 2009, Susp.	.....do	Do.
Spencer, City of, Oklahoma	400412	June 12, 1975, Emerg; July 16, 1980, Reg; December 18, 2009, Susp.	.....do	Do.
The Village, City of, Oklahoma	400420	March 11, 1975, Emerg; July 16, 1980, Reg; December 18, 2009, Susp.	.....do	Do.
Valley Brook, Town of, Oklahoma	400445	April 7, 1975, Emerg; September 30, 1981, Reg; December 18, 2009, Susp.	.....do	Do.
Warr Acres, City of, Oklahoma	400449	January 27, 1975, Emerg; December 16, 1980, Reg; December 18, 2009, Susp.	.....do	Do.
Region VIII				
Colorado:				
Fairplay, Town of, Park	080239	July 29, 1976, Emerg; August 5, 1986, Reg; December 18, 2009, Susp.	.....do	Do.
Park County, Unincorporated Areas	080139	May 13, 1975, Emerg; April 1, 1987, Reg; December 18, 2009, Susp.	.....do	Do.
North Dakota:				
Abercrombie, City of, Richland	380151	March 11, 1997, Emerg; April 25, 1997, Reg; December 18, 2009, Susp.	.....do	Do.
Antelope, Township of, Richland	380663	January 13, 1983, Emerg; August 5, 1986, Reg; December 18, 2009, Susp.	.....do	Do.
Barrie, Township of, Richland	380661	December 30, 1982, Emerg; September 18, 1986, Reg; December 18, 2009, Susp.	.....do	Do.
Belford, Township of, Richland	380662	January 6, 1983, Emerg; August 19, 1986, Reg; December 18, 2009, Susp.	.....do	Do.
Brandenburg, Township of, Richland	380622	January 26, 1979, Emerg; April 1, 1986, Reg; December 18, 2009, Susp.	.....do	Do.
Brightwood, Township of, Richland	380664	February 23, 1983, Emerg; December 11, 1985, Reg; December 18, 2009, Susp.	.....do	Do.
Center, Township of, Richland	380648	November 14, 1980, Emerg; June 4, 1987, Reg; December 18, 2009, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Dwight, Township of, Richland	380657	August 9, 1982, Emerg; September 29, 1986, Reg; December 18, 2009, Susp.	.....do	Do.
Eagle, Township of, Richland	380688	February 24, 1997, Emerg; May 4, 1998, Reg; December 18, 2009, Susp.	.....do	Do.
Fairmount, Township of, Richland	380168	August 8, 1979, Emerg; April 1, 1986, Reg; December 18, 2009, Susp.	.....do	Do.
Greendale, Township of, Richland	380660	September 27, 1982, Emerg; March 11, 1986, Reg; December 18, 2009, Susp.	.....do	Do.
Ibsen, Township of, Richland	380672	May 16, 1983, Emerg; March 12, 1986, Reg; December 18, 2009, Susp.	.....do	Do.
Lamars, Township of, Richland	380658	August 9, 1982, Emerg; March 11, 1986, Reg; December 18, 2009, Susp.	.....do	Do.
Mooreton, Township of, Richland	380654	July 12, 1982, Emerg; September 18, 1986, Reg; December 18, 2009, Susp.	.....do	Do.
Moran, Township of, Richland	380666	March 10, 1983, Emerg; September 18, 1986, Reg; December 18, 2009, Susp.	.....do	Do.
Nansen, Township of, Richland	380656	July 15, 1982, Emerg; March 11, 1986, Reg; December 18, 2009, Susp.	.....do	Do.
Richland County, Unincorporated Areas	380098	February 26, 1997, Emerg; June 1, 1998, Reg; December 18, 2009, Susp.	.....do	Do.
Wahpeton, City of, Richland	380100	May 19, 1975, Emerg; June 4, 1987, Reg; December 18, 2009, Susp.	.....do	Do.
Walcott, Township of, Richland	380340	April 26, 1978, Emerg; September 29, 1986, Reg; December 18, 2009, Susp.	.....do	Do.
Waldo, Township of, Richland	380659	September 10, 1982, Emerg; December 11, 1985, Reg; December 18, 2009, Susp.	.....do	Do.
Wyndmere, Township of, Richland	380667	March 31, 1983, Emerg; December 11, 1985, Reg; December 18, 2009, Susp.	.....do	Do.
Region X				
Oregon:				
Depoe Bay, City of, Lincoln	410283	January 11, 1979, Emerg; October 15, 1980, Reg; December 18, 2009, Susp.	.....do	Do.
Fairview, City of, Multnomah	410180	March 31, 1975, Emerg; September 30, 1987, Reg; December 18, 2009, Susp.	.....do	Do.
Lincoln City, City of, Lincoln	410130	December 22, 1972, Emerg; April 17, 1978, Reg; December 18, 2009, Susp.	.....do	Do.
Lincoln County, Unincorporated Areas	410129	February 16, 1973, Emerg; September 3, 1980, Reg; December 18, 2009, Susp.	.....do	Do.
Multnomah County, Unincorporated Areas.	410179	February 4, 1972, Emerg; June 15, 1982, Reg; December 18, 2009, Susp.	.....do	Do.
Newport, City of, Lincoln	410131	October 18, 1974, Emerg; April 15, 1980, Reg; December 18, 2009, Susp.	.....do	Do.
Siletz, City of, Lincoln	410132	May 30, 1975, Emerg; March 1, 1979, Reg; December 18, 2009, Susp.	.....do	Do.
Toledo, City of, Lincoln	410133	April 19, 1973, Emerg; March 1, 1979, Reg; December 18, 2009, Susp.	.....do	Do.
Troutdale, City of, Multnomah	410184	June 13, 1974, Emerg; September 30, 1988, Reg; December 18, 2009, Susp.	.....do	Do.
Waldport, City of, Lincoln	410134	November 1, 1974, Emerg; March 15, 1979, Reg; December 18, 2009, Susp.	.....do	Do.
Yachats, City of, Lincoln	410135	July 18, 1975, Emerg; March 1, 1979, Reg; December 18, 2009, Susp.	.....do	Do.

*-do- = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: December 9, 2009.

Edward L. Connor,

Acting Assistant Administrator, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E9–29935 Filed 12–15–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

48 CFR Parts 3009 and 3052

[Docket No. DHS–2010–0017]

RIN 1601–AA55

Prohibition on Federal Protective Service Guard Services Contracts With Business Concerns Owned, Controlled, or Operated by an Individual Convicted of a Felony [HSAR Case 2009–001]; Correction

AGENCY: Office of the Chief Procurement Officer, DHS.

ACTION: Final rule; correction.

SUMMARY: This document makes corrections to the Homeland Security Acquisition Regulation in order to make technical citation changes and to remove redundant language.

DATES: *Effective date:* December 16, 2009.

FOR FURTHER INFORMATION CONTACT: Gloria Sochon, Senior Procurement Analyst, at (202) 447–5307 for clarification of content.

SUPPLEMENTARY INFORMATION: This document makes corrections to the Homeland Security Acquisition Regulation (HSAR), final rule Prohibition on Federal Protective Service Guard Services Contracts with Business Concerns Owned, Controlled, or Operated By an Individual Convicted of a Felony [HSAR Case 2009–001], 74 FR 58851 (Nov. 16, 2009). The technical corrections are required to conform the HSAR to citation in the Federal Acquisition Regulations and remove redundant language.

■ In FR Doc. E9–27330, published November 16, 2009 (74 FR 58851), make the following corrections:

Subpart 3009 [Corrected]

■ 1. On page 58856, column 1, instruction 2a, is revised to read ''Redesignating section 3009.104–70 as section 3009.108–70, and subsections 3009.104–71 through 3009.104–75 as subsections 3009.108–7001 through 3009.108–7005, respectively, and section 3009.170 is added and reserved.

3052.209–76 [Corrected]

■ 2. On page 58858, column 2, in subsection 3052.209–76, in the header of the contract clause, remove ''(AUG 2009)'' and add in its place ''(DEC 2009)''.

■ 3. On page 58858, at the bottom of column 2, in section 3052.209–76(c)(2)(v)(A) remove:

''Ability to direct in any manner the election of a majority of the business concern's directors or trustees; or''.

Mary Kate Whalen,

Associate General Counsel for Regulatory Affairs.

[FR Doc. E9–29881 Filed 12–15–09; 8:45 am]

BILLING CODE 9110–9B–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 6101

[GSA BCA Amendment 2009–01; BCA Case 2009–61–1; Docket Number 2009–0016, Sequence 1]

RIN 3090–AI99

Civilian Board of Contract Appeals; BCA Case 2009–61–1; Rules of Procedure of the Civilian Board of Contract Appeals

AGENCIES: Civilian Board of Contract Appeals, General Services Administration (GSA)

ACTION: Final rule.

SUMMARY: This document provides two revisions to the rules governing proceedings before the Civilian Board of Contract Appeals (Board), published in the **Federal Register** on May 12, 2008. First, the Board is correcting the heading for Chapter 61. Upon publication of the rules in the Code of Federal Regulations, the heading for Chapter 61 was erroneously changed. This document corrects that error. In addition, a sentence that became surplusage upon issuance of the rules is being removed.

DATES: *Effective Date:* December 16, 2009.

FOR FURTHER INFORMATION CONTACT: Margaret S. Pfunder, Chief Counsel, Civilian Board of Contract Appeals, telephone (202) 606–8800, e-mail address *Margaret.Pfunder@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite BCA Case 2009–61–1.

SUPPLEMENTARY INFORMATION:

A. Background

The Civilian Board of Contract Appeals was established within the General Services Administration (GSA) by section 847 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109–163. Effective January 6, 2007, the boards of contract appeals that existed at the General Services Administration and the Departments of Agriculture, Energy, Housing and Urban Development, Interior, Labor, Transportation, and Veterans Affairs were terminated, and their cases were transferred to the new Civilian Board of Contract Appeals. The title of Chapter 61 was erroneously changed upon publication of these rules in the Code of Federal Regulations to read ''General Services Administration Board of Contract Appeals''. This document corrects that error. In addition, section 6101.1 is amended by removing the second sentence from paragraph (a). That sentence states, ''These rules will remain in effect until the Board issues final rules of procedure or June 30, 2008, whichever occurs earlier.'' Upon issuance of the final rules, that sentence became surplusage, and it is therefore now removed.

B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not impose any additional costs on large or small businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 6101

Administrative practice and procedure, Agriculture, Freight forwarders, Government procurement, Travel and relocation expenses.

Dated: October 21, 2009.

Stephen M. Daniels,

Chairman, Civilian Board of Contract Appeals, General Services Administration.

■ Therefore, GSA amends 48 CFR Chapter 61 as set forth below:

CHAPTER 61—CIVILIAN BOARD OF CONTRACT APPEALS, GENERAL SERVICES ADMINISTRATION

■ 1. The authority citation for 48 CFR Part 6101 continues to read as follows:

Authority: 41 U.S.C. 601–613.

■ 2. Amend Chapter 61 by revising the Chapter heading as set forth above.

PART 6101—CONTRACT DISPUTE CASES

6101.1 [Amended]

■ 3. Amend section 6101.1 by removing the second sentence from paragraph (a).

[FR Doc. E9–29838 Filed 12–15–09; 8:45 am]
BILLING CODE 6820–AL–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 635

[080724902–91404–02]

RIN 0648–AX07

Atlantic Highly Migratory Species; North and South Atlantic Swordfish Quotas

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

ACTION: Final rule.

SUMMARY: This final rule adjusts the North and South Atlantic swordfish quotas for the 2009 fishing year (January 1, 2009, through December 31, 2009) to account for underharvests, and transfers 18.8 metric tons (mt) dressed weight (dw) to Canada per the 2006 and 2008 International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations 06–03 and 08–02. In addition, this final rule includes minor regulatory modifications and clarifications, eliminates an existing sunset provision in the Madison-Swanson and Steamboat Lumps time/area closure, and establishes a small time/area closure in the Gulf of Mexico called the ''Edges 40 Fathom Contour.'' These changes could impact fishermen with a commercial swordfish, HMS Angling, or Charter/Headboat (CHB) permit who fish for Atlantic swordfish.

DATES: This rule is effective on January 15, 2010.

ADDRESSES: For copies of the supporting documents, including the proposed rule (74 FR 39032, August 5, 2009); the EA for the Gulf of Mexico time/area closures included in this rule; the Environmental Assessment (EA) for the 2007 Swordfish Specifications, Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA); and the 2006 Consolidated Atlantic Highly Migratory Species (HMS) Fishery Management Plan (FMP), please write to Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910, visit the HMS website at *http://www.nmfs.noaa.gov/sfa/hms/*, or contact Steve Durkee.

FOR FURTHER INFORMATION CONTACT: Steve Durkee or Karyl Brewster-Geisz by phone: 301–713–2347 or by fax: 301–713–1917 or Rick Pearson by phone: 727–824–5399.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated HMS FMP. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq*. Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

Information on the specific measures laid out in the proposed rule can be found in 74 FR 39032 (August 5, 2009) and are not repeated here. A brief summary of the actions in this final rule can be found below.

1. Swordfish Quotas

This final rule adjusts the North and South Atlantic swordfish quotas for the 2009 fishing year (January 1, 2009, through December 31, 2009) to account for underharvests in 2008, and to transfer 18.8 metric tons (mt) dressed weight (dw) to Canada per the 2006 and 2008 International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations 06–03 and 08–02. The 2009 North Atlantic swordfish baseline quota is 2,937.6 mt dw. The total North Atlantic swordfish underharvest for 2008 was 2,692 mt dw, which exceeds the maximum carryover cap of 1,468.8 mt dw, established in ICCAT recommendation 06–02, and renewed in 08–02. Therefore, NMFS is carrying over the capped amount per the ICCAT recommendation. Thus, the baseline quota plus the underharvest carryover maximum of 1,468.8 mt dw equals an adjusted quota of 4,406.4 mt dw for the 2009 fishing year (Table 1).

The 2009 South Atlantic swordfish baseline quota is 75.2 mt dw. The total South Atlantic swordfish underharvest for 2008 was 150.4 mt dw, which exceeds the maximum carryover cap of 75.2 mt dw, established in ICCAT recommendation 06–03. Therefore, NMFS is carrying over the capped amount per the ICCAT recommendation. As a result, the baseline quota plus the underharvest carryover maximum of 75.2 mt dw equals an adjusted quota of 150.4 mt dw for the 2009 fishing year (Table 1).

2. Administrative Regulatory Modifications and Clarifications

In addition to adjusting the North and South Atlantic swordfish quotas, NMFS is also performing the following five administrative modifications and clarifications to the regulations: (1) clarifying minimum size requirements for whole and dressed swordfish; (2) issuing ''participant certificates'' at shark identification workshops to attendees who do not have a dealer license; (3) requiring that any dead bycatch in the pelagic longline fishery be brought on board, at the observer's request, for biological sampling; (4) requiring that any changes in information contained in an application for an Atlantic Tuna Longline Limited Access Permit be submitted in writing; and (5) clarifying the information that is to be included on consignment documents for the importation of Atlantic, Pacific and Southern bluefin tuna, frozen bigeye tuna, and swordfish.

3. Adjustment and Implementation of Time/Area Closures in the Gulf of Mexico

Under current regulations (50 CFR 635.21 (a)(4)(ii) (iv)), the Madison-Swanson and Steamboat Lumps time/area closures within the Gulf of Mexico are set to expire on June 16, 2010. This rule eliminates this sunset provision and prevents expiration of the time/area closures on June 16, 2010, consistent with the Gulf of Mexico Fishery Management Council (GOMFMC) regulations. Additionally, this final rule establishes a time/area closure in the northwestern Gulf of Mexico called the ''Edges 40 Fathom Contour,'' at the request of GOMFMC. The boundaries of this closure are defined by the coordinates: NW = 28° 51'N, 85° 16'W; NE = 28° 51 'N, 85° 04'W; SW = 28° 14'N, 84° 54'W; SE = 28° 14'N, 84 42'W.

Response to Comments

NMFS received two comments on the proposed rule which are summarized below, together with NMFS' responses.

Comment: NMFS received two comments in opposition to the annual 18.8 mt dw quota transfer to Canada from the reserve category. The first comment, made by Captain Chris Walter, expressed general opposition to the quota transfer. The second stated comment, made by David Allison of Oceana, expressed concern over higher bycatch rates in the Canadian swordfish fishery than in the U.S. fishery. This commenter wrote that negative impacts on sea turtles in the Canadian swordfish fishery were not specifically examined in the 2007 Environmental Assessment

for the 2007 Swordfish Specifications, and that analysis must be performed before any further annual quota transfers. This analysis should include both an Environmental Impact Statement and ESA Biological Opinion.

Response: The annual transfer of quota to Canada is necessary to comply with ICCAT Recommendation 06–02 (extended via Rec. 08–02), as agreed upon by the CPCs, which explicitly states that the U.S. is to transfer 25 mt ww (18.8 mt dw) to Canada annually, among other things. Per the ATCA, the U.S. is obligated to implement ICCAT-approved recommendations. This mandate offers no leeway for NMFS to alter the annual quota transfer to Canada. The 2007 Environmental Assessment for the 2007 Swordfish Specifications addressed this transfer by reference to the 2004 Environmental Assessment accompanying the final rule to Implement ICCAT Atlantic Swordfish Quota Recommendations. In addition, the amount of quota transferred to Canada is low enough that any impacts, including any negative impacts to sea turtles, will be negligible. The 25 mt ww quota transfer is 0.18 percent of the total North Atlantic swordfish quota, and only 0.64 percent of the U.S. portion of the quota.

Changes from the Proposed Rule

This final rule contains one change from the proposed rule. The regulatory language modifying the method to change address information on an Atlantic Tuna Longline Limited Access Permit (50 CFR 635.4(i)) was altered to be more general. The regulatory language in the proposed rule stated that permit information changes must be made, in writing, to an address specified by NMFS. The language in this final rule states that permit information changes must be made in a manner and/or to a location specified by NMFS. The intent and practical effect did not change, but the more general language will give NMFS flexibility in altering the method to change information to a permit in the future.

Classification

The Acting Assistant Administrator for Fisheries has determined that this final rule is consistent with the Consolidated HMS FMP, the Magnuson-Stevens Act, ATCA, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects

50 CFR Part 300

Reporting and recordkeeping requirements.

50 CFR Part 635

Fisheries, Fishing, Management, Reporting and recordkeeping requirements, Treaties.

Dated: December 10, 2009.

Samuel D. Rauch III,

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

■ For the reasons set out in the preamble, 50 CFR parts 300 and 635 are amended as follows:

PART—300 INTERNATIONAL FISHERIES REGULATIONS

Subpart M—International Trade Documentation and Tracking Programs for Highly Migratory Species

■ 1. The authority citation for subpart M continues to read as follows:

Authority: Authority: 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 300.185, paragraph (a)(2)(vii) is revised to read as follows:

§ 300.185 Documentation, reporting and recordkeeping requirements for consignment documents and re-export certificates.

(a) * * *

(2) * * *

(vii) For fish or fish products, except shark fins, regulated under this subpart that are entered for consumption, the permit holder must provide correct and complete information, as requested by NMFS, on the original consignment document that accompanied the consignment.

* * * * *

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

3. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 4. In § 635.2, the following definition is added within the correct alphabetic order:

§ 635.2 Definitions.

* * * * *

Edges 40 Fathom Contour closed area means a parallelogram-shaped area in the Gulf of Mexico bounded by straight lines connecting the following coordinates in the order stated: 28° 51' N. lat., 85° 16' W. long.; 28° 51' N. lat., 85° 04' W. long.; 28° 14' N. lat., 84° 42' W. long.; 28° 14' N. lat., 84° 54' W. long.

* * * * *

■ 5. In § 635.4, paragraph (i) is revised to read as follows:

§ 635.4 Permits and fees.

* * * * *

(i) *Change in application information.* A vessel owner or dealer must report any change in the information contained in an application for a permit within 30 days after such change. The report must be submitted in a manner and/or to a location designated by NMFS. For certain information changes, a new permit may be issued to incorporate the new information, subject to limited access provisions specified in paragraph (l)(2) of this section. NMFS may require supporting documentation before a new permit will be issued. If a change in the permit information is not reported within 30 days, the permit is void as of the 31st day after such change.

* * * * *

■ 6. In § 635.7, paragraph (f) is added to read as follows:

§ 635.7 At-sea observer coverage.

* * * * *

(f) Vessel responsibilities. An owner or operator of a vessel required to carry one or more observer(s) must provide reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(1) Measuring decks, codends, and holding bins.

(2) Providing the observer(s) with a safe work area.

(3) Collecting bycatch when requested by the observer(s).

(4) Collecting and carrying baskets of fish when requested by the observer(s).

(5) Allowing the observer(s) to collect biological data and samples.

(6) Providing adequate space for storage of biological samples.

■ 7. In § 635.8, paragraphs (b)(4) and (5) and (c) (4) and (5) are revised and paragraph (b) (6) is added to read as follows:

§ 635.8 Workshops.

* * * * *

(b) * * *

(4) Only dealers issued a valid shark dealer permit may send a proxy to the Atlantic shark identification workshops.

If a dealer opts to send a proxy, the dealer must designate at least one proxy from each place of business listed on the dealer permit, issued pursuant to § 635.4(g)(2), which first receives Atlantic shark by way of purchase, barter, or trade. The proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports as required under § 635.5. Only one certificate will be issued to each proxy. If a proxy is no longer employed by a place of business covered by the dealer's permit, the dealer or another proxy must be certified as having completed a workshop pursuant to this section. At least one individual from each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade must possess a valid Atlantic shark identification workshop certificate.

(5) A Federal Atlantic shark dealer issued or required to be issued a shark dealer permit pursuant to § 635.4(g)(2) must possess and make available for inspection a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy at each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade. For the purposes of this part, trucks or other conveyances of a dealer's place of business are considered to be extensions of a dealer's place of business and must possess a copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to a place of business covered by the dealer permit. A copy of a valid Atlantic shark identification workshop certificate must be included in the dealer's application package to obtain or renew an Atlantic shark dealer permit. If multiple businesses are authorized to receive Atlantic sharks under the Atlantic shark dealer's permit, a copy of the Atlantic shark identification workshop certificate for each place of business listed on the Atlantic shark dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade must be included in the Atlantic shark dealer permit renewal application package.

(6) Persons holding an expired Atlantic shark dealer permit and persons who intend to apply for a new Atlantic shark dealer permit will be issued a participant certificate in their name upon successful completion of the Atlantic shark identification workshop. A participant certificate issued to such persons may be used only to apply for an Atlantic shark dealer permit. Pursuant to § 635.8(c)(4), an Atlantic shark dealer may not first receive, purchase, trade, or barter for Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. After an Atlantic shark dealer permit is issued to a person using an Atlantic shark identification workshop participant certificate, such person may obtain an Atlantic shark identification workshop dealer certificate for each location which first receives Atlantic sharks by way of purchase, barter, or trade by contacting NMFS at an address designated by NMFS.

(c) * * *

(4) An Atlantic shark dealer may not first receive, purchase, trade, or barter for Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. A valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy must be maintained on the premises of each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade. An Atlantic shark dealer may not renew a Federal dealer permit issued pursuant to § 635.4(g)(2) unless a copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy has been submitted with the permit renewal application. If the dealer is not certified and opts to send a proxy or proxies to a workshop, the dealer must submit a copy of a valid proxy certificate for each place of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade.

(5) A vessel owner, operator, shark dealer, proxy for a shark dealer, or participant who is issued either a protected species workshop certificate or an Atlantic shark identification workshop certificate may not transfer that certificate to another person.

* * * * *

■ 8. In § 635.20, paragraphs (a) and (f) are revised to read as follows:

§ 635.20 Size limits.

(a) *General.* The CFL will be the sole criterion for determining the size and/or size class of whole (head on) Atlantic tunas for a vessel that has been issued a limited access North Atlantic swordfish permit under § 635.4.

* * * * *

(f) *Swordfish.* (1) For a swordfish that has its head naturally attached, the LJFL is the sole criterion for determining the size of a swordfish. No person shall take, retain, possess, or land a whole (head on) North or South Atlantic swordfish taken from its management unit that is not equal to or greater than 47 inches (119 cm) LJFL. A swordfish with the head naturally attached that is damaged by shark bites may be retained only if the length of the remainder of the fish is equal to or greater than 47 inches (119 cm) LJFL.

(2) If the head of a swordfish has been removed prior to or at the time of landing, the CK measurement is the sole criterion for determining the size of a swordfish. No person shall take, retain, possess, or land a dressed North or South Atlantic swordfish taken from its management unit that is not equal to or greater than 29 inches (73 cm) CK length. A swordfish with the head removed that is damaged by shark bites may be retained only if the length of the remainder of the carcass is equal to or greater than 29 inches (73 cm) CK length.

(3) No person shall import into the United States an Atlantic swordfish weighing less than 33 lb (15 kg) dressed weight, or a part derived from a swordfish that weighs less than 33 lb (15 kg) dressed weight.

(4) Except for a swordfish landed in a Pacific state and remaining in that Pacific state of landing, a swordfish, or part thereof, not meeting the minimum size measurements specified in § 635.20(f)(1) or (2) will be deemed to be an Atlantic swordfish harvested by a vessel of the United States and to be in violation of the minimum size requirement of this section unless such swordfish, or part thereof, is accompanied by a swordfish statistical document attesting that the swordfish was lawfully imported. Refer to § 300.186 of this title for the requirements related to the swordfish statistical document.

(5) A swordfish, or part thereof, will be monitored for compliance with the minimum size requirement of this section from the time it is landed in, or imported into, the United States up to, and including, the point of first transaction in the United States.

■ 9. In § 635.21, paragraphs (a) (4) (ii) and (iii) are revised and paragraph (a) (4) (v) is added to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(a) * * *

(4) * * *

(ii) From November through April of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson closed

area or the Steamboat Lumps closed area, as defined in § 635.2.

(iii) From May through October of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Madison-Swanson or the Steamboat Lumps closed areas except for surface trolling, as specified below under paragraph (a)(4)(iv) of this section.

* * * * *

(v) From January through April of each year, no vessel issued, or required to be issued, a permit under this part may fish or deploy any type of fishing gear in the Edges 40 Fathom Contour closed area, as defined in § 635.2.

* * * * *

■ 10. In § 635.71, paragraphs (d) (11) and (14) are revised to read as follows:

§ 635.71 Prohibitions.

* * * * *

(d) * * *

(11) Receive, purchase, trade, or barter for Atlantic sharks without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy or fail to be certified for completion of a NMFS Atlantic shark identification workshop in violation of § 635.8.

* * * * *

(14) Receive, purchase, trade, or barter for Atlantic sharks without making available for inspection, at each of the dealer's places of business listed on the dealer permit which first receives Atlantic sharks by way of purchase, barter, or trade, a valid dealer or proxy Atlantic shark identification workshop certificate issued by NMFS to the dealer or proxy in violation of § 635.8(b), except that trucks or other conveyances of the business must possess a copy of such certificate.

* * * * *

[FR Doc. E9–29939 Filed 12–15–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 240
Wednesday, December 16, 2009

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 72 and 73

[NRC–2009–0558]

Draft Technical Basis for Rulemaking Revising Security Requirements for Facilities Storing SNF and HLW; Notice of Availability and Solicitation of Public Comments

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Nuclear Regulatory Commission (Commission or NRC) is seeking input from the public, licensees, certificate holders, and other stakeholders on a draft technical basis for a proposed rulemaking that would revise the NRC's security requirements for the storage of spent nuclear fuel (SNF) at an Independent Spent Fuel Storage Installation (ISFSI) and the storage of SNF and/or high-level radioactive waste (HLW) at a Monitored Retrievable Storage Installation (MRS). This contemplated rulemaking would also make conforming changes to the ISFSI and MRS licensing requirements for security plans and programs. The NRC has developed a draft technical basis for this proposed rulemaking that describes the agency's overall objectives, conceptual approaches, potential solutions, integration with agency strategic goals, and related technical and regulatory clarity issues. The NRC is soliciting comments on this draft technical basis document from the public, licensees, and other stakeholders to confirm that an adequate technical basis exists to proceed with rulemaking to issue new risk-informed and performance-based security regulations for SNF and HLW storage facilities.

The NRC will conduct a public Webinar on January 14, 2010, to discuss this draft technical basis and to facilitate the public's and stakeholder's submission of informed comments.

DATES: Comments on this draft technical basis should be submitted by January 31, 2010. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

Public Meeting: The NRC will also take public comments on this draft technical basis at a public webinar on January 14, 2010.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2009–0558 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal e-Rulemaking Web site at *http://www.regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

To ensure efficient and complete comment resolution, comments should include references to the section and page numbers of the document to which the comment applies, if possible. When commenting on the technical basis, please exercise caution and do not include any site-specific security-related information.

Federal Rulemaking Web Site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0558. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov*.

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Public File Area O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into 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's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. The draft technical basis to revise the security requirements for facilities storing SNF and HLW is available electronically under ADAMS Accession No. ML093280743.

Federal Rulemaking Web Site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2009–0558.

FOR FURTHER INFORMATION CONTACT: Philip Brochman or Rupert (Rocky) Rockhill, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–6557; e-mail: *Phil.Brochman@nrc.gov*; or (301) 415–3734; e-mail *Rupert.Rockhill@nrc.gov*, respectively.

SUPPLEMENTARY INFORMATION:

Background

The NRC requires high assurance of adequate protection of public health and safety, the common defense and security, and the environment for the secure storage of SNF and HLW. The NRC meets this strategic goal by requiring ISFSI licensees to comply with security requirements specified in Title 10 of the Code of *Federal Regulations,* Part 73 (10 CFR Part 73), ''Physical Protection of Plants and Materials.'' Following the terrorist attacks of September 11, 2001, the NRC has continued to achieve this requisite

high assurance for all facilities licensed to store SNF through a combination of these existing security regulations and the issuance of security orders to individual licensees. These orders ensured that a consistent overall protective strategy is in place for all types of ISFSIs, given the current threat environment. The NRC has not issued any licenses for an MRS, nor are any applications for a license for an MRS pending before the NRC. The issuance of these security orders was noticed in the **Federal Register** on October 23, 2002 (see 67 FR 65150 and 67 FR 65152) for existing licensees. Subsequent to the issuance of these orders to all existing ISFSI licensees, the NRC periodically issued these same security orders to all new ISFSI licensees, before such facilities commenced operation. The NRC also noticed the issuance of these subsequent orders in the **Federal Register**.

Following the terrorist attacks of September 11, 2001, the NRC completed security assessments for a range of NRC-licensed facilities. For ISFSIs, the NRC's assessments were accomplished during 2003 to 2005 and evaluated several types of dry storage cask designs that were viewed as being representative of the entire population of dry storage ISFSIs. These assessments evaluated both attacks using large aircraft and ground assaults using a variety of methods. The results of assessments indicated that no significant vulnerabilities were indicated and thus no immediate changes in the security requirements for ISFSIs were necessary. However, the assessments did challenge previous NRC conclusions on the ability of a malevolent act to breach shielding and/or confinement barriers and thus release radiation or radioactive material; and indicated that increased security requirements were warranted over the longer term. Because these assessments discuss vulnerability information, and thus could be used as potential targeting tools, they are not publicly available.

Finally, the current security regulations for ISFSIs are quite complex and pose challenges both to NRC staff and to the regulated industry. This regulatory complexity is due to multiple factors, including: Two different types of ISFSI licenses (general and specific licenses) under 10 CFR Part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste,'' and varying applicability of regulations based upon whether the ISFSI is collocated with an operating power reactor, collocated with a decommissioning power reactor, or is located away from any power reactors. In response to the new information gained from these security assessments and in recognition of the existing regulatory challenges, the NRC staff presented policy paper SECY–07–0148; dated August 28, 2007, to the Commission to address these issues (a redacted version of this policy paper is publicly available under ADAMS Package No. ML080030050 in NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*.). This policy paper summarized the current regulatory structure for ISFSI security, analyzed several policy and process issues, and provided recommendations in order to obtain early Commission direction on the development of an ISFSI security rulemaking. In a Staff Requirements Memorandum (SRM–SECY–07–0148), the Commission directed the NRC staff to proceed with the development of a proposed rulemaking that uses a risk-informed and performance-based approach for these facilities (ADAMS Accession No. ML073530119). The NRC has recently completed the draft technical basis to support this rulemaking. Because of the importance of this regulation, the staff has decided to release the technical documentation for public comment. With this approach, the NRC can address stakeholder questions and respond to comments early in the process. In addition, the staff will hold a public Webinar on January 14, 2010, to discuss this draft technical basis and to facilitate the public's and stakeholder's submission of informed comments.

I. Rulemaking Objectives

The NRC's specific objectives for this rulemaking are to:

(1) Update the ISFSI and MRS security requirements to improve the consistency and clarity of the Part 73 regulations for both types of ISFSI licenses (*i.e.,* general and specific), to reflect the Commission's current thinking on security requirements, and to incorporate lessons learned from security inspections and Force-on-Force (FOF) evaluations conducted (on reactor sites) since the ISFSI security regulations were last updated in the 1990s;

(2) Make generically applicable requirements similar to those imposed on ISFSI licensees by the post-9/11 ISFSI security orders; and

(3) Use a risk-informed and performance based structure in updating the ISFSI and MRS security regulations.

Additionally, one of the issues raised in a petition for rulemaking submitted by the C–10 Research and Education Foundation, Inc. (PRM–72–6) may be relevant to this rulemaking. The NRC published a notice of receipt and request for comment on PRM–72–6 in the **Federal Register** on March 3, 2009 (74 FR 91718).

Objective One—Consistency

The first objective is to propose a set of security requirements that will achieve consistent outcomes across the wide range of SNF and HLW storage facilities that either exist today, or could be licensed by the NRC under Part 72 in the future. The existing ISFSI and MRS security regulations in Part 73 are unnecessarily complex; have not been updated in more than a decade; and are challenging for the NRC staff, licensees, applicants, and other stakeholders to understand and apply. Accordingly, the rulemaking would—

(1) Create a more consistent and coherent regulatory structure for these types of waste storage facilities; and thereby improve agency transparency, regulatory clarity, and the ease of use of these regulations;

(2) Propose security requirements that are consistent with the Commission's recent final rule updating the security requirements for nuclear power reactors (*see* 74 FR 13925; March 29, 2009);

(3) Propose security requirements that address lessons learned during the course of previous NRC inspections and FOF exercises held since the ISFSI security regulations were last updated; and lessons learned during licensing reviews of all of the power reactor security plans that were conducted in 2003 and 2004 (following the issuance of security orders to reactor licensees).

Objective Two—Generic Applicability of Security Orders

The second objective is to make the appropriate provisions of the security orders issued by the NRC to ISFSI licensees following the terrorist attacks of September 11, 2001, generically applicable. This includes both the initial security orders issued in 2005 and subsequently updated security orders issued in 2007. The NRC is proposing to make provisions of these orders generically applicable in the proposed rulemaking and thus to decontrol non-sensitive requirements to increase agency transparency and regulatory clarity. Additionally, measures such as vehicle barrier systems would be added to the regulations in Part 73. Finally, the NRC would also address lessons learned in inspecting the imposition of these security orders.

Objective Three—Use a Risk-Informed and Performance Based Structure

Under this approach, NRC is proposing to establish a security-based dose limit in Part 73 that has the same values as found under the current limits for safety-related accidents in 10 CFR Part 72. The requirement for licensees to specify a controlled area boundary and to meet a ''5-Rem'' dose limit for design basis accidents is specified in the current 10 CFR 72.106.[1] Licensees would use the information supplied by the NRC in combination with information specific to their facility (*e.g.,* distance from the ISFSI or MRS to the controlled area boundary, specific storage cask type, specific fuel burn-up (*i.e.,* radionuclide inventory), and distance to the facility's site boundary) to calculate the potential dose and to verify that a 0.05–Sv (5-Rem) dose limit to be included in Part 73, has been met. The NRC envisions that licensees would use an iterative process that considers changes to parameters (*e.g.,* distance to the controlled area boundary) in order to meet the 0.05–Sv (5-Rem) security dose limit. Licensees who could not meet the 0.05–Sv (5-Rem) dose limit (either with their current facility or by expanding the controlled area boundary of their facility) would be required to consider other options. These options could include increasing the size of the licensee's facility, using engineered security barriers and features to prevent a specific ''security scenario,'' if possible, or shifting to a ''denial'' protective strategy to prevent the specific ''security scenario'' from succeeding.

ISFSI and MRS licensees would also be required to evaluate the effects from the detonation of both a land-based or waterborne vehicle bomb attack (the size of the explosive and the vehicle characteristics would be specified by the NRC) against the SNF or HLW storage casks, facility, or pool; against the facility's central and secondary alarm stations; against security personnel defensive positions (if the licensee employs a denial protective strategy); and against a transfer container if the transfer pathway is not protected by a temporary or permanent vehicle barrier system. ISFSI and MRS licensees would be required to design, install, and implement a vehicle barrier system (which may include the use of landform obstacles) to mitigate the effects of a land-based or, if applicable, a waterborne, vehicle bomb attack.

In implementing this new risk-informed and performance-based approach for ISFSI and MRS security, the NRC would discontinue the application of the design basis threat (DBT) for radiological sabotage to general license ISFSIs. The current regulations only apply the DBT for radiological sabotage to general license ISFSIs. This is an example of inconsistent treatment of ISFSIs and MRSs. The Commission had previously indicated that the issue of whether or not to apply the DBT for radiological sabotage to all ISFSIs (and thus to MRSs as well) would be addressed in a future rulemaking.[2]

In developing this risk-informed and performance-based approach, the NRC staff also considered the findings and recommendations contained in the National Academy of Sciences' (NAS') National Research Council report on ''Safety and Security of Commercial Spent Nuclear Fuel Storage: Report to Congress,'' dated July 2004 (particularly those findings and recommendations contained in sections 4 and 5 of the NAS report). This report contains classified national security information and is not publicly available. Additionally, in 2006, the NAS published a redacted version of this study titled ''Safety and Security of Commercial Spent Nuclear Fuel Storage: Public Report.'' This study is available from the NAS for a fee (*see* the NAS Web site at *http://www.nap.edu/catalog.php?record_id=11263#toc*). The NAS study was based, in part, upon the results of the NRC's 2003 to 2005 security assessments on four representative dry SNF storage systems.

Petiton for Rulemaking (PRM–72–6)

Petition for rulemaking (PRM–72–6), item number 11, requests that the NRC ''* * * require Hardened On-site Storage (HOSS) at all nuclear power plants as well as away-from-reactor dry cask storage; that all nuclear industry interim on-site or off-site dry cask storage installations or ISFSIs be fortified against attack.'' Consequently, item 11's technical content appears to be relevant to the scope of the proposed rulemaking and it is mentioned in the draft technical basis. Therefore, the NRC may consider this petition in the course of developing the proposed rule. However, the NRC has not yet reached a decision on acceptance of this petition and this notice does not prejudge the agency's final action on whether to accept the requests in PRM–72–6.

II. Specific Proposal

The draft technical basis supports a forthcoming proposed revision to the current regulations in 10 CFR Parts 72 and 73, and adding new regulations in 10 CFR Part 73. This draft technical basis will be used by the NRC to develop a proposed rulemaking revising the security requirements for facilities storing SNF and/or HLW. The NRC notes that the public, licensees, certificate holders, and other stakeholders will have a future opportunity to comment on the proposed rulemaking when that document is published in the **Federal Register**.

This draft technical basis does not include any revisions to the security requirements that are applicable to a geologic repository operations area that would be licensed under 10 CFR Parts 60 or 63 (*see* separate proposed rule 72 FR 72521; December 20, 2007).

III. Availability of Documents

The following table indicates the draft technical basis and related documents that are available to the public and how they may be obtained. *See* the **ADDRESSES** section above for information on the physical locations and Web sites to access these documents.

Document	PDR	Web	Electronic reading room (ADAMS)
Draft Technical Basis, Revision 1 (December 2009)	X	X	ML093280743
Commission: SECY–07–0148 (redacted) (August 28, 2007)	X	X	ML080030050
Commission: SRM–SECY–07–0148 (December 18, 2007)	X	X	ML073530119

[1] The dose criteria in 10 CFR 72.106 includes separate limits of 0.05 Sv (5 Rem) total effective dose equivalent; 0.15 Sv (15 Rem) to the lens of the eye; and 0.5 Sv (50 Rem) as either the sum of the deep dose equivalent and any organ dose, or the shallow dose equivalent to the skin or any extremity. Collectively, these values are hereinafter referred to as the 0.05–Sv (5–Rem) dose limit.

[2] Final rule—10 CFR Part 73, ''Design Basis Threat,'' published on March 19, 2007 (72 FR 12705), see response to public comment Issue 5 (at 72 FR 12716).

IV. Specific Considerations and Questions

The NRC requests public comments on this draft technical basis by the **DATES** section specified above. The NRC has not identified any specific questions for public and stakeholder input.

Dated at Rockville, Maryland, this 8th day of December 2009.

For the Nuclear Regulatory Commission.

Richard P. Correia,

Director, Division of Security Policy, Office of Nuclear Security and Incident Response.

[FR Doc. E9–29872 Filed 12–15–09; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0736; Airspace Docket No. 09–AGL–21]

Proposed Amendment of Class E Airspace; Huntingburg, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Huntingburg, IN. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Huntingburg Airport, Huntingburg, IN. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at Huntingburg Airport.

DATES: 0901 UTC. Comments must be received on or before February 1, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0736/Airspace Docket No. 09–AGL–21, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.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 ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: (817) 321–7716.

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–2009–0736/Airspace Docket No. 09–AGL–21.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), 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 NPRMs 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 action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs operations at Huntingburg Airport, Huntingburg, IN. Adjustment to the geographic coordinates would be made in accordance with the FAAs National Aeronautical Charting Office. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation 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.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Huntingburg Airport, Huntingburg, IN.

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, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE 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 FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AGL IN E5 Huntingburg, IN [Amended]

Huntingburg Airport, IN
(Lat. 38°14′57″ N., long. 86°57′13″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Huntingburg Airport and within 2 miles either side of the 091° bearing from the airport extending from the 7-mile radius to 11.1 miles east of the airport.

* * * * *

Issued in Fort Worth, TX on October 28, 2009.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–29845 Filed 12–15–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0142; Airspace Docket No. 09–AAL–2]

Proposed Establishment of Class E Airspace; Shaktoolik, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Shaktoolik, AK. New Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs), and an Obstacle Departure Procedure (ODP) at Shaktoolik Airport have made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before February 1, 2010.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0142/ Airspace Docket No. 09–AAL–2, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.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.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

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–2009–0142/Airspace Docket No. 09–AAL–2.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

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 action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Shaktoolik Airport, AK, to accommodate new RNAV SIAPs at Shaktoolik Airport. This Class E airspace would provide adequate controlled airspace upward from 700 and 1,200 feet above the surface, for the safety and management of IFR operations at Shaktoolik Airport.

The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be subsequently published 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. Because 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.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to establish Class E airspace at Shaktoolik Airport, Shaktoolik, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

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; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR 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 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is to be amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Shaktoolik, AK [New]

Shaktoolik Airport, AK

(Lat. 64°22′16″ N., long. 161°13′26″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Shaktoolik Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Shaktoolik Airport, AK.

* * * * *

Issued in Anchorage, AK, on December 3, 2009.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. E9–29839 Filed 12–15–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0692; Airspace Docket No. 09–AAL–13]

Proposed Establishment of Class E Airspace; Koyukuk, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Koyukuk, AK. New Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs), and an Obstacle Departure Procedure (ODP) at Koyukuk Airport have made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before February 1, 2010.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0692/ Airspace Docket No. 09–AAL–13 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 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.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; *fax:* (907) 271–2850; *e-mail: gary.ctr.rolf@faa.gov. Internet address: http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

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–2009–0692/Airspace Docket No. 09–AAL–13.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned

with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

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 action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace at Koyukuk Airport, AK, to accommodate new RNAV SIAPs at Koyukuk Airport. This Class E airspace would provide adequate controlled airspace upward from 700 and 1,200 feet above the surface, for the safety and management of IFR operations at Koyukuk Airport.

The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be subsequently published 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. Because 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.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to establish Class E airspace at Koyukuk Airport, Koyukuk, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

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; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR 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 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is to be amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Koyukuk, AK [New]

Koyukuk Airport, AK
(Lat. 64°52′33″ N., long. 157°43′50″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Koyukuk Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Koyukuk Airport, AK.

* * * * *

Issued in Anchorage, AK, on December 3, 2009.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. E9–29843 Filed 12–15–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1055; Airspace Docket No. 09–AAL–16]

Proposed Revision of Class E Airspace; Dillingham, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise Class E airspace at Dillingham, AK. Amended Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs), conventional SIAPs, and an Obstacle Departure Procedure (ODP) at Dillingham Airport have made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before February 1, 2010.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–1055/Airspace Docket No. 09–AAL–16, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.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.

An informal docket may also be examined during normal business hours

at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

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–2009–1055/Airspace Docket No. 09–AAL–16.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

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 action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Dillingham Airport, AK, to accommodate amended RNAV SIAPs at Dillingham Airport. This Class E airspace would provide adequate controlled airspace upward from the surface, and from 700 and 1,200 feet above the surface, for the safety and management of IFR operations at Dillingham Airport.

The Class E2 surface areas are published in paragraph 6002 in FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be subsequently published 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. Because 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.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace at Dillingham Airport, Dillingham, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

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 14 CFR 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 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is to be amended as follows:

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

AAL AK E2 Dillingham, AK [Revised]

Dillingham Airport, AK
(Lat. 59°02′41″ N., long. 158°30′20″ W.)
Dillingham VOR/DME
(Lat. 58°59′39″ N., long. 158°33′08″ W.)

Within a 4.4-mile radius of the Dillingham Airport, AK, and within 3.1 miles each side of the 206° radial of the Dillingham VOR/DME, extending from the 4.4-mile radius to 10.4 miles southwest of the Dillingham

Airport, AK. 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 Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Dillingham, AK [Revised]

Dillingham Airport, AK
(Lat. 59°02′41″ N., long. 158°30′20″ W.)
Dillingham VOR/DME
(Lat. 58°59′39″ N., long. 158°33′08″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Dillingham Airport, AK, and within 3.1 miles either side of the 206° radial of the Dillingham VOR/DME, extending from the 7-mile radius to 14.1 miles southwest of the Dillingham Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 22-mile radius of the Dillingham Airport, AK.

* * * * *

Issued in Anchorage, AK, on December 3, 2009.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. E9–29842 Filed 12–15–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1038; Airspace Docket No. 09–AAL–19]

Proposed Revision of Class E Airspace; Scammon Bay, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise Class E airspace at Scammon Bay, AK. New Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Scammon Bay Airport have made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before February 1, 2010.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–1038/Airspace Docket No. 09–AAL–19, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 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.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Gary Rolf, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov*. Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/*.

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–2009–1038/Airspace Docket No. 09–AAL–19.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

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 action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Scammon Bay Airport, AK, to accommodate new RNAV SIAPs at Scammon Bay Airport. This Class E airspace would provide adequate controlled airspace upward from 700 and 1,200 feet above the surface, for the safety and management of IFR operations at Scammon Bay Airport.

The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be subsequently published 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. Because 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.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace at Scammon Bay Airport, Scammon Bay, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

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; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR 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 7400.9T, *Airspace Designations and Reporting Points,* signed August 27, 2009, and effective September 15, 2009, is to be amended as follows:

* * * * *

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Scammon Bay, AK [Revised]

Scammon Bay Airport, AK
(Lat. 61°50′40″ N., long. 165°34′25″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Scammon Bay Airport, AK; and that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the Scammon Bay Airport, AK.

* * * * *

Issued in Anchorage, AK, on December 3, 2009.

Michael A. Tarr,

Acting Manager, Alaska Flight Services Information Area Group.

[FR Doc. E9–29846 Filed 12–15–09; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 190

RIN 3038–AC90

Operation, in the Ordinary Course, of a Commodity Broker in Bankruptcy

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (the ''Commission'') proposes amending its regulations (17 CFR Chapter 1, hereinafter, the ''Regulations'') regarding the operation of a commodity broker in bankruptcy, in order to permit the trustee in such bankruptcy to operate, with the written permission of the Commission, the business of such commodity broker in the ordinary course, including the purchase or sale of new commodity contracts on behalf of the customers of such commodity broker under appropriate circumstances, as determined by the Commission.

DATES: Submit comments on or before January 15, 2010.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web Site: http://www.cftc.gov.* Follow the instructions for submitting comments on the Web site.
- *E-mail: secretary@cftc.gov.* Include the RIN number in the subject line of the message.
- *Fax:* 202–418–5521.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.

FOR FURTHER INFORMATION CONTACT: Robert B. Wasserman, Associate Director, Division of Clearing and Intermediary Oversight, 202–418–5092, *rwasserman@cftc.gov;* or Nancy Schnabel, Special Counsel, Division of Clearing and Intermediary Oversight, 202–418–5344, *nschnabel@cftc.gov;* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION

I. Authority of the Commission To Promulgate and Amend Regulation 190.04(d)

The Commission is empowered by Section 20 of the Commodity Exchange Act (the ''Act'') to provide ''[n]otwithstanding title 11 of the United States Code * * * with respect to a commodity broker that is a debtor under chapter 7 of title 11 of the United States Code, by rule or regulation * * * (3) the method by which the business of such commodity broker is to be conducted or liquidated after the date of the filing of the petition under such chapter, including the payment and allocation of margin with respect to commodity contracts not specifically identifiable to a particular customer pending their orderly liquidation.'' [1]

The Commission exercised such power to promulgate Regulation 190.04(d), which specifies the procedures that a trustee must follow in liquidating open commodity contracts carried by a commodity broker in bankruptcy. Similarly, the Commission will exercise such power when amending Regulation 190.04(d).

Currently, Regulation 190.04(d)(2) denies a trustee the authority to purchase or sell new commodity contracts on behalf of customers of a commodity broker in bankruptcy, except to: (1) Offset an open commodity contract; (2) transfer any transferable notice (received by either the trustee or the commodity broker) applicable to an open commodity contract; and (3) cover, in its discretion and with the approval of the Commission, inventory or commodity contracts of the commodity broker that cannot be immediately liquidated due to market conditions (including price limits).[2]

[1] 7 U.S.C. 24.

[2] 17 CFR 190.04(d)(2).

II. Proposed Amendment To Allow the Trustee To Operate, in the Ordinary Course, a Commodity Broker in Bankruptcy

A. Background

In the proposing release to the original Regulation Part 190 (the ''Proposing Release''), the Commission specified the purposes that it intended Regulation Part 190 to achieve, which included:

> [T]o limit the period during which the bankruptcy estate is at risk from fluctuations in value of the commodity contracts and other property contained therein; * * * to maximize recovery in kind; and * * * to provide an understandable and workable method for operating the estate pending liquidation.[3]

In the typical case, a commodity broker in bankruptcy would be insolvent. If a commodity broker is insolvent, then it would not have the capital necessary for operating its business, including for supporting the credit of its customers, or for otherwise performing on its obligations.[4] Thus, preventing a trustee from purchasing or selling new commodity contracts, whether for the commodity broker or the customers thereof, would generally (i) minimize the risk of loss to customers of the commodity broker, and (ii) therefore, maximize the scope of recovery for such customers.

However, certain purchases or sales of new commodity contracts may actually reduce the risk of loss to customers of a commodity broker in bankruptcy. Therefore, when the Commission promulgated Regulation Part 190 in 1983, the Commission created certain exceptions to Regulation 190.04(d)(2), as described above. By creating such exceptions, the Commission acknowledged that the trustee must be allowed to purchase or sell new commodity contracts, whether for the commodity broker or the customers thereof, in order to: (1) Liquidate open commodity contracts; or (2) transfer an incipient delivery obligation of an open commodity contract. Facilitating such liquidation would limit the period in which the estate of the commodity broker is at risk for fluctuations in value. Permitting such transfer would tend to maximize recovery of customers of the commodity broker, by allowing the trustee to minimize or avoid claims for losses resulting from the inability of the estate of the commodity broker to fulfill obligations to take or effect delivery on open commodity contracts.

In addition to the exceptions enumerated above, the Commission acknowledged that, if the trustee cannot immediately liquidate the inventory or open commodity contracts of a commodity broker in bankruptcy, because of market conditions (including price limits), then the trustee should be allowed to purchase or sell new commodity contracts, in order to cover or partially cover such inventory or commodity contracts. The Commission intended to permit such cover or partial cover in order to prevent, among other things, the ''material erosion in value'' of such inventory or commodity contracts, which would diminish the recovery of the customers of the commodity broker.[5]

B. The Proposed Amendment

The Commission is proposing to amend Regulation 190.04(d) to allow the trustee, under appropriate circumstances, to operate the business of a commodity broker in bankruptcy in the ordinary course, including the purchase or sale of new commodity contracts on behalf of the customers of the debtor (the ''*Amendment*''). The appropriateness of a particular set of circumstances would be determined by the Commission in its discretion, and such operation would require the written permission of the Commission. Pursuant to Regulation 190.10(d), the Commission has delegated all the functions of the Commission in Regulation Part 190, except one, to the Director of the Division of Clearing and Intermediary Oversight, and therefore, under this proposed amendment, the Director would also have the power to make such determination and to issue such written permission.[6]

C. Rationale for the Proposed Amendment

Recently, events have demonstrated that a commodity broker may enter into bankruptcy while not insolvent.[7] For example, on Friday, November 25, 2005, after the closing of the relevant markets, Refco, LLC (''Refco'') filed for relief under Subchapter IV of Chapter 7 of the Bankruptcy Code, primarily to satisfy a precondition for the sale of its FCM business to a third party. Previously, the United States Bankruptcy Court for the Southern District of New York (''District Court'') had approved the sale of that FCM business. According to the agreement governing the sale, the third party would give the parent entities of Refco (i) a specified sum and (ii) the opportunity to retain the net regulatory capital of Refco.[8]

Shortly after Refco filed for relief under Subchapter IV of Chapter 7 of the Bankruptcy Code, the sale of its FCM business to a third party was consummated. Prior to the re-opening of the relevant markets on Sunday, November 27, 2005, all of the customer accounts of Refco, comprising one hundred percent of the net equity of each customer, were transferred to the third party.

During the Refco proceedings, it was practicable to transfer customer accounts when all relevant markets were closed. However, it may not always be so practicable. For example, on Friday, September 19, 2008, prior to the closing of the relevant markets, Lehman Brothers Inc. (''Lehman'') became the subject of a proceeding under the Securities Investor Protection

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[3] 46 FR 57535, 57536 (November 24, 1981).

[4] In general, commodity brokers are required to guarantee all customer positions that they carry, as well as to use their own capital to cover the debit balance of any customer in an omnibus segregated account that they maintain, in order to prevent the commodity broker from using the property belonging to other customers to margin, guarantee, or secure the positions of the customer incurring such debit. *See* Section 4d of the Act (7 U.S.C. 6d). *See also* CFTC Letter No. 00–106 (November 22, 2000) (stating that a commodity broker that is a futures commission merchant (''FCM'') must cover any deficit in the customer segregated account with its own funds or property, and not the funds or property of other customers).

[5] In the Proposing Release, the Commission included the following version of Regulation 190.04(d)(2) (referenced in the Proposing Release as Regulation 190.04(d)(3)): Nothing in this Part shall be interpreted to permit the trustee to purchase new commodity contracts for customers of the debtor: Provided, however, That to prevent *material erosion in value,* the trustee may, in its discretion and with the approval of the Commission, cover uncovered inventory or commodity contracts of the debtor which cannot be liquidated immediately because of limit moves or other market conditions.

46 FR 57353, 57561 (November 24, 1981). However, in the adopting release to Regulation Part 190 (the ''Adopting Release''), the Commission removed the reference to ''material erosion in value'' in proposed Regulation 190.04(d)(2), in response to a comment that such reference would ''have limited the cases in which cover transactions could be sought by the trustee.'' Nevertheless, the Commission reiterated in the Adopting Release that the primary purpose of Regulation 190.04(d)(2) was to prevent a ''material erosion in value'' of uncovered inventory or commodity contracts, by stating that ''the Commission * * * believes cover transactions would be limited to this purpose.'' 48 FR 8716, 8729 (March 1, 1983).

[6] Regulation 190.10(d) would apply to the proposed Amendment. Regulation 190.10(d) states:

> Until such time as the Commission orders otherwise, the Commission hereby delegates to the Director of the Division of Clearing and Intermediary Oversight, and to such members of the Commission's staff acting under his direction as he may designate, all the functions of the Commission set forth in this part except the authority to approve or disapprove a withdrawal or settlement of a commodity account by a public customer pursuant to § 190.06(g)(3).

[7] The Bankruptcy Code permits a solvent entity to legally file for relief under Chapter 7 of the Bankruptcy Code. *See* Collier on Bankruptcy ¶ 109.03[2].

[8] *See In re: Refco, LLC,* No. 05–60134–rdd, Docket No. 5 (Bankr. S.D.N.Y. Nov. 25, 2005).

Act of 1970 (''SIPA''),[9] primarily to satisfy a precondition for the sale of its securities broker-dealer business and its FCM business to a third party. On Saturday, September 20, 2008, the District Court approved the sale of such securities broker-dealer business and FCM business, in exchange for the third party giving the parent of Lehman a specified sum.[10] Shortly after such approval, the sale was consummated. Soon after the consummation, the customer accounts of Lehman began to be transferred to the third party. However, because the Lehman proceedings under SIPA had commenced in District Court prior to the closing of the relevant markets, customers of Lehman would have been unable to manage their accounts, absent a provision in the Order issued by the District Court permitting the trustee to conduct business in the ordinary course.[11]

The Commission is proposing the Amendment to enable customers to manage their accounts, after their commodity broker enters into bankruptcy and prior to the transfer of their accounts, in certain circumstances. As the Refco and Lehman proceedings illustrate, there may be cases where a transfer of customer accounts has been arranged pre-bankruptcy, and where a commodity broker in bankruptcy may nevertheless possess the capital necessary to continue operating its business in the ordinary course (*e.g.,* to continue supporting the credit of its customers and performing on its other obligations), pending imminent transfer of customer accounts to another commodity broker. Therefore, permitting the trustee to operate such business in the ordinary course may advance the purpose of Regulation Part 190—namely, ''to provide an understandable and workable method for operating the estate pending liquidation.'' [12] Thus, the proposed Amendment is consistent with the past practice of the Commission in creating exemptions to Regulation 190.04(d)(2) when necessary to advance the purposes of Regulation Part 190. Additionally, allowing customers to manage their accounts, as much as possible, as if the commodity broker had not entered into bankruptcy would be in the best interests of both the customers and the relevant markets in general.

Whether a commodity broker in bankruptcy has sufficient capital to continue operating its business in the ordinary course is inherently a factual question. Therefore, the Commission reserves the power to limit the application of the proposed Amendment, in its discretion, by: (1) Requiring the trustee to obtain the written permission of the Commission; and (2) determining the circumstances under which the trustee may purchase or sell new commodity contracts on behalf of customers of the commodity broker in bankruptcy.

In deciding whether to apply the proposed Amendment to a particular commodity broker in bankruptcy, the Commission may consider the following factors: (1) Whether the commodity broker has entered into an agreement providing for the imminent transfer of its customer accounts to an entity that is ready, willing and able to accept such transfer promptly; (2) whether the commodity broker has sufficient capital, at the time it becomes subject to bankruptcy proceedings, to continue operating its business in the ordinary course pending the transfer; and (3) whether a commodity broker will have sufficient capital, after the sale of its assets (including its FCM business), to continue operating its business in the ordinary course until all of its customer accounts have been transferred. The Commission anticipates that future bankruptcies of commodity brokers may present new factors for its consideration, and the proposed Amendment is therefore intended to provide the Commission with flexibility to consider such new factors in its discretion.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') [13] requires Federal agencies, in promulgating regulations, to consider the impact of those regulations on small businesses. As mentioned above, the proposed Amendment provides a limited exception to Regulation 190.04(d)(2), by permitting a trustee to operate, with the written permission of the Commission, the business of a commodity broker in bankruptcy in the ordinary course, including the purchase or sale of new commodity contracts on behalf of the customers of such commodity broker. The proposed Amendment does not impose a regulatory burden on either a commodity broker pre-bankruptcy or a trustee post-bankruptcy. Moreover, the proposed Amendment will affect only FCMs (including certain foreign futures commission merchants).[14] The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its regulations on such entities in accordance with the RFA.[15] The Commission has previously determined that FCMs are not small entities for the purpose of the RFA.[16] Accordingly, pursuant to 5 U.S.C. 605(b), the Chairman certifies, on behalf of the Commission, that the proposed Amendment will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'') [17] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. The proposed Amendment does not require the new collection of information on the part of any entities that would be subject to the proposed Amendment. Accordingly, for purposes of the PRA, the Commission certifies that the proposed Amendment, if promulgated in final form, would not impose any new reporting or recordkeeping requirements.

C. Cost-Benefit Analysis

Section 15(a) of the Act [18] requires that the Commission, before promulgating a regulation under the Act or issuing an order, consider the costs and benefits of its action. By its terms, Section 15(a) of the Act does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather,

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[9] 15 U.S.C. 78aaa–111.

[10] *See In re: Lehman Brothers Holdings Inc., et al.,* No. 08–13555, Docket No. 258 (Bankr. S.D.N.Y. Sept. 20, 2008).

[11] *See S.I.P.C.* v. *Lehman Brothers, Inc.,* No. 08–8119, Docket No. 3 (S.D.N.Y. September 19, 2008).

[12] 46 FR 57535, 57536 (November 24, 1981).

[13] 5 U.S.C. 601 *et seq.*

[14] The proposed Amendment may apply, in the future, to other commodity brokers that execute trades and carry accounts for clearing on behalf of customers—namely, commodity options dealers and leverage transaction merchants. Currently, no such commodity brokers exist. Therefore, even if such commodity brokers would constitute ''small entities'' for purposes of the RFA, the proposed Amendment can have no current impact on such commodity brokers. However, it is unlikely that such commodity brokers would constitute ''small entities'' for purposes of the RFA. In defining ''small entities'' for the purpose of the RFA, the Commission excluded FCMs based on the fiduciary nature of FCM-customer relationships, as well as the minimum financial requirements that apply to FCMs. *See* 47 FR 18618, 18619 (Apr. 30, 1982). Certain parts of this rationale would also be applicable to commodity options dealers, foreign futures commission merchants, and leverage transaction merchants.

[15] 47 FR 18618 (Apr. 30, 1982).

[16] *Id.* at 18619.

[17] 44 U.S.C. 3501 *et seq.*

[18] 7 U.S.C. 19.

Section 15(a) of the Act simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five considerations and could, in its discretion, determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission has evaluated the costs and benefits of the proposed Amendment, in light of the specific considerations identified in Section 15(a) of the Act, as follows:

1. Protection of Market Participants and the Public

In the event of the bankruptcy of a commodity broker, the proposed Amendment would benefit the customers of such commodity broker, by providing them with the opportunity, under certain circumstances, to manage their accounts prior to the transfer of such accounts to a new commodity broker.

2. Efficiency and Competition

The proposed Amendment is not expected to have an effect on efficiency or competition.

3. Financial Integrity of Futures Markets and Price Discovery

As mentioned above, the proposed Amendment will promote financial integrity of the futures markets by providing customers of a commodity broker in bankruptcy with the opportunity, under certain circumstances, to manage their accounts prior to the transfer of such accounts to a new commodity broker.

4. Sound Risk Management Practices

The proposed Amendment is not expected to have a direct effect on the risk management practices of commodity brokers.

5. Other Public Considerations

Recent events, such as the Refco and Lehman proceedings, have demonstrated that the proposed Amendment is necessary and prudent.

Accordingly, after considering the five factors enumerated in the Act, the Commission has determined to propose the regulations set forth below.

List of Subjects in 17 CFR Part 190

Bankruptcy, Brokers, Commodity futures.

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR part 190 as follows:

PART 190—BANKRUPTCY

1. The authority citation for Part 190 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4a, 6c, 6d, 6g, 7a, 12, 19, and 24, and 11 U.S.C. 362, 546, 548, 556, and 761–766, unless otherwise noted.

2. Add new paragraph (d)(3) to § 190.04 to read as follows:

§ 190.04 Operation of the debtor's estate—general.

* * * * *

(d) * * *

(3) *Exception to liquidation only.* Notwithstanding paragraph (d)(2) of this section, the trustee may, with the written permission of the Commission, operate the business of the debtor in the ordinary course, including the purchase or sale of new commodity contracts on behalf of the customers of the debtor under appropriate circumstances, as determined by the Commission.

* * * * *

Issued in Washington, DC, on December 9, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–29730 Filed 12–15–09; 8:45 am]

BILLING CODE P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 382

[Docket No. 2006–1 CRB DSTRA]

Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Royalty Judges are publishing for comment proposed regulations governing the rates for the satellite digital audio radio services' use of the ephemeral recordings statutory license under the Copyright Act for the period 2007 through 2012.

DATES: Comments and objections, if any, are due no later than January 15, 2010.

ADDRESSES: Comments and objections may be sent electronically to *crb@loc.gov.* In the alternative, send an original, five copies and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments and objections may not be delivered by an overnight delivery service other than U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments and objections must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments and objections must be brought to the Copyright Office Public Information Office, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–0600, between 8:30 a.m. and 5 p.m. If delivered by a commercial courier, comments and objections must be delivered between 8:30 a.m. and 4 p.m. to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC, and the envelope must be addressed as follows: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, Room LM–403, 101 Independence Avenue, SE., Washington, DC 20559–0600.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or by e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On January 24, 2008, the Copyright Royalty Judges published in the **Federal Register** their determination of royalty rates and terms under the statutory licenses under Sections 112(e) and 114 of the Copyright Act for the period 2007 through 2012 for satellite digital audio radio services (''SDARS''). 73 FR 4080. In *SoundExchange, Inc.* v. *Librarian of Congress,* 571 F.3d 1220, 1226 (DC Cir. 2009), the U.S. Court of Appeals for the DC Circuit affirmed the Judges' determination in all but one respect, remanding to the Copyright Royalty Judges the single matter of specifying a royalty for the use of the ephemeral recordings statutory license under Section 112(e) of the Copyright Act. By order dated October 22, 2009, the Copyright Royalty Judges established a period commencing on November 2, 2009, and concluding on December 2, 2009, for Sound Exchange, Inc. and Sirius XM Radio Inc. (collectively, the ''Parties'') to negotiate and submit a settlement of the ephemeral royalty rate

issue that was the subject of the remand. With the Parties having reached such a settlement, the Copyright Royalty Judges now publish for comment the proposed change in the rule that is necessary to implement that settlement pursuant to order of remand from the U.S. Court of Appeals for the DC Circuit.

In the Settlement, the Parties have agreed to proposed changes in the regulations at 37 CFR 382.12 that do not disturb the combined Section 112(e)/114 royalty previously set by the Copyright Royalty Judges, but do specify that five percent of the combined royalty will be considered the Section 112(e) royalty, while the balance of the royalty is attributable to the Section 114 license.

List of Subjects in 37 CFR Part 382

Copyright, Digital audio transmissions, Performance right, Sound recordings.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend part 382 of title 37 of the Code of Federal Regulations as follows:

PART 382—RATES AND TERMS FOR DIGITAL TRANSMISSIONS OF SOUND RECORDINGS AND THE REPRODUCTION OF EPHEMERAL RECORDINGS BY PREEXISTING SUBSCRIPTION SERVICES AND PREEXISTING SATELLITE DIGITAL AUDIO RADIO SERVICES

1. The authority citation for part 382 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114, and 801(b)(1).

2. Section 382.12 is revised to read as follows:

§ 382.12 Royalty fees for the public performance of sound recordings and the making of ephemeral recordings.

(a) *In general.* The monthly royalty fee to be paid by a Licensee for the public performance of sound recordings pursuant to 17 U.S.C. 114(d)(2) and the making of any number of ephemeral phonorecords to facilitate such performances pursuant to 17 U.S.C. 112(e) shall be the percentage of monthly Gross Revenues resulting from Residential services in the United States as follows: for 2007 and 2008, 6.0%; for 2009, 6.5%; for 2010, 7.0%; for 2011, 7.5%; and for 2012, 8.0%.

(b) *Ephemeral recordings.* The royalty payable under 17 U.S.C. 112(e) for the making of phonorecords used by the Licensee solely to facilitate transmissions during the Term for which it pays royalties as and when provided in this subpart shall be included within, and constitute 5% of, such royalty payments.

Dated: December 11, 2009.

James Scott Sledge,

Chief U.S. Copyright Royalty Judge.

[FR Doc. E9–29904 Filed 12–15–09; 8:45 am]

BILLING CODE 1410–72–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1083]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before March 16, 2010.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1083, to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820, or (e-mail) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
Town of Ennis, Montana					
Montana	Town of Ennis	Moores Creek	Approximately 5,450 feet downstream of 1st Street.	None	+4915
			Approximately 650 feet upstream of Moores Creek Road.	None	+5030

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Ennis

Maps are available for inspection at 328 West Main Street, Ennis, MT 59729.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Cross County, Arkansas, and Incorporated Areas				
Cooper Creek	Approximately 1,100 feet upstream of State Highway 1 Business.	None	+279	Unincorporated Areas of Cross County.
	Approximately 0.58 mile upstream of State Highway 1 Business.	None	+286	
Turkey Creek	Approximately 400 feet upstream of State Highway 1	None	+258	Unincorporated Areas of Cross County.
	Just upstream of Gibbs Road	None	+259	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Cross County

Maps are available for inspection at 705 Union Avenue East, Room 4, Wynne, AR 72396.

Drew County, Arkansas, and Incorporated Areas				
Tenmile Creek	Approximately 1,000 feet downstream of the Missouri Pacific Railroad.	None	+208	Unincorporated Areas of Drew County.
	Just downstream of Missouri Pacific Railroad	None	+212	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Tenmile Tributary	Approximately 3,200 feet downstream of Ragland Avenue.	None	+222	City of Monticello, Unincorporated Areas of Drew County.
	Just downstream of Barkada Road	None	+236	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Monticello

Maps are available for inspection at 204 West Gains Street, Monticello, AR 71655.

Unincorporated Areas of Drew County

Maps are available for inspection at 210 South Main Street, Monticello, AR 71655.

Poinsett County, Arkansas, and Incorporated Areas

Left Hand Chute of Little River.	At the confluence of St. Francis River	None	+212	Unincorporated Areas of Poinsett County.
	Approximately 0.45 mile downstream of Leatherwood Lane.	None	+216	
	Approximately 1.02 mile downstream of State Highway 140.	None	+220	
	Approximately 1,400 feet downstream of State Highway 140.	None	+223	
St. Francis River	Approximately 0.73 mile downstream of Highway 63 ..	None	+211	Unincorporated Areas of Poinsett County.
	At the confluence of Left Hand Chute of Little River ...	None	+212	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Poinsett County

Maps are available for inspection at the County Hall, Harrisburg, AR 72432.

Saline County, Arkansas, and Incorporated Areas

Hurricane Lake	Just downstream of Interstate 30	None	+369	City of Benton, Unincorporated Areas of Saline County.
	. Approximately 0.41 mile downstream of Zuber Road ..	None	+410	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Benton

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Maps are available for inspection at 114 South East Street, Benton, AR 72015.

Unincorporated Areas of Saline County

Maps are available for inspection at 200 North Main Street, Room 17, Benton, AR 72015.

Humboldt County, California, and Incorporated Areas

Redwood Creek (With all levees).	At the confluence with the Pacific Ocean	None	+10	Unincorporated Areas of Humboldt County.
	Approximately 1.25 mile upstream of U.S. Highway 101.	None	+44	
Redwood Creek (Without all levees).	At the confluence with the Pacific Ocean	None	+10	Unincorporated Areas of Humboldt County.
	Approximately 1.25 mile upstream of U.S. Highway 101.	None	+42	
Redwood Creek (Without all right levees).	At the confluence with the Pacific Ocean	None	+10	Unincorporated Areas of Humboldt County.
	Approximately 1.25 mile upstream of U.S. Highway 101.	None	+43	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Humboldt County

Maps are available for inspection at the County Courthouse, 825 5th Street, Room 111, Eureka, CA 95501.

Oglethorpe County, Georgia, and Incorporated Areas

Oconee River	At the confluence of Falling Creek	None	+461	Unincorporated Areas of Oglethorpe County.
	Approximately 0.4 mile upstream of the county boundary.	None	+477	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Oglethorpe County

Maps are available for inspection at the Oglethorpe County Board of Commissioners Office, 341 West Main Street, Lexington, GA 30648.

Wilkinson County, Georgia, and Incorporated Areas

Little Commissioner Creek	Approximately 0.4 mile upstream of State Route 18	None	+332	Unincorporated Areas of Wilkinson County.
	Approximately 0.5 mile upstream of State Route 18	None	+332	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Wilkinson County

Maps are available for inspection at the County Courthouse, 100 Bacon Street, Irwinton, GA 31042.

Bath County, Kentucky, and Incorporated Areas

Caney Creek (Backwater effects from Cave Run Lake).	From confluence with Cave Run Lake to approximately 0.6 mile upstream of the confluence with Cave Run Lake.	None	+747	Unincorporated Areas of Bath County.
Cave Run Lake	Entire shoreline of Cave Run Lake	None	+747	Unincorporated Areas of Bath County.
Sulpher Branch (Backwater effects from Cave Run Lake).	From confluence with Cave Run Lake to 2,000 feet upstream of the confluence with Cave Run Lake.	None	+747	Unincorporated Areas of Bath County.
Trough Lick Branch (Backwater effects from Cave Run Lake).	From confluence with Cave Run Lake to 2,000 feet upstream of the confluence with Cave Run Lake.	None	+747	Unincorporated Areas of Bath County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Bath County

Maps are available for inspection at 19 East Main Street, Owingsville, KY 40360.

Pointe Coupee Parish, Louisiana, and Incorporated Areas

Bayou Fordoche	Approximately 0.47 mile downstream of Interstate 190	None	+19	Town of Livonia.
	Approximately 1.21 mile upstream of Interstate Highway 190.	None	+19	
Bayou Fordoche	Approximately 0.54 mile downstream of Robinhood Road.	None	+26	Village of Fordoche.
	Approximately 900 feet downstream of Robinhood Road.	None	+27	
False Bayou	Just upstream of Texas and Union Railroad	+29	+23	Unincorporated Areas of Pointe Coupee Parish.
	Approximately 1,500 feet upstream of Texas and Union Railroad.	+29	+27	

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ADDRESSES

Town of Livonia

Maps are available for inspection at the Pointe Coupee Police Jury, 160 East Main Street, New Roads, LA 70760.

Unincorporated Areas of Pointe Coupee Parish

Maps are available for inspection at the Pointe Coupee Police Jury, 160 East Main Street, New Roads, LA 70760.

Village of Fordoche

Maps are available for inspection at the Pointe Coupee Police Jury, 160 East Main Street, New Roads, LA 70760.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Dorchester County, Maryland, and Incorporated Areas				
Marshy Hope Creek	Approximately at the county boundary with Caroline County.	None	+11	Unincorporated Areas of Dorchester County.
	Approximately 250 feet downstream of the Town of Federalsburg corporate limits.	None	+11	
Wright's Branch	Approximately at Delaware Avenue	None	+35	Unincorporated Areas of Dorchester County.
	Approximately 400 feet upstream of Andrews Street ..	None	+37	

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ADDRESSES

Unincorporated Areas of Dorchester County

Maps are available for inspection at the County Office Building, 501 Court Lane, Cambridge, MD 21613.

Somerset County, Maryland, and Incorporated Areas				
Loretta Branch	Approximately 125 feet downstream of Umes Boulevard.	None	+5	Unincorporated Areas of Somerset County.
	Approximately at the confluence with Manokin River and Manokin Branch.	None	+5	
Manokin Branch	Approximately at the confluence with Manokin River and Loretta Branch.	None	+5	Unincorporated Areas of Somerset County.
	Approximately 750 feet upstream of Broad Street	None	+5	
Manokin River	Approximately 4,000 feet upstream of the confluence with Taylor Creek.	None	+5	Unincorporated Areas of Somerset County.
	Approximately at the crossing of Somerset Avenue	None	+5	

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ADDRESSES

Unincorporated Areas of Somerset County

Maps are available for inspection at 319 West Main Street, Crisfield, MD 21817.

Prentiss County, Mississippi, and Incorporated Areas				
Tennessee-Tombigbee Waterway (Bay Springs Lake).	Entire shoreline (within county)	None	+420	Unincorporated Areas of Prentiss County.

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Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

ADDRESSES

Unincorporated Areas of Prentiss County

Maps are available for inspection at the County Courthouse, 2301 North 2nd Street, Booneville, MS 38829.

Gallia County, Ohio, and Incorporated Areas

Campaign Creek (backwater effects from Ohio River).	Approximately 640 feet upstream of Bulaville Pike	None	+571	Unincorporated Areas of Gallia County.
	Approximately 0.7 mile upstream of Bulaville Pike	None	+571	
Clear Fork (backwater effects from Ohio River).	Confluence with Raccoon Creek	None	+566	Unincorporated Areas of Gallia County.
	Approximately 0.6 mile downstream of State Route 141.	None	+566	
Little Swan Creek (backwater effects from Ohio River).	Confluence with Swan Creek	None	+561	Unincorporated Areas of Gallia County.
	Approximately 0.7 mile upstream of confluence with Swan Creek.	None	+561	
Raccoon Creek	Approximately 1.9 mile downstream of State Route 160 in the Village of Vinton.	None	+605	Unincorporated Areas of Gallia County, Village of Vinton.
	Approximately 0.8 mile upstream of State Route 160 in the Village of Vinton.	None	+613	
Raccoon Creek (backwater effects from Ohio River).	Approximately 0.6 mile upstream of Little Raccoon Creek's confluence with Raccoon Creek.	None	+566	Unincorporated Areas of Gallia County.
	Approximately 0.7 mile upstream of Lincoln Pike	None	+566	
Swan Creek (backwater effects from Ohio River).	Approximately 1,020 feet downstream of Swan Creek Road.	None	+561	Unincorporated Areas of Gallia County.
	Approximately 1,360 feet downstream of Peters Branch Road.	None	+561	

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ADDRESSES

Unincorporated Areas of Gallia County

Maps are available for inspection at 111 Jackson Pike, Suite 1569, Gallipolis, OH 45631.

Village of Vinton

Maps are available for inspection at 111 Jackson Pike, Suite 1569, Gallipolis, OH 45631.

Le Flore County, Oklahoma, and Incorporated Areas

Caston Creek	Just upstream of the confluence with the Poteau River.	None	+463	Unincorporated Areas of Le Flore County.
	Approximately 500 feet upstream of the confluence with Mountain Creek.	None	+470	
Morris Creek	Approximately 200 feet downstream of Old Highway 59.	None	+469	Town of Howe, Unincorporated Areas of Le Flore County.
	Approximately 830 feet downstream of County Road East 1425.	None	+492	
Morris Tributary	Approximately 1,640 feet downstream of Highway 59	None	+485	Town of Howe, Unincorporated Areas of Le Flore County.
	Approximately 525 feet downstream of County Road East 1430.	None	+501	
Mountain Creek	At the confluence with Caston Creek	None	+470	Unincorporated Areas of Le Flore County.
	Approximately 600 feet upstream of Highway 270	None	+483	
Polk Creek	Approximately 0.6 mile downstream of Possum Valley Road.	None	+443	City of Poteau, Unincorporated Areas of Le Flore County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Just upstream of Polk Creek Road	None	+584	
Poteau River	Flooding effects from the Poteau River extending just upstream of the San Francisco Railway.	None	+448	Unincorporated Areas of Le Flore County.
	Flooding effects from the Poteau River extending from 2.3 miles upstream of County Road East 1370.	None	+453	
Town Creek North	Approximately 958 feet upstream of Witte Street	+454	+453	City of Poteau.
	Just upstream of Cavanal Scenic Expressway	None	+571	

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ADDRESSES

City of Poteau
Maps are available for inspection at 111 Peters Street, Poteau, OK 74953.

Town of Howe
Maps are available for inspection at 21781 West Main Street, Howe, OK 74940.

Unincorporated Areas of Le Flore County
Maps are available for inspection at 100 South Broadway Street, Poteau, OK 74953.

Colorado County, Texas, and Incorporated Areas

Colorado River	Approximately 0.6 mile downstream of County Highway 122.	None	+139	Unincorporated Areas of Colorado County, City of Columbus, City of Eagle Lake, Colorado County Water Control Improvement District No. 2.
	Just downstream of Burnham's Ferry Crossing	None	+223	

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ADDRESSES

City of Columbus
Maps are available for inspection at 605 Spring Street, Columbus, TX 78934.

City of Eagle Lake
Maps are available for inspection at 400 Spring Street, Columbus, TX 78934.

Colorado County Water Control Improvement District No. 2
Maps are available for inspection at 400 Spring Street, Columbus, TX 78934.

Unincorporated Areas of Colorado County
Maps are available for inspection at 400 Spring Street, Columbus, TX 78934.

Dawson County, Texas, and Incorporated Areas

Sulphur Springs Draw	Just upstream of County Road L	None	+2924	Unincorporated Areas of Dawson County.
	Just downstream of U.S. Highway 180	None	+2950	

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ADDRESSES

Unincorporated Areas of Dawson County

Maps are available for inspection at 400 South 1st Street, Lamesa, TX 79331.

Denton County, Texas, and Incorporated Areas

Cooper Creek	Approximately 570 feet downstream of the intersection of Cooper Creek and Mingo Road.	+588	+585	City of Denton.
	Approximately 586 feet downstream of the intersection of Cooper Creek and East Sherman Drive.	+630	+628	

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ADDRESSES

City of Denton

Maps are available for inspection at 215 East McKinney Street, Denton, TX 76201.

Duval County, Texas, and Incorporated Areas

San Diego Creek	Just upstream of Ventura Street	None	+296	City of San Diego, Unincorporated Areas of Duval County.
	Just upstream of Julian Street	None	+304	

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ADDRESSES

City of San Diego

Maps are available for inspection at 404 South Meir Street, San Diego, TX 78384.

Unincorporated Areas of Duval County

Maps are available for inspection at 400 East Gravis Highway 44, San Diego, TX 78384.

Fannin County, Texas, and Incorporated Areas

Bois D'arc Creek	Approximately 1,400 feet upstream of State Highway 56.	None	+553	Unincorporated Areas of Fannin County.
	Approximately 0.75 mile upstream of State Highway 56.	None	+554	

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ADDRESSES

Unincorporated Areas of Fannin County

Maps are available for inspection at 101 East Sam Rayburn Drive, Bonham, TX 75418.

Hale County, Texas, and Incorporated Areas

Running Water Draw	Approximately 1,800 feet downstream of County Road Y.	+3335	+3337	City of Plainview, Unincorporated Areas of Hale County.
	Approximately 500 feet upstream of U.S. Highway 70	+3381	+3382	
Tributary A	Approximately 1,400 feet upstream of Business Loop Interstate 27.	+3378	+3380	City of Plainview, Unincorporated Areas of Hale County.
	Just upstream of County Road 60	+3387	+3388	
Tributary to Running Water Draw.	At the confluence with Running Water Draw	+3364	+3365	City of Plainview, Unincorporated Areas of Hale County.
	Playa C adjoining Interstate 27	+3380	+3381	

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ADDRESSES

City of Plainview

Maps are available for inspection at 901 Broadway Street, Plainview, TX 79072.

Unincorporated Areas of Hale County

Maps are available for inspection at 500 Broadway Street, Plainview, TX 79072.

Wasatch County, Utah, and Incorporated Areas

Center Creek	At confluence with Surplus Canal	None	+5628	City of Heber City, Town of Independence, Unincorporated Areas of Wasatch County.
	Approximately 2,914 feet upstream of the upper Center Creek Road crossing.	None	+6573	
Humbug Canal	At the confluence with Center Creek	None	+5685	City of Heber City, Unincorporated Areas of Wasatch County.
	Approximately 566 feet upstream of 600 South Street	None	+5692	
Lake Creek	At the diversion to South Lake Creek and North Lake Creek.	None	+5860	Unincorporated Areas of Wasatch County.
	Approximately 0.73 mile upstream of Lake Pines Drive.	None	+6738	
Lower Wasatch Canal	At Highway 189	None	+5634	City of Heber City, Unincorporated Areas of Wasatch County.
	Approximately 800 feet upstream of Mill Road	None	+5694	
North Lake Creek	Approximately 800 feet upstream of Mill Road	None	+5694	City of Heber City, Unincorporated Areas of Wasatch County.
	At the diversion from Lake Creek	None	+5860	
Snake Creek	At confluence with Middle Provo River	None	+5422	City of Midway, Unincorporated Areas of Wasatch County.
	Approximately 210 feet upstream of Warm Springs Road.	None	+5760	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
South Lake Creek	Approximately 566 feet upstream of 600 South Street	None	+5692	City of Heber City, Unincorporated Areas of Wasatch County.
	At the diversion from Lake Creek	None	+5860	
Surplus Canal	At the confluence with the Middle Provo River	None	+5433	City of Heber City, Unincorporated Areas of Wasatch County.
	At Highway 189	None	+5634	
Upper Provo River	Approximately 0.52 mile downstream of Highway 32 ..	None	+6186	Unincorporated Areas of Wasatch County.
	Approximately 0.28 mile upstream of Moonlight Drive	None	+6426	

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ADDRESSES

City of Heber City
Maps are available for inspection at 75 North Main Street, Heber City, UT 84032.

City of Midway
Maps are available for inspection at 75 North 100 West, Midway, UT 84032.

Town of Independence
Maps are available for inspection at 4530 East Center Creek Road, Heber City, UT 84032.

Unincorporated Areas of Wasatch County
Maps are available for inspection at 25 North Main Street, Heber City, UT 84032.

Barbour County, West Virginia, and Incorporated Areas

Tygart Valley River	Approximately 40 feet downstream of the confluence of Big Run.	None	+1696	Unincorporated Areas of Barbour County.
	Approximately 175 feet upstream of the confluence of Tributary No. 1 to Tygart Valley River.	None	+1706	

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ADDRESSES

Unincorporated Areas of Barbour County
Maps are available for inspection at the County Courthouse, 8 North Main Street, Philippi, WV 26416.

Upshur County, West Virginia, and Incorporated Areas

Brushy Fork (Backwater flooding from Buckhannon River).	Approximately at the confluence with Fink Run	None	+1415	Unincorporated Areas of Upshur County.
	Approximately 700 feet upstream of County Route 7/1 (Left Branch of Brushy Fork).	None	+1415	
Fink Run (Backwater flooding from Buckhannon River).	Just upstream of Old Weston Road	None	+1415	Unincorporated Areas of Upshur County.
	Approximately 2,100 feet upstream of intersection of Old Weston Road and County Route 5/7 (Mudlick Run).	None	+1415	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Unnamed Tributary No. 1 to Fink Run (Backwater flooding from Buckhannon River).	Approximately at the area bounded by U.S. Route 33, Wabash Avenue, and County Route 33/1.	None	+1415	Unincorporated Areas of Upshur County.

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ADDRESSES

Unincorporated Areas of Upshur County

Maps are available for inspection at 38 West Main Street, Buckhannon, WV 26201.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Deborah S. Ingram,

Acting Deputy Assistant Administrator for Mitigation, Mitigation Directorate, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E9–29934 Filed 12–15–09; 8:45 am]

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Notices

Federal Register
Vol. 74, No. 240
Wednesday, December 16, 2009

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

Departmental Management; Public Meeting on BioPreferred℠ Voluntary Labeling Program

AGENCY: Departmental Management, Office of Procurement and Property Management, USDA.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Agriculture (USDA) will hold a public meeting on January 5, 2010, for interested stakeholders to discuss the issue of evaluating environmental assessment of biobased products, including the proposed determination and use of product life cycle assessment (LCA), as that issue pertains to (1) The designation by the U.S. Department of Agriculture of biobased products for a Federal procurement preference, as mandated by the 2008 Farm Bill, and (2) the need for supplementary information about a product's environmental aspects under the pending ''USDA Certified Biobased Product'' labeling program. Given the growing importance of biobased products to consumers, industry, and government, there is a clear need to assess the sustainability of these products, and to do so using an agreed-upon and credible process/procedure.

DATES: January 5, 2010, 8:30 a.m. (EST) to 1 p.m. (EST).

Meeting Location: Jefferson Auditorium, South Building, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250–9911.

Pre-registration for the January 5, 2010, meeting is not required but would be helpful, particularly if you wish to make a presentation. If you wish to register to attend please do so at this Web site: *http://www.cepd.iastate.edu/biopreferred* and state whether or not you wish to be recognized to make a formal presentation.

For security purposes and to facilitate a smooth entry into a Federal facility, attendees may provide their names in advance, as spelled on government issued identification, via e-mail to: *BioPreferred@usda.gov.* This list will be given to security personnel to expedite the entry process. Additionally, attendees are encouraged to gain entry into the building at Wing 7 on the corner of 14th Street and Independence Avenue, SW., and will be required to present government issued identification. (You may also enter through Wing 1 near the Metro at 12th St. and Independence Ave. Escorts will be available to make sure you find the Jefferson Auditorium with no difficulty.) Those attending are advised to arrive at least 30 minutes early to pass through security.

Those unable to attend the public meeting in person may listen to the meeting by calling 800–857–5233. The pass code is ''USDA''. Participants using the audio bridge may e-mail comments or questions during the meeting to *BioPreferred@usda.gov.*

FOR FURTHER INFORMATION CONTACT: U.S. Department of Agriculture, Office of Procurement and Property Management, Ron Buckhalt, BioPreferred Manager, 342 Reporters Building, 300 7th Street, SW., Washington, DC 20024, (202) 205–4008. *RonB.Buckhalt@DA.USDA.GOV.*

SUPPLEMENTARY INFORMATION: Section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA) (Pub. L. 107–171) established a program for the procurement of USDA designated biobased products by Federal agencies and a voluntary program for the labeling of USDA certified biobased products. The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246) continued these programs and made certain changes to the Federal procurement preference program. USDA refers to the procurement preference program and the voluntary labeling program together as the BioPreferred Program.

Due to the changes mandated by the 2008 Farm Bill, and the passage of five years since USDA first published the Guidelines for Designated Biobased Products for Federal Procurement (Guidelines) (7 CFR 2902), USDA intends to revise the Guidelines. USDA is holding a series of public meetings to gather input from interested stakeholders on what should be considered when revising the Guidelines.

The goal of this public meeting is to gather information about the determination and use of product life cycle assessment (LCA) as it relates to the BioPreferred program. BioPreferred is a Federal program that encourages the purchase and use of biobased products—those made from biological or renewable agricultural materials. Program management is seeking input on (1) How best to determine if biobased products are environmentally preferable to conventional products (*e.g.,* the optimum process for analyzing these biological ingredients and materials) and (2) what measures/methods other stakeholders are using to determine and clarify this issue based on ongoing work by numerous entities in this area.

Under the current Guidelines, USDA determines life cycle costs, environmental and health benefits, and performance of biobased products using Building for Environmental and Economic Sustainability (BEES), an analytic tool used to determine the environmental and health benefits and life cycle costs of items. The U.S. Department of Commerce, National Institute of Standards and Technology, with support from the U.S. Environmental Protection Agency (EPA), developed the BEES model.

BEES measures the environmental performance of products by using the internationally standardized and science-based life cycle assessment approach specified in the International Organization for Standards (ISO) 14040 standards. All stages in the life of a product are analyzed: raw material acquisition, manufacture, transportation, installation, use, and recycling and waste management. Biobased product economic performance is measured using the American Society for Testing and Materials (ASTM) standard life cycle cost method, which covers the costs of initial investment, replacement, operation, maintenance and repair, and disposal.

The working definition of LCA under consideration for the January 5, 2010 meeting is ''the compilation and evaluation of the inputs, outputs, and the potential environmental impacts of a product system throughout its life cycle, including manufacture, use, and disposal.'' LCA is one of several

environmental management techniques (*e.g.,* risk assessment, environmental performance evaluation, environmental auditing, and environmental impact assessment).

To set the stage before opening the forum for public comment, USDA has invited to the public meeting speakers from USDA and EPA, as well as individuals from academia and industry who are well-versed in sustainable practices and determination and implementation of product LCA. USDA is seeking answers to a series of questions about LCA and the role of BEES in designating biobased products for Federal procurement. These questions include:

- How should USDA use LCA to designate categories of biobased products for preferred Federal procurement?
- Should USDA use LCA to determine which biobased/BioPreferred products will be eligible for voluntary product labeling and, if so, how?
- Is BEES the most appropriate tool for LCA for the BioPreferred program?
- Should USDA consider a more simplified approach to environmental assessment such as carbon footprinting rather than multivariate analyses such as BEES?

Additionally, USDA will hold two meetings in 2010 to hear from interested stakeholders about their input on two other subjects. The first meeting will focus on how to designate complex biobased products. The second meeting will address how to designate intermediate ingredients and feedstocks that can be used to produce items subject to the Federal procurement preference program and how to automatically designate items composed of designated intermediate ingredients and feedstocks if the content of the designated intermediate ingredients and feedstocks exceeds 50 percent of the item (unless the Secretary determines a different composition percentage is appropriate). One of these two 2010 meetings will be held in Iowa and the other in California. USDA will post notices in the **Federal Register** when details are final regarding these meetings.

Done in Washington, DC, this eleventh day of December 2009.

Robin E. Heard,

Deputy Assistant Secretary for Administration, U.S. Department of Agriculture.

[FR Doc. E9–29957 Filed 12–15–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Proposed Information Collection; Comment Request; Form ED–840P Petition by a Firm for Certification of Eligibility To Apply for Trade Adjustment Assistance; Trade Adjustment Assistance for Firms Program

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before February 16, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Diane Rodriguez, Program Analyst, Performance and National Programs Division, Room 7009, Economic Development Administration, Washington, DC 20230, telephone (202) 482–4495, facsimile (202) 482–2838 (or via the Internet at *drodriguez@eda.doc.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

EDA administers the Trade Adjustment Assistance for Firms (TAAF) Program, which is authorized under chapters 3 and 5 of title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*) (Trade Act), through a national network of 11 non-profit and university-affiliated Trade Adjustment Assistance Centers (TAACs), each of which serves a different geographic service region. EDA certifies firms as eligible to participate in the TAAF Program and provides funding to allow eligible client-firms to receive adjustment assistance through the TAACs. The information collected on Form ED–840P and relevant supporting documentation is used to determine if a firm is eligible to participate in the program. In accordance with the Trade Act and EDA's regulations as set out at 13 CFR part 315, EDA must verify that the following have occurred: (1) A significant reduction in the number or proportion of the workers in the firm, a reduction in the workers' wage or work hours, or an imminent threat of such reductions; (2) sales or production of the firm have decreased absolutely, as defined in EDA's regulations, or sales or production, or both, of any article or service accounting for at least 25 percent of the firm's sales or production has decreased absolutely; and (3) an increase in imports of articles or services like or directly competitive with those produced or provided by the petitioning firm has contributed importantly to the decline in employment and sales or production of the firm. Additionally, the firm must demonstrate that its customers have reduced purchases from the firm in favor of buying items or services from foreign suppliers. The use of the form standardizes and limits the information collected as part of the certification process and eases the burden on applicants and reviewers alike.

After being determined eligible for TAAF Program assistance using the information provided on Form ED–840P, firms must create an EDA-approved adjustment proposal, which is each firm's business plan to remain viable in the current global economy, in order to receive financial assistance under the TAAF Program. Each adjustment proposal must meet certain requirements as set out in the Trade Act and EDA's regulation at 13 CFR 315.16. This notice also includes an estimate for adjustment proposals.

Form ED–840P was renewed in June 2009; however, an emergency request was submitted to the Office of Management and Budget due to the eligibility changes in the Trade Adjustment Assistance for Firms Program as specified in the Trade and Globalization Adjustment Assistance Act (TGAAA) of 2009, which reauthorized the program. OMB approved this emergency request on August 12, 2009, and because of the time constraints of the emergency request, a notice for public comment was not processed. The emergency request is valid for six months and this notice will begin the process to extend the approval.

In order to comply with and facilitate new reporting and eligibility requirements as stated in the TGAAA, three new collection items have been added to the form. In addition, a fourth

item was recommended by the TAAC Petition Team. Following are the changes to Form ED–840P:

(1) Item 1 has been revised so that a firm's congressional district may be recorded. This will allow EDA to comply with the statutory requirement to report the number of petitions and certifications by congressional district.

(2) Item 6 has been revised so that petitioners may clarify whether they are using decline in net sales or net production to qualify. This will allow a more accurate calculation of a firm's productivity measure, which EDA is calculating as net sales per employee. EDA is required to report on a firm's productivity at time of certification, upon completion of the program, and each year for the two years thereafter.

(3) The eligibility criteria have been revised to allow for a 24 or 36-month look-back period. Item 6 of Form ED–840P has been revised so that petitioners can clearly indicate their look-back period.

(4) As recommended by the TAACs, Item 12 has been revised to allow the respective TAAC Director to sign certifying the accuracy and completeness of the petition information.

II. Method of Collection

Form ED–840P may be downloaded in Portable Document Format (PDF) from EDA's Web site at *http://www.eda.gov/InvestmentsGrants/Directives.xml.* Although there is no form associated with adjustment proposals, they must meet the requirements set out in EDA's regulation at 13 CFR 315.16. Both petitions for certification on Form ED–840P and adjustment proposals may be submitted via e-mail to *taac@eda.doc.gov* or in hard copy to EDA at 1401 Constitution Avenue, NW., Room 7106, Washington DC 20230.

III. Data

OMB Control Number: 0610–0091.

Form Number(s): ED–840P.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 800 (500 petitions for certification and 300 adjustment proposals).

Estimated Time Per Response: 128.2 hours (8.2 for petitions for certification and 120 for adjustment proposals)

Estimated Total Annual Burden Hours: 40,100 (4,100 for petitions for certification and 36,000 for adjustment proposals).

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (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 or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 10, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–29856 Filed 12–15–09; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–580–839

Certain Polyester Staple Fiber from the Republic of Korea: Extension of Time Limit for the Preliminary Results of the 2008 - 2009 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 16, 2009.

FOR FURTHER INFORMATION CONTACT: Seth Isenberg or Patricia Tran, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–0558 and (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Supplementary Information

On June 24, 2009, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain polyester staple fiber (''PSF'') from the Republic of Korea (''Korea''), covering the period May 1, 2008, through April 30, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 30052 (June 24, 2009). The preliminary results for this review are currently due no later than January 31, 2010.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''Department'') to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the preliminary results to a maximum of 365 days.

The Department requires additional time to review and analyze the respondent's sales and cost information and to issue supplemental questionnaires. Thus, we have determined that it is not practicable to complete this review within the previously established time limit (*i.e.*, by January 31, 2010). Therefore, the Department is extending the time limit for completion of these preliminary results by 120 days to no later than May 31, 2010, in accordance with section 751(a)(3)(A) of the Act. The final results continue to be due 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: December 10, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–29930 Filed 12–15–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–887

Tetrahydrofurfuryl Alcohol from the People's Republic of China: Continuation of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 16, 2009.

SUMMARY: As a result of the determinations by the Department of

Commerce (''Department'') and the International Trade Commission (''ITC'') that revocation of the antidumping duty order on Tetrahydrofurfuryl Alcohol (''THFA'') from the People's Republic of China (''PRC'') would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

FOR FURTHER INFORMATION CONTACT: Frances Veith, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4295.

SUPPLEMENTARY INFORMATION: On July 1, 2009, the Department initiated a sunset review of the antidumping duty order on THFA from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (''Act''). *See Initiation of Five-year (''Sunset'') Review*, 74 FR 31412 (July 1, 2009).

As a result of its review, the Department determined that revocation of the antidumping duty order on THFA from the PRC would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked. *See Tetrahydrofurfuryl Alcohol from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 74 FR 57290 (November 5, 2009).

On November 30, 2009, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on THFA from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within the reasonably foreseeable future. See USITC Publication 4118 (November 2009), and *Tetrahydrofurfuryl Alcohol from China*, 74 FR 63788 (December 4, 2009).

Scope of the Order

The product covered by this order is tetrahydrofurfuryl alcohol (C5H10O2) (THFA''). THFA, a primary alcohol, is a clear, water white to pale yellow liquid. THFA is a member of the heterocyclic compounds known as furans and is miscible with water and soluble in many common organic solvents. THFA is currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS'') under subheading 2932.13.00.00. Although the HTS subheadings are provided for convenience and for customs purposes, the Department's written description of the merchandise subject to the order is dispositive.

Continuation of the Order

As a result of these determinations by the Department and the ITC that revocation of the antidumping duty order on THFA would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping order on THFA from the PRC. United States Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: December 9, 2009.

Carole A. Showers,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–29908 Filed 12–15–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket T–2–2009]

Foreign-Trade Zone 33—Pittsburgh, PA; Application for Temporary/Interim Manufacturing Authority; DNP IMS America Corporation (Thermal Transfer Ribbon Printer Rolls); Mount Pleasant, PA

An application has been submitted to the Executive Secretary of the Foreign-Trade Zones Board (the Board) by the Regional Industrial Development Corporation, grantee of FTZ 33, requesting temporary/interim manufacturing (T/IM) authority within Subzone 33E at the DNP IMS America Corporation (DNP) facility, located in Mount Pleasant, Pennsylvania. The application was filed on December 10, 2009.

The DNP facility (123 employees, 3.12 acres, 135,989 enclosed square feet, 336 million square meters capacity) is located at 1001 Technology Drive, Mount Pleasant, Pennsylvania (Subzone 33E). Under T/IM procedures, DNP has requested authority to produce monochrome thermal transfer ribbon (TTR) printer rolls (HTSUS 8443.99, duty-free), using foreign-sourced master rolls of TTR (HTSUS 3702.39, duty rate, 3.7%), representing 71–87% of the value of the finished product. T/IM authority could be granted for a period of up to two years.

FTZ procedures could exempt DNP from customs duty payments on the foreign TTR master rolls used in export production. The company anticipates that some 10 percent of the plant's shipments will be exported. On its domestic sales, DNP would be able to choose the duty rate during customs entry procedures that apply to the finished TTR printer rolls (duty-free) for the foreign TTR master rolls. FTZ procedures would further allow DNP to realize logistical benefits through the use of certain customs procedures and duty savings on scrap and waste for the new activity.

In accordance with the Board's regulations, Diane Finver of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations pursuant to Board Orders 1347 and 1480.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW., Washington, DC 20230. The closing period for their receipt is January 15, 2010.

DNP has also submitted a request for permanent FTZ manufacturing authority for the same product and component. It should be noted that the request for permanent authority would be docketed separately and would be processed as a distinct proceeding. Any party wishing to submit comments for consideration regarding the request for permanent authority would need to submit such comments pursuant to the separate notice that would be published for that request.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Diane Finver at *Diane.Finver@trade.gov* (202) 482–1367.

Dated: December 11, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–29905 Filed 12–15–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT27

Endangered Species; File No. 14506

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Llewellyn Ehrhart, University of Central Florida, P.O. Box 162368, Orlando, Florida 32816, has applied in due form for a permit to take green (*Chelonia mydas*), hawksbill (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*), and leatherback (*Dermochelys coriacea*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before January 15, 2010.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov/index.cfm*, and then selecting File No. 14506 from the list of available applications. These documents are also available for review upon written request or by appointment in the following offices:

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

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 14506.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Patrick Opay, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Dr. Ehrhart requests a five-year research permit to continue long-term studies of sea turtle populations in three disparate habitats on Florida's Atlantic coast. Project 1 would occur in the Indian River Lagoon System, Project 2 would occur over the Sabellariid work rock reefs of Indian River County, and Project 3 would occur in the Trident Turning Basin, Cape Canaveral Air Force Station. Researchers would assess population structure, trends in relative abundance, habitat utilization, sex ratios, physiology, genetics, zoogeography, and epidemiology of sea turtles in these habitats. Turtles would be captured using tangle and dip nets. For Project 1 researchers would annually capture, flipper tag, passive integrated transponder (PIT) tag, measure, weigh, blood sample, tissue biopsy, lavage, photograph, and/or remove epibiota from: 100 loggerhead, 260 green, 3 Kemp's ridley, 2 hawksbill, and 1 leatherback sea turtle. Up to 10 of the green sea turtles would have a transmitter attached to the carapace annually. For Project 2 researchers would annually capture, flipper tag, PIT tag, measure, weigh, blood sample, tissue biopsy, lavage, photograph, and/or remove epibiota from: 10 loggerhead, 140 green, 2 Kemp's ridley, and 2 hawksbill sea turtles. For Project 3 researchers would annually capture, flipper tag, PIT tag, measure, weigh, blood sample, tissue biopsy, lavage, mark the carapace with paint, and photograph, and/or remove epibiota from: 10 loggerhead, 140 green, 1 Kemp's ridley, 1 hawksbill, and 1 leatherback sea turtle.

Dated: December 11, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–29940 Filed 12–15–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT08

Establishment of a Recreational Fisheries Working Group by the Marine Fisheries Advisory Committee

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

ACTION: Notice; request for nominations.

SUMMARY: Nominations are being solicited for appointment to a new Recreational Fisheries Working Group of the Marine Fisheries Advisory Committee (MAFAC) beginning in January 2010. MAFAC is the only Federal advisory committee with the responsibility to advise the Secretary of Commerce (Secretary) on all matters concerning living marine resources that are the responsibility of the Department of Commerce. MAFAC is establishing a Recreational Fisheries Working Group (RFWG) to assist it in the development of recommendations to the Secretary on regulations, policies and programs critical to the mission and goals of the NMFS. The RFWG shall be composed of people with a specific interest and qualification related to NOAA's recreation-related activities. The members will be appointed by MAFAC in consultation with NOAA and will serve for an initial term of one year, with the potential for reappointment. Nominees should possess demonstrable expertise in the science, management or business of recreational fishing, a well-informed background in recreational fisheries issues, and an operational knowledge of federal agencies and interactions with the Fishery Management Councils and/or regional and state partners, and be able to fulfill the time commitments required for two annual meetings.

DATES: Applications must be postmarked on or before January 15, 2010.

ADDRESSES: Applications should be sent to Gordon C. Colvin, Interim Senior Policy Advisor for Recreational

Fisheries, NMFS ST–12453, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Gordon C. Colvin, Interim Senior Policy Advisor for Recreational Fisheries; (301) 713–2367 x175; e-mail: *Gordon.Colvin@noaa.gov*

SUPPLEMENTARY INFORMATION: MAFAC is establishing the RFWG to advise MAFAC on issues of importance to the recreational fishing community, including, but not limited to: (1) the Ocean Policy Task Force report, (2) review and possible revision of the NOAA Recreational Fisheries Strategic Plan, (3) marine spatial planning, and (4) catch share policy, and such other recreational fisheries issues identified as appropriate by MAFAC. An initial task of the RFWG will be to assist the MAFAC Recreational Fisheries Subcommittee with the planning and organization of a NOAA 2010 recreational fishing summit.

The RGWG members cannot be employed by NOAA or a member of a Regional Fishery Management Council or have been registered as a lobbyist with the Secretary of the Senate and the Clerk of the House of Representatives within two years of the date of appointment. The RFWG is expected to have no more than 25 members to be selected from a balance of the diverse national and regional recreational fisheries sector and community perspectives. Membership is voluntary, and except for reimbursable travel and related expenses, service is without pay.

Each submission should provide the nominee's name and affiliation (if applicable) and contact information including name, address, phone number, fax number, and e-mail address (if available); and should describe their qualifying experience in the following areas:

1. Experience in marine recreational angling, and as a leader or representative of the angling community, fishing clubs or organizations, or in marine recreational fishing media;

2. Expertise in the science, management or business of recreational fishing;

3. Informed background in recreational fisheries issues; and

4. Operational knowledge of federal agencies and interactions with the Fishery Management Councils and/or regional and state partners.

Applications should be sent to (see **ADDRESSES**) and must be received by (see **DATES**). The full text of the MAFAC Charter and its current membership can be viewed at the NMFS' web page at *www.nmfs.noaa.gov/mafac.htm*.

Dated: December 10, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Services.

[FR Doc. E9–29938 Filed 12–15–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–821–819

Magnesium Metal from the Russian Federation: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 16, 2009.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3477.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published an antidumping duty order on magnesium metal from the Russian Federation on April 15, 2005. See *Notice of Antidumping Duty Order: Magnesium Metal From the Russian Federation*, 70 FR 19930 (April 15, 2005). On April 1, 2009, we published the notice of opportunity to request administrative review. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 14771 (April 1, 2009). In response to the opportunity to request an administrative review, PSC VSMPO–AVISMA Corporation, a Russian Federation producer of the subject merchandise, requested that the Department conduct an administrative review on April 30, 2009. On April 30, 2009, U.S. Magnesium Corporation LLC, the petitioner in this proceeding, also requested that the Department conduct an administrative review with respect to PSC VSMPO–AVISMA Corporation and Solikamsk Magnesium Works (SMW). On May 29, 2009, the Department published a notice of initiation of an administrative review of the antidumping duty order on magnesium metal from the Russian Federation for the period April 1, 2008, through March 31, 2009. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 74 FR 25711 (May 29, 2009). The preliminary results of this administrative review are currently due no later than December 31, 2009.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published in the **Federal Register**. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of this review by the current deadline of December 31, 2009, because we require additional time to analyze a number of complex cost–accounting and corporate–affiliation issues relating to this administrative review that have been raised by parties to the proceeding. In addition, we plan to verify the questionnaire responses submitted for this review which will require additional time.

Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we are extending the time period for issuing the preliminary results of this review by 120 days to April 30, 2010.

This notice is published in accordance with sections 751(a)(3)(A) and 777 (i)(1) of the Act.

Dated: December 9, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–29973 Filed 12–15–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 8, 2009, the Department of Commerce (''the Department'') published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain stainless steel butt–weld pipe fittings from Taiwan. *See Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part, and Notice of Intent Not to Revoke Order in Part*, 74 FR 32532 (July 8, 2009) (''*Preliminary Results*''). The merchandise covered by the order is certain stainless steel butt–weld pipe fittings from Taiwan as described in the ''Scope of the Order'' section of this notice. The period of review (''POR'') is June 1, 2007, through May 31, 2008. We provided interested parties an opportunity to comment on our *Preliminary Results*. Based upon our analysis of the comments received, we made changes to the margin calculation. The final weighted–average dumping margin is listed below in the section titled ''Final Results of Review.''

EFFECTIVE DATE: December 16, 2009.

FOR FURTHER INFORMATION CONTACT: John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department's preliminary results of review were published on July 8, 2009. *See Preliminary Results*. We invited parties to comment on the *Preliminary Results*. We received a case brief from the sole respondent, Ta Chen Stainless Pipe Co., Ltd. (''Ta Chen's Brief'') on August 10, 2009. We did not receive any case or rebuttal briefs from petitioners Flowline Division of Markovitz Enterprises, Inc., Shaw Alloy Piping Products, Inc., Core Pipe (formerly known as Gerlin, Inc.) and Taylor Forge Stainless, Inc.

Revocation

On June 30, 2008, Ta Chen requested, under 19 CFR 351.222(b)(2) and (e), that the antidumping duty order, as it relates to Ta Chen, be revoked based on the absence of dumping, and included with its request certain company certifications regarding revocation. In this case, our margin calculation shows that Ta Chen sold the subject merchandise at less than normal value during the current review period. Additionally, Ta Chen predicates its request on the assumption that action by the Court of International Trade will result in recalculations for the two immediately preceding administrative reviews of margins at zero or *de minimis*. While we acknowledge that the Department's determinations in the two prior segments of this proceeding are currently in litigation, there is no final and conclusive judgment from any court supporting Ta Chen's arguments or invalidating the Department's findings in the prior administrative reviews. *See Preliminary Results* at 32533–34. Accordingly, we determine, pursuant to 19 CFR 351.222(b)(2), that revocation of the order with respect to Ta Chen is not warranted.

Scope of the Order

The products subject to the order are certain stainless steel butt–weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter. Certain welded stainless steel butt–weld pipe fittings (''pipe fittings'') are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system. Pipe fittings come in a variety of shapes, with the following five shapes the most basic: ''elbows,'' ''tees,'' ''reducers,'' ''stub ends,'' and ''caps.'' The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from the order. The pipe fittings subject to the order are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive. Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of the order.

Partial Rescission of Review

In the *Preliminary Results*, the Department issued a notice of intent to rescind the review with respect to Liang Feng Stainless Steel Fitting Co., Ltd. (''Liang Feng''), Tru–Flow Industrial Co., Ltd. (''Tru–Flow''), Censor International Corporation (''Censor'') and PFP Taiwan Co., Ltd. (''PFP''), because we found they had no entries of subject merchandise during the POR. *See Preliminary Results* at 32533. As the Department received no comments on our intent to rescind, we find that rescission of the review concerning Liang Feng, Tru–Flow, Censor, and PFP is appropriate. Therefore, the Department is rescinding the review with respect to Liang Feng, Tru–Flow, Censor, and PFP.

Analysis of Comments Received

All issues raised in the case brief, as well as the Department's findings, in this administrative review are addressed in the Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review of Certain Stainless Steel Butt–Weld Pipe Fittings from Taiwan (''Decision Memorandum''), dated December 7, 2009, which is hereby adopted by this notice. A list of the issues raised and to which we have responded is found in the Decision Memorandum, appended to this notice. The Decision Memorandum is on file in the Central Records Unit in room 1117 of the main Commerce building, and can also be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the public version of the Decision Memorandum are identical in content.

Final Results of Review

As a result of our review, we determine that the following weighted–average margin exists for the period June 1, 2007, through May 31, 2008:

Manufacturer	Weighted–Average Margin
Ta Chen Stainless Pipe Co., Ltd	0.82 percent

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Tariff Act of 1930, as amended (''the

Act''), and 19 CFR 351.212(b). The Department calculated importer–specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise manufactured or exported by Ta Chen. Antidumping duties for the rescinded companies, Liang Feng, Tru–Flow, Censor, and PFP, shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification applies to POR entries of subject merchandise produced by companies examined in this review (i.e., companies for which a dumping margin was calculated) where the companies did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of certain stainless steel butt–weld pipe fittings from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Act: (1) for the company covered by this review, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in the less–than-fair–value investigation or a prior review, the cash deposit rate will continue to be the company–specific rate from the most recent review; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value investigation, but the producer is, the cash deposit rate will be that established for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will be 51.01 percent, the all–others rate established in the less–than-fair–value investigation. These deposit requirements shall remain in effect until further notice.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also is the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 7, 2009.

Carole A. Showers,

Acting Deputy Assistant Secretary for Import Administration.

APPENDIX

Issues in Decision Memorandum

1. Purchased Fittings

2. Calculation of General and Administrative (''G&A'') Expenses

3. Ta Chen's Raw Material and Conversion Cost Variances

4. Constructed Export Price (''CEP'') Offset

5. Basis of Dumping Margin Calculation

6. Calculation of CEP Profit Ratio

[FR Doc. E9–29928 Filed 12–15–09; 8:45 am]

BILLING CODE 3510–DS–S

U.S. DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Docket 54–2009

Foreign–Trade Zone 238 Dublin, Virginia, Application for Subzone, VF Corporation (Apparel, Footwear, and Luggage Distribution), Martinsville, Virginia

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the New River Economic Development Alliance, Inc., grantee of FTZ 238, requesting special–purpose subzone status for the apparel, footwear, and luggage warehousing and distribution facilities of VF Corporation (VFC), located in Martinsville, Virginia. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 2, 2009.

The VFC facilities consist of two sites (183 employees): *Site 1* - warehouse/distribution center (466,700 sq.ft./60.1 acres/168 employees) located at 500 Nautica Way, Martinsville; *Site 2* - warehouse/distribution center (891,913 sq.ft./117.6 acres/15 employees) located at 3375 Joseph Martin Highway, Martinsville, Virginia. The facilities are used for warehousing and distribution of foreign–origin apparel, footwear, and luggage for the U.S. market and export. FTZ procedures would be utilized to support VFC's U.S.-based value–added and distribution activity. Finished products to be admitted to the proposed subzone for distribution would include men's, boys', women's and girls' footwear, coats, suits, jackets, trousers, pants, blouses, shirts, tops, jumpers, gowns, underwear, hosiery, sleepwear, robes, athletic wear, neckties, hats, scarves, shawls, mufflers, gloves/mittens, infants' apparel, luggage, hand bags, attaches, backpacks, and packaging materials. The applicant is not seeking manufacturing or processing authority with this request.

FTZ procedures could exempt VFC from customs duty payments on foreign products that are exported (about 1% of shipments). On domestic sales, duty payments would be deferred until the foreign merchandise is shipped from the facility and entered for U.S. consumption. FTZ designation would further allow VFC to realize logistical benefits through the use of weekly customs entry procedures. The application indicates that the savings from FTZ procedures would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002. The closing period for receipt of comments is February 16, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 1, 2010.

A copy of the application will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at the address listed above and in the ''Reading Room'' section of the Board's website, which is accessible via www.trade.gov/ftz. For further information, contact Pierre Duy at Pierre.Duy@trade.gov or (202) 482–1378.

Dated: December 3, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–29906 Filed 12–15–09; 8:45 am]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

Identifying Labels for Drywall Under Section 14(c) of the Consumer Product Safety Act; Notice of Inquiry; Request for Comments and Information

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of inquiry.

SUMMARY: Section 14(c) of the Consumer Product Safety Act authorizes the Consumer Product Safety Commission (''Commission'' or ''CPSC'') to require, through rulemaking, labels for a consumer product that would identify the date and place of manufacture of the product, cohort information (batch, run number, or other identifying characteristic), and the manufacturer of the product. 15 U.S.C. 2063(c). This notice requests comments and information about such a rulemaking with regard to drywall.

DATES: Written comments must be received by February 16, 2010.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0105, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov.

Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand Delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dean W. Woodard, Director, Defect Investigations Division, Office of Compliance and Field Operations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7651; *dwoodard@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Since December of 2008, the Commission has been receiving reports of various problems related to drywall primarily imported from the People's Republic of China. The first reports came primarily from Florida and were related to the building boom and post-hurricane construction. As reports continued to come in, it became apparent that the drywall issue was more widespread. Currently, CPSC has received over 2000 incident reports from 32 States, the District of Columbia and Puerto Rico. The Commission has expanded its investigation to include both imported and domestically manufactured drywall.

Problems described in these reports include odor, health effects and corrosion effects on certain metal components in the home. The most frequently reported health symptoms are irritated and itchy eyes and skin, difficulty in breathing, persistent cough, bloody noses, recurrent headaches, sinus infection, and asthma attacks. Many reports indicate that the symptoms lessen when the consumer is away from home. As for corrosion-related effects, consumers have reported blackened and corroded metals and electrical wiring in their homes and failures of such equipment as evaporator coils of central air conditioners. There have also been reports of failures of appliances such as refrigerators and dishwashers, and of electronic devices such as televisions and video game systems.

CPSC is investigating the health effects and the potential electrical and fire safety issues stemming from the corrosion of metal equipment and components. CPSC is working with a number of state and federal partners in this investigation including the U.S. Environmental Protection Agency, U.S. Department of Housing and Urban Development, Centers for Disease Control, Agency for Toxic Substance and Disease Registry and several state departments of health and state attorneys general. In the course of this investigation, Commission staff has visited several U.S. and Chinese drywall manufacturing facilities and mines. CPSC staff is analyzing information received from consumers, builders, importers, manufacturers and suppliers of drywall to better determine the scope of the drywall problem. CPSC and its state and federal partners are conducting a number of technical studies to determine connections between the emissions from drywall and the reported health and corrosive effects.

CPSC's investigation indicates that it is often difficult to determine the manufacturer and origin of drywall in homes. As further discussed in the next section, the investigation also indicates that there can be a good deal of variability in drywall depending on its type and origin. Being able to identify the manufacturer and origin of drywall could aid in investigating complaints related to drywall and narrow the scope of any investigation or necessary remedial action in the future.

B. The Product

Drywall, sometimes also called gypsum board, plasterboard or wallboard, is a kraft paper liner wrapped around a plaster mix consisting primarily of gypsum. There are essentially two types of gypsum: Mined gypsum; and synthetic gypsum. These two types are sometimes combined.

Mined gypsum is found in sedimentary rock formations among limestone, shale, marl and clay. Characteristics of the mined gypsum can vary depending on the geology in the region where it is mined or quarried. Nearby sulfur deposits and marine conditions may affect the quality of the gypsum.

Synthetic gypsum is an alternative to natural mined gypsum. It is a byproduct generated from flue gas desulfurization (''FGD'') in fossil-fueled power plants.

There can be variability in gypsum depending on where it is mined and the manufacturing process employed. Gypsum mined in some areas may have higher levels of sulfur, strontium, carbonate, or pyrite; some of these chemicals could affect drywall's behavior in homes. Similarly, some flue gas sources may have higher or lower concentrations of these and other compounds.

There are eight domestic drywall manufacturers in the United States, with plants spread throughout the country and North America. Two domestic manufacturers are ranked among the top five drywall producers in the global market. In 2008, the United States drywall production totaled an estimated 26.4 billion square feet. In 2006, the total domestic production of 35.0 billion square feet was not enough to meet demand that year. As a result, parties found themselves importing drywall from China and other countries to meet construction needs. In 2006, approximately 218,100 metric tons of drywall was imported from China.

The drywall manufacturing process is rather standard throughout the industry. To make drywall, the raw gypsum (whether mined, FGD or a combination) is dehydrated (sometimes called ''calcined''), typically with natural gas. A slurry is made consisting of gypsum and additives such as fiber (typically paper and/or fiberglass), plasticizer, foaming agent, potash as an accelerator, water, ethylenediaminetetra acetic acid or other chelate as a retarder. The additives are based on whether the drywall is to be standard, fire resistant, or mildew or water resistant. The slurry is fed between continuous layers of paper on a board machine. As the board moves down a conveyer line, the mixture hardens. The paper becomes bonded to the solid slurry mix. The board is then cut to requested lengths and conveyed through dryers to remove any free moisture. The lengths and thickness of the board vary depending on the typical building code or usage requirements.

At a certain point along the conveyer line, most domestic manufacturers mark the board with a stamp which may include the company name, logo, brand name, plant location, production date, and time. However, this practice is not standard for every drywall manufacturer in the global marketplace.

C. Need for Better Identification of Drywall

CPSC's investigation has shown that building supply companies often stock drywall based on purpose, type, length and thickness, rather than brand name. Therefore, various drywall brands could be sold to fill a single construction project order. Since construction customers generally do not inventory drywall based on brand or country of origin it makes identifying the source/manufacturer of the drywall difficult once the product is installed.

In the course of its investigation, CPSC staff has found that drywall often lacks any marks on its face or backing identifying the manufacturer or the production batch or lot. Identifying markings on the drywall could help consumers and investigators to isolate the source of drywall problems in the future. Being able to identify the brand and lot or batch could further narrow the focus of an investigation to discrete sets of drywall. The majority of imported drywall has little or no markings at all on its face. Most domestic drywall has markings that identify the manufacturer. Any markings that are present on domestic or imported drywall whether on the board or tape are inconsistent as to both content and placement. Most drywall is sealed on the ends with tape that displays a brand name or manufacturer's name. During the installation process, however, that tape is often removed.

D. Statutory Authority

Section 14(c) of the CPSA authorizes the Commission to issue a rule requiring labels (and prescribing their form and content) containing source information, such as date and place of manufacture of a consumer product, cohort information (including batch, run number or other identifying characteristic), and identification of the manufacturer or private labeler. 15 U.S.C. 2063(c).

Section 14(c) allows the Commission, where practicable, to require that the identifying labels be permanently marked or affixed to the product. *Id.* Such an identifying permanent mark would be consistent with section 103 of the Consumer Product Safety Improvement Act, entitled ''Tracking Labels for Children's Products,'' which requires ''permanent distinguishing marks'' stating certain identifying information on children's products and their packaging. Section 14(c) of the CPSA also authorizes the Commission to permit information about the date and place of manufacture and cohort information to be coded. 15 U.S.C. 2063(c).

The Commission is considering a rulemaking that would require manufacturers of drywall to label/mark their products to identify (1) The name of the manufacturer; (2) the plant name and location; (3) the source material (*i.e.,* natural gypsum, synthetic gypsum or a mixture); (4) a code to identify the mine or power plant that supplied the gypsum; (5) the date of manufacture of the drywall; and (6) the batch or lot number.

The Commission requests comments on such a requirement and on the specific issues mentioned in the following section. If the Commission were to initiate such a rulemaking, it would do so with the issuance of a notice of proposed rulemaking.

E. Request for Comments

The Commission requests comments on the possibility of initiating a rulemaking proceeding to require identifying labels on drywall. Specifically, the Commission requests comments and information on the following specific issues:

1. What labeling or markings are companies currently providing on drywall?

2. What would be the cost impact if the Commission were to require identifying labels/markings of the type discussed in this notice on drywall?

3. What, if any, other identifying information should be required?

4. Should there be a uniform format for the labels/markings, and if so, what should it be?

5. How can CPSC assure that the identifying label/marking is accessible after the drywall is installed?

6. What would the impact be on industry of requiring identifying information to be printed on both faces of the drywall in two horizontal ribbons parallel to the longitudinal axis with a

frequency that is a non-integer of 16 inches?

7. If the Commission were to define 'drywall' for tracking labels, or other purposes, what should such a definition include?

8. With what specificity should drywall manufacturers identify the 'date of manufacture,' and why?

Dated: December 9, 2009.

Todd Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–29946 Filed 12–15–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 10–C0001]

Excelligence Learning Corporation, d/b/a Discount School Supply, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Excelligence Learning Corporation, d/b/a/Discount School Supply, containing a civil penalty of $25,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by December 31, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 10–C0001, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: M. Reza Malihi, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7733.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: December 10, 2009.

Todd A. Stevenson,

Secretary.

United States of America Consumer Product Safety Commission

CPSC Docket No. *10–C0001*

In the Matter of: Excelligence Learning Corporation d/b/a Discount School Supply

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Excelligence Learning Corporation, d/b/a Discount School Supply (''*Excelligence*'') and the staff (''*Staff*'') of the United States Consumer Product Safety Commission (''*CPSC*'' or the ''*Commission*'') enter into this Settlement Agreement (''*Agreement*''). The Agreement and the incorporated attached Order (''*Order*'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''*CPSA*'').

3. Excelligence is a corporation organized and existing under the laws of Delaware, with its principal offices located in Monterey, California. At all times relevant hereto, Excelligence imported and/or sold educational toys and school products.

Staff Allegations

4. Between May 2004 and May 2007, Excelligence imported into the United States about 20,000 units of certain ''shaving-style'' paint brushes, each about 4-inches long, with handles that are painted blue, purple, orange, yellow, lime green, or pink, and the item number #SHVBRSH printed on the product's packaging (''*Brush(es)*''). The Brushes were sold as a set of six consisting of a variety of the aforementioned colors, and also sold as part of the ''BioColor® Foam Paint Starter Kit'' and ''Colorations® Foam Paint Starter Kit.'' The Brushes were, in turn, offered for sale or sold to schools, childcare centers, and other organizations, and directly to consumers, via Discount School Supply catalogs and the company's Web site, as follows: Sets were sold from May 2004 through August 2007 for about $5 per unit; the BioColor® kits were sold from May 2004 through June 2006 for about $60 per kit; and the Colorations® kits were sold from July 2006 through August 2007 for about $60 per kit.

5. Between August 2000 and August 2007, Excelligence imported into the United States about 13,000 units of ''Giant Grow'' measuring charts, each consisting of a giant yellow ruler-shaped plastic chart for measuring a child's growth with a picture of a bean stalk painted on it from top to bottom (''*Chart(s)*''). The Charts were, in turn, offered for sale or sold to schools, childcare centers, and other organizations, and directly to consumers, from August 2000 through August 2007 for about $10 per unit, via Discount School Supply catalogs and the company's Web site.

6. During June 2007, Excelligence imported into the United States about 60 units of ''Tic Tac Turtle Toss'' play mats, each consisting of a 50-inch vinyl/polyester play mat that is double-sided, with a number design on one side and a turtle design on the other, the ''Discount School Supply'' name and logo printed in the corner on both sides, and numbers and designs painted in red, blue, green and black over a yellow background (''*Mat(s)*''). The Mats were, in turn, offered for sale or sold to schools, childcare centers, and other organizations, and directly to consumers, from June 2007 through September 2007 for about $40 per unit, via Discount School Supply catalogs and the company's Web site.

7. The Brushes, Charts and Mats are ''consumer product(s),'' and, at all times relevant hereto, Excelligence was a ''manufacturer'' and/or a ''retailer'' of those consumer product(s), which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(3), (5), (8), (11), and (13), 15 U.S.C. 2052(a)(3), (5), (8), (11), and (13).

8. The Brushes, Charts and Mats are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, 16 C.F.R. Part 1303 (the ''*Ban*''). Under the Ban, toys and other children's articles must not bear ''lead-containing paint,'' defined as paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16 CFR 1303.2(b)(1)

9. On August 20, 2007, Excelligence reportedly received ''preliminary'' test results from an independent laboratory indicating the presence of excessive lead levels in surface coatings of tested Brush handles. Ten days later, on August 30, 2007, Excelligence reported to CPSC that it had commissioned an independent laboratory to conduct

further testing for the presence of lead in surface coatings on additional Brush samples. As expressed in two test reports of the same date, the confirmatory testing demonstrated that the green, yellow and orange paints on handles of a Brush set each contained a total lead content of more than 10,000 parts per million (ppm); and that the green, yellow and orange paints of another Brush set each contained a total lead content of more than 10,000 ppm. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban.

10. On August 29, 2007, Excelligence reported to CPSC that it had received ''preliminary'' test results showing that surface paint on the Charts had excessive levels of lead, but indicated that it was in the process of obtaining further results to determine the scope of affected units. On October 25, 2007, Excelligence reported to CPSC that it had commissioned an independent laboratory to conduct confirmatory testing for the presence of lead in surface coatings on additional Chart samples, and determined that product units received by customers in 2002 and in 2005 failed to comply with the Ban. As expressed in two test reports dated October 12, 2007, the testing of a Chart sample manufactured in 2005 demonstrated that the ''Black Coating on Plastic Sheet (Scale)'' contained a total lead content of more than 0.390 percent, and the ''Coatings (Green & White) on Plastic Sheet (Tree)'' contained a total lead content of more than 0.204 percent; and testing of a Chart sample manufactured in 2002 demonstrated that corresponding paints contained a total lead content of more than 0.260 percent, and more than 0.262 percent, respectively. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban.

11. After learning on September 17, 2007 that ''preliminary'' test results on a pre-production run of the Mats had indicated the presence of excessive lead levels in surface coatings, Excelligence sent production samples of Mats from current warehouse inventory for further testing by an independent laboratory. On October 24, 2007, Excelligence reported to CPSC that confirmatory testing by the laboratory testing for lead in surface coatings on the additional Mat samples, whose results were set forth in an October 15, 2007 test report, demonstrated that the blue, red, yellow, black and green surface coatings of the plastic patterns contained a total lead content from 4,440 ppm to 9,110 ppm. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban.

12. On November 21, 2007, the Commission and Excelligence announced a consumer-level recall of about 20,000 units of the Brushes because ''Surface paint on the brush handles can contain excessive levels of lead, violating the federal lead paint standard.'' On December 19, 2007, the Commission and Excelligence announced a recall of about 13,000 units of the Charts because ''The paint on the grow chart contains excess levels of lead, violating the federal lead paint standard.'' The next month, on January 16, 2008, the Commission and Excelligence likewise announced a recall of about 60 units of the Mats because ''The paint on the Tic Tac Turtle Toss mats contains excess levels of lead, violating the federal lead paint standard.''

13. Although Excelligence reported no incidents or injuries associated with the Brushes, Charts and Mats, it failed to take adequate action to ensure that none would bear or contain lead-containing paint, thereby creating a risk of lead poisoning and adverse health effects to children.

14. The Brushes, Charts and Mats constitute ''banned hazardous products'' under CPSA section 8 and the Ban, 15 U.S.C. 2057 and 16 CFR 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

15. Between August 2000 and September 2007, Excelligence sold, manufactured for sale, offered for sale, distributed in commerce, or imported into the United States, or caused one or more of such acts, with respect to the aforesaid banned hazardous Brushes, Charts and Mats, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. 2068(a)(1). Excelligence committed these prohibited acts ''knowingly,'' as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

16. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Excelligence is subject to civil penalties for the aforementioned violations.

Excelligence Response

17. Excelligence denies the Staff's allegations set forth above that Excelligence knowingly violated the CPSA.

Agreement of the Parties

18. Under the CPSA, the Commission has jurisdiction over this matter and over Excelligence.

19. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Excelligence, or a determination by the Commission, that Excelligence has knowingly violated the CPSA.

20. In settlement of the Staff's allegations, Excelligence shall pay a civil penalty in the amount of twenty five thousand dollars ($25,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. This payment shall be made by check payable to the order of the United States Treasury.

21. Upon the Commission's provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) days, the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the **Federal Register**.

22. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Excelligence knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (3) a determination by the Commission of whether Excelligence failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

23. The Commission may publicize the terms of the Agreement and Order.

24. The Agreement and Order shall apply to, and be binding upon, Excelligence and each of its successors and assigns.

25. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Excelligence to appropriate legal action.

26. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or contradict its terms. The Agreement shall not be waived, amended, modified, or otherwise altered, except in a writing that is executed by the party against whom such waiver, amendment,

modification, or alteration is sought to be enforced.

26. If any provision of the Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and Excelligence agree that severing the provision materially affects the purpose of the Agreement and Order.

Excelligence Learning Corporation

Dated: *10–28–08*

By:

Kelly Crampton, Chief Executive Officer
Excelligence Learning Corporation
d/b/a Discount School Supply
2 Lower Ragsdale Drive, Suite 200
Monterey, CA 93940

Dated: *10–27–08*

By:

Jonathan I. Price, Esq.
Goodwin Procter LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018–1405
Counsel for Excelligence Learning Corporation

U.S. Consumer Product Safety Commission Staff

Cheryl A. Falvey
General Counsel
Office of the General Counsel

Ronald G. Yelenik
Assistant General Counsel
Division of Compliance
Office of the General Counsel
Dated: *11–17–09*

By:

M. Reza Malihi, Trial Attorney
Division of Compliance
Office of the General Counsel

United States of America Consumer Product Safety Commission

CPSC Docket No. 10–C0001

In the Matter of: Excelligence Learning Corporation D/B/A Discount School Supply

Order

Upon consideration of the Settlement Agreement entered into between Excelligence Learning Corporation, d/b/a Discount School Supply (''*Excelligence*'') and the U.S. Consumer Product Safety Commission (''*Commission*'') staff, and the Commission having jurisdiction over the subject matter and over Excelligence, and it appearing that the Settlement Agreement and Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is Further ordered, that Excelligence shall pay a civil penalty in the amount of twenty five thousand dollars ($25,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Excelligence to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Excelligence at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the *4th* day of *December* 2009.

By Order of the Commission:

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission

[FR Doc. E9–29943 Filed 12–15–09; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, DoD announces that the Defense Advisory Committee on Military Personnel Testing will meet on January 21 and 22, 2010, to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests. Subject to the availability of space, the meeting is open to the public.

DATES: The meeting will be held on January 21 (from 8:30 a.m. to 4 p.m.) and January 22, 2010 (from 8:30 a.m. to noon).

ADDRESSES: The meeting will be held at The EPIC Hotel, 270 Biscayne Blvd., Miami, Florida 33131.

FOR FURTHER INFORMATION CONTACT: Committee's Designated Federal Officer or Point of Contact: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

SUPPLEMENTARY INFORMATION:

Agenda

The Committee will meet to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests. The agenda includes an overview of current enlistment test development timelines and planned research for the next three years.

Public's Accessibility to the Meeting

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public.

Oral Presentations/Written Statements

Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian (see **FOR FURTHER INFORMATION CONTACT**) no later than January 10, 2010.

Dated: December 10, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–29811 Filed 12–15–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE Over-the-Counter Drug Demonstration Project

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of modifications and an extension to the TRICARE over-the-counter drug demonstration project.

SUMMARY: This notice is to advise interested parties of modifications to and an extension of the demonstration project entitled ''TRICARE Over-the-Counter Drug Demonstration Project.'' The original demonstration notice was published on June 15, 2007 (72 FR 33208; FR Doc. E7–11558) and described a demonstration project to evaluate the costs/benefits and beneficiary satisfaction of providing OTC drugs under the pharmacy benefits program when the selected OTC drugs are determined to be clinically effective. The demonstration was to be conducted until the implementation of the combined TRICARE mail and retail contract (TPharm) which will be November 4, 2009. This demonstration project will now be modified and extended for three additional years (November 4, 2012).

DATES: The modification and extension of the demonstration project is effective from November 4, 2009, to November 4, 2012.

FOR FURTHER INFORMATION CONTACT: Colonel Everett McAllister, TRICARE Management Activity, Pharmaceutical Operations Directorate, telephone (703) 681–2890.

SUPPLEMENTARY INFORMATION:

A. Background

For additional information on the TRICARE Over-the-Counter Drug Demonstration Project, see 72 FR 33208 (June 15, 2007).

B. Description of Modifications to the Demonstration Project

(1) Paragraph B(2) of the original notice at 72 FR 33209 is revised to read as follows:

OTC drug availability through the demonstration project. Eligible candidates for the demonstration are those who have a prescription for a prescription item that has an approved OTC drug equivalent, as defined by the program. The process used to verify eligibility will depend upon the dispensing venue the beneficiary chooses to use. Not all OTC drugs eligible for dispensing through this project will be available at all dispensing venues. The Pharmacy Program Office will communicate OTC drug availability through the use of the TRICARE Web site (*http://www.tricare.mil/pharmacy*), public affairs outreach, and through the representative military beneficiary organizations.

(2) Paragraph B(4) of the original notice at 72 FR 33209 and 33210 is revised to read as follows:

Cost sharing requirements. Until a modification to the new pharmacy contract software can occur to accept a $0 cost share, beneficiaries will be charged a non-reimbursable TRICARE cost share of $3 identical to that charged for a generic pharmaceutical agent. The $3 cost share will apply until the earlier of January 1, 2010 or the date on which systems changes can be made to accommodate processing of the retail network pharmacy and mail order pharmacy claims with a $0 cost share.

(3) Paragraph B(5) of the original notice at 72 FR 33210 is revised to read as follows:

Period of demonstration. The modification of the demonstration project will be effective November 4, 2009. This demonstration project will be extended for three additional years (November 4, 2012).

Dated: December 11, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–29864 Filed 12–15–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13596–000]

McGinnis, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

December 10, 2009.

On September 29, 2009, McGinnis, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Smithland Hydrokinetic Project, which would be located downstream of the U.S. Army Corps of Engineer's Smithland Lock and Dam on the Ohio River near the town of Hamletsburg, Pope County, Illinois; and town of Smithland, Livingston County, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following:

(1) Ten 35-kilowatt turbine generators mounted to a barge anchored in the Ohio River downstream of the Smithland Lock and Dam; (2) an armored transmission cable extending from the barge to a small shore substation; and (3) an access road needed to access the shore substation. The project would have an estimated annual generation of 1,533,000 kilowatt-hours.

Applicant Contact: Mr. Bruce D. McGinnis, Sr.; McGinnis, Inc.; P.O. Box 534; 502 Second St. Ext.; South Point, OH 45680; or phone 740–377–4391.

FERC Contact: Monte TerHaar at *monte.terhaar@ferc.gov* or phone 202–502–6035.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*; call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13596) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29916 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13513–000]

Lock+ Hydro Friends Fund XXII, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

December 10, 2009.

On June 12, 2009, Lock+ Hydro Friends Fund XXII, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Project Darwin, which would be located at the U.S. Army Corps of Engineer's Cape Fear Lock and Dam No. 1 on the Cape fear River near the town of Kings Bluff, Bladen County, NC. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following:

(1) Two lock frame modules consisting of eighteen 525 kilowatt turbines placed in a concrete-lined conduit of unknown dimensions. The module would be located adjacent to and east of the Corps dam; and (2) a proposed 69 kV transmission line approximately 2.0 miles long extending from the turbine units to an existing distribution line located east of the dam. The 9.45 megawatt project would have an estimated annual generation of 74 gigawatt-hours.

Applicant Contact: Wayne F. Krouse; Hydro Green Energy, LLC; 5090 Richmond Avenue #390; Houston, TX 77056; phone: (877) 556–6566 x709.

FERC Contact: Monte TerHaar at *monte.terhaar@ferc.gov* or phone 202–502–6035.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simple method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13513) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29918 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13516–000]

Lock+ Hydro Friends Fund XVIII, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

December 10, 2009.

On July 16, 2009, Lock+ Hydro Friends Fund XVIII, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Project Terrible Towel, which would be located at the U.S. Army Corps of Engineer's William O. Huske Lock and Dam on the Cape fear River near the town of Tolar Landing, Bladen County, NC. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following:

(1) Two lock frame modules consisting of eighteen 525 kilowatt turbines placed in a concrete-lined conduit of unknown dimensions. The module would be located adjacent to and east of the Corps dam; and (2) a proposed 69 kV transmission line approximately 1.1 miles long extending from the turbine units, crossing the Cape fear River, to an existing distribution line located west of the dam. The 9.45 megawatt project would have an estimated annual generation of 74 gigawatt-hours.

Applicant Contact: Wayne F. Krouse; Hydro Green Energy, LLC; 5090 Richmond Avenue #390; Houston, TX 77056; phone: (877) 556–6566 x709.

FERC Contact: Monte TerHaar at *monte.terhaar@ferc.gov* or phone 202–502–6035.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*; call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13516) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29919 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13517–000]

Lock+ Hydro Friends Fund XXIV, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

December 10, 2009.

On July 16, 2009, Lock+ Hydro Friends Fund XXIV, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Project Transformer, which would be located at the U.S. Army Corps of Engineer's Cape Fear River Lock and Dam No. 2 on the Cape fear River near the town of Elizabethtown, Bladen County, NC. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following:

(1) Two lock frame modules consisting of eighteen 525 kilowatt turbines placed in a concrete-lined conduit of unknown dimensions. The

modules would be located at the northeast end of the Corps dam; and (2) a proposed 69 kV transmission line approximately 2.3 miles long extending from the turbine units, crossing the Cape fear River, to an existing distribution line located southwest of the dam. The 9.45 megawatt project would have an estimated annual generation of 74 gigawatt-hours.

Applicant Contact: Wayne F. Krouse; Hydro Green Energy, LLC; 5090 Richmond Avenue #390; Houston, TX 77056; phone: (877) 556–6566 x709.

FERC Contact: Monte TerHaar at *monte.terhaar@ferc.gov* or phone 202–502–6035.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*; call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13517) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29920 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13519–000]

Lock+ Hydro Friends Fund XIX, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

December 10, 2009.

On June 18, 2009, Lock+ Hydro Friends Fund XIX, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Project Steel Curtain, which would be located at the U.S. Army Corps of Engineer's Claiborne Lock and Dam on the Alabama River near the town of Monroeville, Monroe County, AL. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following:

(1) One lock frame module consisting of nine 2,000 kilowatt turbines placed in a concrete-lined conduit of unknown dimensions. The module would be located adjacent to and east of the Corps dam; and (2) a proposed 69 kV transmission line approximately 4.0 miles long extending from the turbine units, and crossing the Alabama River to an existing distribution line located southeast of the dam. The 18 megawatt project would have an estimated annual generation of 15 gigawatt-hours.

Applicant Contact: Wayne F. Krouse; Hydro Green Energy, LLC; 5090 Richmond Avenue #390; Houston, TX 77056; phone: (877) 556–6566 x709.

FERC Contact: Monte TerHaar at *monte.terhaar@ferc.gov* or phone 202–502–6035.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simple method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13519) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29921 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13579–000]

FFP Qualified Hydro 14, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

December 10, 2009.

On September 4, 2009, FFP Qualified Hydro 14, LLC filed an application, pursuant to Section 4(f) of the Federal Power Act, proposing to study the feasibility of the Saylorville Dam Hydroelectric Project No. 13579, to be located at the Saylorville Dam on the Des Moines River, in Polk County, Iowa. The Saylorville Dam is owned and operated by the U.S. Army Corps of Engineers and includes the existing reservoir, dam, and outlet works.

The proposed project would consist of: (1) A new 100-foot-long, 40-foot-wide intake structure; (2) a new 2,600-foot-long, 20-foot-diameter penstock; (3) two new Kaplan turbine-generator units with a combined capacity of 11 megawatts; (4) a new 100-foot-long, 60-foot-wide powerhouse; (5) a tailrace utilizing an existing side channel; (6) a new 13.8-kilovolt, 7,000-foot-long transmission line; (7) a new substation; (8) a new 950-foot access road; (9) and appurtenant facilities. The project would have an estimated annual generation of 55,000 megawatt-hours.

Applicant Contact: Ramya Swaminathan, FFP Qualified Hydro 14 LLC, 33 Commercial Street, Gloucester, MA 01930, (978) 226–1531.

FERC Contact: Brandon Cherry, (202) 502–8328.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing application: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13579) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29922 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13584–000]

Muskingum Valley Hydro; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

December 10, 2009.

On September 14, 2009, Muskingum Valley Hydro filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Muskingum Valley Deer Creek Dam Hydroelectric Project No. 13584, to be located at the existing Deer Creek Dam, on the on the Deer Creek, in Pickaway County, Ohio. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The existing Deer Creek Dam is owned and operated by the U.S. Corps of Engineers, and includes the existing reservoir, dam, outlet works, and tailrace. The proposed project would consist of: (1) A new 30-foot-long by 30-foot-wide powerhouse to be located on the downstream side of Deer Creek Dam below the outlet works; (2) two 50-foot-long, 48-inch-diameter penstocks; (3) two new turbine generator units for a total installed capacity of 9.15 megawatts; (4) a new 400-foot-long, 14.7-kilovolt transmission line; and (5) appurtenant facilities. The proposed project would operate in run-of-river mode and generate an estimated average annual generation of 34,057 megawatt-hours.

Applicant Contact: Randall J. Smith, Muskingum Valley Hydro, 4950 Frazeysburg Road, Zanesville, Ohio 43701, (740) 891–5424.

FERC Contact: Michael Watts, (202) 502–6123.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13568) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29923 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13592–000]

McGinnis, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

December 10, 2009.

On September 29, 2009, McGinnis, Inc. filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Hannibal Hydrokinetic Project No. 13592, to be located on the Ohio River, in Monroe County, Ohio and Wetzel County, West Virginia.

The proposed Hannibal Hydrokinetic Project would be located just downstream of the U.S. Army Corps of Engineers Hannibal Lock and Dam in an area of the Ohio River approximately 6,200 feet long and 1,000 feet wide and would consist of: (1) A single barge suspending approximately 10 axial-flow turbine generators into the river with a total installed capacity of 350 kilowatts, (2) a new approximately 2,300-foot-long, 13.2-kilovolt transmission line; and (3) appurtenant facilities. The project would have an estimated annual generation of 1,533 megawatt-hours.

Applicant Contact: Russell Painter, McGinnis, Inc., P.O. Box 534, 502 Second St. Ext., South Point, OH 45680, (740) 377–4391.

FERC Contact: Brandon Cherry, (202) 502–8328.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing application: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number

(P-13592) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29924 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13593–000]

McGinnis, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

December 10, 2009.

On September 29, 2009, McGinnis, Inc. filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the New Cumberland Hydrokinetic Project No. 13593, to be located on the Ohio River, in Jefferson County, Ohio and Hancock County, West Virginia.

The proposed New Cumberland Hydrokinetic Project would be located just downstream of the U.S. Army Corps of Engineers New Cumberland Lock and Dam in an area of the Ohio River approximately 6,400-feet-long and 1,200-feet-wide and would consist of: (1) A single barge suspending approximately 10 axial-flow turbine generators into the river with a total installed capacity of 350 kilowatts, (2) a new approximately 7,000-foot-long, 13.2-kilovolt transmission line; and (3) appurtenant facilities. The project would have an estimated annual generation of 1,533 megawatt-hours.

Applicant Contact: Russell Painter, McGinnis, Inc., P.O. Box 534, 502 Second St. Ext., South Point, OH 45680, (740) 377–4391.

FERC Contact: Brandon Cherry, (202) 502–8328.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing application: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13593) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29925 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13595–000]

McGinnis, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

December 10, 2009.

On September 29, 2009, McGinnis, Inc. filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Pike Island Hydrokinetic Project No. 13595, to be located on the Ohio River, in Belmont County, Ohio and Ohio County, West Virginia.

The proposed Pike Island Hydrokinetic Project would be located just downstream of the U.S. Army Corps of Engineers Pike Island Lock and Dam in an area of the Ohio River approximately 6,400-feet-long and 1,500-feet-wide and would consist of: (1) A single barge suspending approximately 10 axial-flow turbine generators into the river with a total installed capacity of 350 kilowatts, (2) a new approximately 2,500-foot-long, 13.2-kilovolt transmission line; and (3) appurtenant facilities. The project would have an estimated annual generation of 1,533 megawatt-hours.

Applicant Contact: Russell Painter, McGinnis, Inc., P.O. Box 534, 502 Second St. Ext., South Point, OH 45680, (740) 377–4391.

FERC Contact: Brandon Cherry, (202) 502–8328.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing application: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13595) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29926 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 08, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–983–023; ER07–758–019; ER06–738–022; ER02–537–026; ER06–739–022; ER07–501–021; ER08–649–014.

Applicants: Fox Energy Company LLC, Inland Empire Energy Center, LLC, East Coast Power Liden Holding, LLC, EFS Parlin Holdings, LLC, Cogen Technologies Linden Venture LP, Birchwood Power Partners LP, Shady Hills Power Company, LLC.

Description: GE Companies Submit Supplemental Order 652 Letter to Staff.

Filed Date: 12/07/2009.

Accession Number: 20091207–5128.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ER03–1340–005; ER05–41–002; ER07–357–006; ER08–1288–005.

Applicants: Chanarambie Power Partners LLC; Oasis Power Partners, LLC; Fenton Power Partners I, LLC; Wapsipinicon Wind Project, LLC.

Description: Chanarambie Power Partners LLC *et al* submits substitute

tariff sheets that correct the 8/20/09 filing errors of the revised tariff sheets.

Filed Date: 12/04/2009.

Accession Number: 20091207–0156.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ER03–1340–006; ER07–357–007; ER08–1237–003; ER09–1302–001; ER08–1288–006; ER09–1181–002.

Applicants: Chanarambie Power Partners LLC, Fenton Power Partners I, LLC, Hoosier Wind Project, LLC, Northwest Wind Partners, LLC, Oasis Power Partners, LLC, Shiloh Wind Project 2, LLC, Wapsipinicon Wind Project, LLC.

Description: Chanarambie Power Partners, LLC *et al* submits a change of status notice pertaining to the respective market based rate authorizations to reflect the acquisition by EDF Development, Inc *etc.*

Filed Date: 12/07/2009.

Accession Number: 20091208–0065.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ER06–972–002.

Applicants: Thornwood Management Company, LLC.

Description: Thornwood Management Company, LLC submits the Updated Market Power Analysis.

Filed Date: 12/07/2009.

Accession Number: 20091208–0062.

Comment Date: 5 p.m. Eastern Time on Friday, February 05, 2009.

Docket Numbers: ER08–394–004; ER08–394–005.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator submits compliance filing regarding the effect that Behind the Meter Generation has had on the calculation of their Planning Reserve Margin *etc.*

Filed Date: 12/01/2009.

Accession Number: 20091208–0082.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 22, 2009.

Docket Numbers: ER08–912–006; ER09–32–003; ER09–279–002; ER09–30–003; ER09–31–003; ER02–2085–015; ER03–296–002; ER07–242–013; ER03–951–022; ER09–282–002; ER05–481–020; ER09–1284–001.

Applicants: Iberdrola Renewables, Inc.; Barton Windpower LLC; Buffalo Ridge I LLC; Elm Creek Wind, LLC; Farmers City Wind, LLC; Northern Iowa Windpower II LLC; Flying Cloud Power Partners, LLC; MinnDakota Wind LLC; Moraine Wind LLC; Moraine Wind II LLC; Trimont Wind I LLC; Rugby Wind LLC.

Description: Iberdrola Renewables, Inc *et al.* submits supplemental information in support of the updated triennial market power analysis filed on 6/30/09.

Filed Date: 12/02/2009.

Accession Number: 20091208–0005.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 23, 2009.

Docket Numbers: ER08–1057–002.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc submits Compliance Refund Report.

Filed Date: 12/07/2009.

Accession Number: 20091208–0060.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ER08–1106–004.

Applicants: MATL LLP.

Description: MATL, LLP submits Original Sheet 1 *et al.* Service Agreement 1 *et al* to the Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume 1 in compliance with Order 614.

Filed Date: 12/07/2009.

Accession Number: 20091208–0063.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ER09–411–004.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits the results of the analysis that the August 7 Order required to be performed by the Midwest ISO's RSG Task Force *etc.*

Filed Date: 12/07/2009.

Accession Number: 20091208–0074.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ER09–502–003; ER09–666–004; ER09–668–004; ER09–669–004; ER09–670–004; ER09–671–004.

Applicants: EDF Development, Inc.; EDFD–Handsome Lake; EDFD–Perryman; EDFD–Conemaugh; EDFD–C.P. Crane; EDFD–West Valley.

Description: EDF Development, Inc *et al.* submits Notice of change in status to inform the Commission of consummation of the Transaction *et al.*

Filed Date: 12/04/2009.

Accession Number: 20091208–0083.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ER09–832–004; ER02–2559–011; ER00–2391–011; ER00–3068–010; ER98–3511–014; ER02–1903–012; ER99–2917–012; ER98–3566–020; ER98–3564–015; ER02–2120–008; ER05–714–005; ER04–290–006; ER02–256–003; ER09–990–003; ER04–187–008; ER05–236–008; ER02–2166–010; ER05–661–004; ER03–1375–007.

Applicants: NextEra Energy Power Marketing, LLC; Backbone Mountain Windpower LLC; Doswell Limited Partnership; FPL Energy Cape, LLC; FPLE Maine Hydro, LLC; FPL Energy Marcus Hook, L.P.; FPL ENERGY MH50, LP; FPL Energy Power Marketing, Inc.; FPL Energy Wyman IV LLC; FPLE Rhode Island State Energy, LP; Gexa Energy LLC; Mill Run Windpower, LLC; NextEra Energy SeaBrook, LLC; Meyersdale Windpower, LLC; North Jersey Energy Associates, a L.P.; Northeast Energy Associates, LP; Pennsylvania Windfarms, Inc.; Somerset Windpower LLC; Waymart Wind Farm L.P.

Description: NextEra Companies Notice of Change in Status Regarding the Market-Based Rate Authorizations for the ISO–NE and PJM Markets.

Filed Date: 12/07/2009.

Accession Number: 20091207–5139.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ER09–1312–002; ER09–1313–002.

Applicants: Riverside Energy Center, LLC; RockGen Energy, LLC.

Description: Riverside Energy Center, LLC *et al.* submits a compliance filing of revised Rate Schedule FERC 2 *et al.*

Filed Date: 12/03/2009.

Accession Number: 20091207–0152.

Comment Date: 5 p.m. Eastern Time on Thursday, December 24, 2009.

Docket Numbers: ER09–1727–001; ER09–1728–001.

Applicants: ALLETE, Inc.

Description: Midwest Independent Transmission System Operator, Inc *et al.* submits compliance filing which revised the original 9/21/09 proposal to reflect modifications proposed in the Applicants' 10/23/09 Answer *etc.*

Filed Date: 12/04/2009.

Accession Number: 20091208–0013.

Comment Date: 5 p.m. Eastern Time on Monday, December 14, 2009.

Docket Numbers: ER10–92–003.

Applicants: EDF Trading North America, LLC.

Description: EDF Trading North America, LLC submits a Notice to inform the Commission that the EDF Trading affiliate, EDF Development, Inc, and Constellation Energy Group, Inc has consummated a transaction *etc.*

Filed Date: 12/04/2009.

Accession Number: 20091207–0154.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ER10–139–001.

Applicants: Atlantic Path 15, LLC.

Description: Atlantic Path 15, LLC submits filing Sub, Fifth Revised Sheet 16 to its Transmission Owner Tariff, FERC Electric Tariff Revised 1 *etc.*

Filed Date: 12/07/2009.

Accession Number: 20091208–0061.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ER10–142–002.

Applicants: Entergy Power, LLC.

Description: Entergy Power, Inc submits Notice of Succession and name change.

Filed Date: 12/04/2009.

Accession Number: 20091207–0155.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ER10–147–001.

Applicants: Great River Energy.

Description: Great River Energy *et al.* submits Substitute Original Sheet No 3633.11 *et al.*

Filed Date: 12/07/2009.

Accession Number: 20091207–0198.

Comment Date: 5 p.m. Eastern Time on Monday, December 14, 2009.

Docket Numbers: ER10–288–001.

Applicants: Carolina Power & Light Company & Florida

Description: Carolina Power & Light Co and Florida Power Corp submits an amendment to the 11/18/09 Section 205 filing.

Filed Date: 12/07/2009.

Accession Number: 20091207–0197.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ER10–354–000.

Applicants: Starion Energy Inc.

Description: Starion Energy, Inc submits an application for Order Accepting Rates for Filing and Granting Waivers and Blanket Approvals.

Filed Date: 12/04/2009.

Accession Number: 20091207–0195.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ER10–385–000.

Applicants: Castleton Energy Services, LLC.

Description: Application of Castleton Energy Services, LLC for market based rate authority, associated waivers, blanket approvals, notification of price reporting status and request for Category 1 Seller determinations.

Filed Date: 12/07/2009.

Accession Number: 20091208–0064.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ER10–389–000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Co submits the annual adjustment to a transmission rate under the Interconnection Agreement.

Filed Date: 12/07/2009.

Accession Number: 20091207–0196.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ER10–390–000.

Applicants: Avista Turbine Power, Inc.

Description: Avista Turbine Power, Inc submits a request for authorization for affiliate transactions and request for expedited action.

Filed Date: 12/07/2009.

Accession Number: 20091208–0059.

Comment Date: 5 p.m. Eastern Time on Thursday, December 17, 2009.

Docket Numbers: ER10–391–000.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc submits an amended Interconnection Agreement with Cleco Power LLC.

Filed Date: 12/07/2009.

Accession Number: 20091208–0048.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ER10–392–000.

Applicants: Allegheny Energy Supply Company, LLC.

Description: Allegheny Energy Supply Company, LLC submits request for authorization to make wholesale power sales to its affiliate, *etc.*

Filed Date: 12/07/2009.

Accession Number: 20091208–0045.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ER10–393–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits its Open Access Transmission Tariff to reduce the currently effective Violation Relaxation Limit governing operational constraints *etc.*

Filed Date: 12/07/2009.

Accession Number: 20091208–0046.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ER10–394–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff, terminating provisions related to the Dispatch Band Option *etc.*

Filed Date: 12/07/2009.

Accession Number: 20091208–0047.

Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–29880 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 9, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–560–006.

Applicants: Credit Suisse Energy LLC.

Description: Notice of Non-Material Change in Status for Credit Suisse.

Filed Date: 12/08/2009.

Accession Number: 20091208–5075.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 29, 2009.

Docket Numbers: ER08–613–002.
Applicants: Niagara Mohawk Power Corporation.
Description: Revised Refund Report of Niagara Mohawk Power Corporation d/b/a National Grid.
Filed Date: 12/08/2009.
Accession Number: 20091208–5081.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 29, 2009.

Docket Numbers: ER09–701–004.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits errata tariff sheets to correct a few Commission Order 614 ministerial errors, omissions and clean up revisions in tariff sheets etc.
Filed Date: 12/08/2009.
Accession Number: 20091209–0043.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 29, 2009.

Docket Numbers: ER09–1604–001.
Applicants: Northern Indiana Public Service Company.
Description: Northern Indiana Public Service Company submits Agreement designated to comply with Order 614 and Section 35.9.
Filed Date: 12/08/2009.
Accession Number: 20091209–0048.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 29, 2009.

Docket Numbers: ER10–236–002.
Applicants: Ohms Energy Company, LLC.
Description: Amended Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority, submitted by OHMS Energy Company, LLC.
Filed Date: 12/08/2009.
Accession Number: 20091209–0044.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 29, 2009.

Docket Numbers: ER10–293–001.
Applicants: First Point Power, LLC.
Description: First Point Power, LLC submits Amended Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority.
Filed Date: 12/08/2009.
Accession Number: 20091208–0093.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 29, 2009.

Docket Numbers: ER10–397–000.
Applicants: Cesarie, LLC.
Description: Cesarie, Inc submits Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority under Rate Schedule FERC Electric Tariff, Original Volume 1.
Filed Date: 12/08/2009.
Accession Number: 20091209–0047.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 29, 2009.

Docket Numbers: ER10–398–000.
Applicants: Alcoa Power Generating Inc.
Description: Alcoa Power Generating, Inc submits amendment to its Electric Rate Schedule FERC No. 19, the Exchange Agreement with Tennessee Valley Authority.
Filed Date: 12/08/2009.
Accession Number: 20091209–0046.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 29, 2009.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–11–000.
Applicants: Southwest Power Pool, Inc.
Description: Application of Southwest Power Pool, Inc. under Section 204 of the Federal Power Act for an Order Authorizing the Issuance of Securities.
Filed Date: 12/04/2009.
Accession Number: 20091204–5115.
Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ES10–12–000.
Applicants: Portland General Electric Company.
Description: Application of Portland General Electric Company for Authority to Issue Short-Term Debt Securities.
Filed Date: 12/04/2009.
Accession Number: 20091204–5135.
Comment Date: 5 p.m. Eastern Time on Monday, December 28, 2009.

Docket Numbers: ES10–13–000.
Applicants: FirstEnergy Service Company.
Description: Joint Application of First Energy Service Company *et al.* under Section 203 of the Federal Power Act for Authorization to issue short-term debt securities.
Filed Date: 12/08/2009.
Accession Number: 20091209–0045.
Comment Date: 5 p.m. Eastern Time on Tuesday, December 29, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–29879 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

December 10, 2009.

	Docket Nos.
BP Wind Energy North America Inc.	EG09–90–000
Big Sky Wind, LLC	EG09–91–000
Eurus Combine Hills II LLC	EG09–92–000
Elmwood Park Power LLC	EG09–93–000
Dry Lake Wind Power, LLC	EG09–94–000
Raleigh Wind Power Partnership.	EG09–95–000
SunEdison Canada, LLC ...	FC09–1–000

Take notice that during the months of October 2009 and November 2009, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the

Commission's regulations, 18 CFR 366.7(a) (2009).

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29917 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD09–9–000]

Small Hydropower Development in the United States; Notice Granting Extension of Time To Provide Comments

December 10, 2009.

On December 2, 2009, the Federal Energy Regulatory Commission held a Commissioner-led technical conference to explore issues related to licensing small non-federal hydropower projects in the United States. At the conference, Commission staff set January 4, 2010, as the due date for filing any written comments about small hydropower issues with the Commission. On December 4, 2009, American Rivers and the National Hydropower Association (NHA) filed a joint motion, requesting that the Commission extend the comment due date to February 4, 2010. In their filing, American Rivers and the NHA state that the additional time will allow for the submission of thoughtful and more detailed comments.

Upon consideration, notice is hereby given that an extension of time for all interested entities to file comments is granted to and including February 4, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29927 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–396–000]

Tres Amigas LLC; Notice of Filing

December 9, 2009.

Take notice that on December 8, 2009, Tres Amigas LLC filed an application requesting authorization to sell transmission services at negotiated rates through the Tres Amigas Superstation, pursuant to section 205 of the Federal Power Act, 16 USC 824d (2006), and Part 35 of the Commission's Rules and Regulations, 18 CFR Part 35 (2009).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 29, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29913 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–22–000]

Tres Amigas LLC; Notice of Filing

December 9, 2009.

Take notice that on December 8, 2009, Tres Amigas LLC filed a petition for disclaimer of jurisdiction, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 (2009), requesting the Commission to issue a declaratory order ruling that any transmission owner that constructs transmission facilities interconnecting the ERCOT grid to the proposed Tres Amigas Superstation (Tres Amigas) will not be subject to the Commission's jurisdiction as a public utility under the Federal Power Act by virtue of such interconnection, that transmission services over the alternating current (AC) lines from ERCOT to Tres Amigas (and synchronized with the ERCOT grid) will not be subject to the Commission's jurisdiction, and that establishing a new AC to Direct Current interconnection between Tres Amigas and ERCOT will not change the jurisdictional status of any other ERCOT utilities or ERCOT transaction.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on December 29, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29909 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–377–000]

Elk Creek Wind II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 9, 2009.

This is a supplemental notice in the above-referenced proceeding of Elm Creek Wind II LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is December 29, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29911 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–378–000]

Buffalo Ridge II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 9, 2009.

This is a supplemental notice in the above-referenced proceeding of Buffalo Ridge II LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is December 29, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29912 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–374–000]

Medicine Bow Power Partners, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

December 9, 2009.

This is a supplemental notice in the above-referenced proceeding of Medicine Bow Power Partners, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 29, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access

who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29910 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–3–000; Docket Nos. CP07–441–000; Docket No. CP09–433–000; Docket No. CP09–17–000; Docket No. AC08–161–000; Docket No. CP08–6–005; Docket No. CP09–56–000; Docket No. CP09–36–002; Docket No. CP09–40–001; Docket No. CP09–54–001; Docket No. CP09–68–000]

Accrual of Allowance for Funds Used During Construction: Pacific Connector Gas Pipeline, LP; Fayetteville Express Pipeline LLC; Florida Gas Transmission Company, LLC; Midcontinent Express Pipeline LLC; Southern Natural Gas Company; Southeast Supply Header, LLC/ Southern Natural Gas Company; Ruby Pipeline, LLC; Texas Eastern Transmission, LP; Supplemental Notice on Technical Conference on Commission Policy on Commencement of Accrual of Allowance for Funds Used During Construction

December 9, 2009.

The December 2, 2009 notice of a technical conference to address the accrual of allowance for funds used during construction (AFUDC) specified several recent and pending proceedings in which the issue of the accrual of AFDUC is raised. This issue is raised in two additional pending proceedings: Fayetteville Express Pipeline LLC in Docket No. CP09–433–000 and Midcontinent Express Pipeline LLC in Docket Nos. CP08–6–005 and Docket No. CP09–56–000. Accordingly, these two cases will be included with those previously specified as a subject of the technical conference to be held on Tuesday, December 15, 2009, from 9 a.m. until 1 p.m., in the Commission Meeting Room, at the Commission's offices at 888 First Street, NE., Washington, DC.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29915 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–3–000]

Enogex L.L.C.; Notice of Petition for Rate Approval

December 9, 2009.

Take notice that on November 23, 2009, Enogex L.L.C. (Enogex) filed pursuant to section 284.123(b)(2) of the Commission's regulations, filed a petition requesting that the Commission approve its rates pursuant to section 311(a)(2) of the Natural Gas Policy Act of 1978. Enogex proposes a fuel factor of 0.92% for the East Zone and a fuel factor of 1.12% for the West Zone of its system for Fuel Year 2010.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Friday, December 18, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29914 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM04–7–007]

Market-Based Rates For Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities; Notice of Request for Clarification

October 30, 2009.

Take notice that on March 9, 2009, as amended on October 28, 2009, the Compliance Working Group[1] filed a request for clarification regarding which employees can be ''shared'' for purposes of compliance with the Commission's Affiliate Restrictions adopted under Order No. 697.[2]

[1] The members of the Compliance Working Group taking part in the filing are: Allegheny Energy, Inc., American Electric Power Company, Inc., Cleco Corporation, Consumers Energy Company, Dominion Resources, Inc., Duke Energy Corporation, Edison International, El Paso Electric Company, Energy East Corp., Entergy Corporation, Exelon Corporation, FirstEnergy Corp., FPL Group, Inc., Pacific Gas and Electric Co., Progress Energy, Inc., Public Service Enterprise Group Inc., and Westar Energy, Inc.

[2] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, FERC Stats. & Regs. ¶ 31,252 (Order No. 697), clarified, 121 FERC

Continued

The Compliance Working Group states that the question presented arises because of an unintended inconsistency in the treatment of shared employees under the two major rulemakings—Order Nos. 697 and 717—that impose restrictions on employee interactions and communications. The Compliance Working Group states that Order No. 697 sought to ensure consistency between the two rules by holding that shared employees, for purposes of its Affiliate Restrictions, would be the same as later defined by the Standards of Conduct. It states that an inconsistency later arose because Order No. 717 ultimately revised the Standards of Conduct by eliminating the concept of shared employees altogether.[3] The Compliance Working Group states that this disconnect has created a compliance conundrum that should be remedied.

The Compliance Working Group asks the Commission to interpret the Affiliate Restrictions to permit sharing of employees who are not ''transmission function employees'' or ''marketing function employees''—the same sharing that is now permitted under the Standards of Conduct. The Compliance Working Group states that this interpretation is consistent with the purpose of Order Nos. 697 and 717, will facilitate compliance by regulated companies, and enhance enforcement by the Commission. It also states that, as was the case with Order No. 717, this interpretation would not eliminate the residual protection afforded by the rule against undue discrimination.

Any person desiring to comment in the above-referenced proceeding may file comments with the Commission on or before 5 p.m. Eastern time on November 30, 2009.

The Commission encourages electronic submission of comments in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of comments to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–29907 Filed 12–15–09; 8:45 am]

BILLING CODE 6717–01–P

[3] *Standards of Conduct for Transmission Providers,* Order No. 717, FERC Stats. Regs. ¶ 31,280 (2008), *order on reh'g,* Order No. 717–A, 129 FERC ¶ 61,043 (2009).

¶ 61,260 (2007), *order on reh'g,* Order No. 697–A, FERC Stats. & Regs. ¶ 31,268 (2008); *clarified,* 124 FERC ¶ 61,055 (2008), *order on reh'g,* Order No. 697–B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g,* Order No. 697–C, FERC Stats. & Regs. ¶ 31,291 (2009).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0528; FRL–9092–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Industrial-Commercial-Institutional Steam Generating Units, EPA ICR Number 1088.12, OMB Control Number 2060–0072

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before January 15, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0528, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Robert C. Marshall, Jr., Office of Compliance, Mail code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7021; fax number: (202) 564–0050; e-mail address: *marshall.robert@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 30, 2009 (74 *FR* 38004), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0528, which is available for public viewing online at *http://www.regulations.gov*, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, 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 Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov*, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov*, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: NSPS for Industrial-Commercial-Institutional Steam Generating Units (40 CFR Part 60, Subpart Db).

ICR Numbers: EPA ICR Number 1088.12, OMB Control Number 2060–0072.

ICR Status: This ICR is scheduled to expire on February 28, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this

submission is pending at OMB. 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 in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Entities potentially affected by this action are the owners or operators of industrial/commercial/institutional steam generating units. The affected entities are subject to the General Provisions of the New Source Performance Standards (NSPS) at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart Db. Owners or operators of the affected facilities must make an initial notification, performance tests, and periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 214 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or 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 which have subsequently changed; 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.

Respondents/Affected Entities: Owners or operators of industrial/commercial/institutional steam generating units.

Estimated Number of Respondents: 1,500.

Frequency of Response: Initially, occasionally, quarterly, and semiannually.

Estimated Total Annual Hour Burden: 771,889.

Estimated Total Annual Cost: $94,838,557, which includes $63,338,557 in labor costs, $9,000,000 in capital/startup costs, and $22,500,000 in operation and maintenance (O&M) costs.

Changes in the Estimates: The increase in burden from the most recently approved ICR is due to adjustment. The total number of respondents has increased from 1,185 to 1,500 which results in a greater number of respondents, responses, and burden hours. The burden also increased somewhat due to calculation errors in the previous ICR that are corrected in this ICR. In addition, an increase in respondent and Agency labor costs resulted from labor rate increases and the inclusion of managerial and clerical labor hours. The previous ICR showed only the technical hours.

Dated: December 7, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–29892 Filed 12–15–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0822; FRL–8797–2]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before January 15, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0822, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0822. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.),

2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Colin G. Walsh, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0298; e-mail address: *walsh.colin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, 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 claimed as CBI. In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

File Symbol: 85937-R; 85937-E. *Applicant*: Plant Impact plc; 12 South Preston Office Village, Cuerdan Way, Bamber Bridge, Preston, PR5 6BL United Kingdom. *Product name*: Bug Oil Ornamental (85937-R); Bug Oil Food Use (85937-E). *Active ingredient*: Insecticide and Tagetes Oil at 0.6%. *Proposal classification/Use*: Biochemical Insecticide (C.Walsh).

List of Subjects

Environmental protection, Pesticides and pest.

Dated: November 23, 2009.

Keith A. Matthews,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E9–29893 Filed 12–15–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0362; FRL–8795–6]

Dibromo-3-nitrilopropionamide et al; Antimicrobial Pesticide Registration Review Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration review. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before March 16, 2010.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are

commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information contact*: The Chemical Review Manager identified in the table in Unit III.A. for the pesticide of interest.

For general information contact: Lance Wormell, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603-0523; fax number: (703) 308–8090; e-mail address: *wormell.lance@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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 person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, 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 claimed as CBI. In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA section 3(a), a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration— that is, they can still be used without unreasonable adverse

effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table:

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration Review Case Name and Number	Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Disodium cyanodithioimidocarbamate (DCDIC) (case 3065)	EPA–HQ–OPP–2009–0723	Monisha Harris (703) 308–0410 *harris.monisha@epa.gov*
Dibromo-3-nitrilopropionamide (DBNPA) (case 3056)	EPA–HQ–OPP–2009–0724	Eliza Blair (703) 308–7279 *blair.eliza@epa.gov*
2-Mercaptobenzothiazole (case 2380)	EPA–HQ–OPP–2009–0725	Eliza Blair, (703) 308–7279 *blair.eliza@epa.gov*
Bromohydroxyacetophenone (BHAP) (case 3032)	EPA–HQ–OPP–2009–0726	K. Avivah Jakob, (703) 305–1328 *jakob.kathryn@epa.gov*
Lauryl Sulfate Salts (case 4061)	EPA–HQ–OPP–2009–0727	Monisha Harris, (703) 308–0410 *harris.monisha@epa.gov*

B. Docket Content

1. *Review dockets*. The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information*. More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's website at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm*. Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review*.

3. *Information submission requirements*. Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.
- As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests, Antimicrobials, Dibromo-3-nitrilopropionamide, (DBNPA), 2-Mercaptobenzothiazole, Bromohydroxyacetophenone, (BHAP), Disodium cyanodithioimidocarbamate, (DCDIC), Lauryl Sulfate Salts.

Dated: November 4, 2009.

Joan Harrigan Farrelly,

Director, Antimicrobials Division, Office of PesticidePrograms.

[FR Doc. E9–29592 Filed 12–15–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008-0347; FRL–8803–9]

Carbaryl; Product Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces EPA's order for the cancellations, voluntarily

requested by the registrant and accepted by the Agency, of products containing the pesticide, carbaryl, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows an October 21, 2009 **Federal Register** Notice of Receipt of Request from the carbaryl registrant to voluntarily cancel their carbaryl pet collar product registrations. These are not the last carbaryl products registered for use in the United States; however, they are the last carbaryl products registered for use on pets. In the October 21, 2009 Notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30–day comment period that would merit its further review of these requests, or unless the registrant withdrew its request within this period. The Agency received one comment on the Notice, but it did not merit further review of the request. Further, the registrant did not withdraw its request. Accordingly, EPA hereby issues in this Notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the carbaryl products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations of the products listed in Table 1 of Unit II. are effective September 30, 2010.

FOR FURTHER INFORMATION CONTACT: Jacqueline Guerry, Pesticide Re-Evaluation Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (215) 814–2184; fax number: (215) 814–3113; e-mail address: *guerry.jacqueline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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 person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0347. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

This Notice announces, effective September 30, 2010, the cancellation, as requested by the registrant Wellmark International of certain end-use carbaryl products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Table 1 of this unit.

TABLE 1.—CARBARYL PRODUCT CANCELLATIONS

Registration Number	Product Name
2724–272	Flea Collar RF-76 for Cats
2724–273	Flea Collar RF-75 for Dogs

Table 2 of this unit includes the name and address of record of the registrant of the products in Table 1 of this unit.

TABLE 2.—REGISTRANTS OF CANCELLED CARBARYL PRODUCTS

EPA Company Number	Company Name and Address
2724	Wellmark International 1501 E. Woodfield Road, Suite 200 WestSchaumburg, Illinois 60173

III. Summary of Public Comments Received and Agency Response to Comments

The Agency received one comment in response to the October 21, 2009, Carbaryl; Notice of Receipt of a Request to Voluntarily Cancel Pesticide Registrations to Terminate Use of Certain Products, from BioSpotVictims.org (BioSpot), a non-profit organization. BioSpot supports the decision by the registrant to cancel their carbaryl pet collar products; however, BioSpot objects to EPA's proposal to allow persons other than the registrant to continue to sell existing stocks of canceled products until such stocks are exhausted. BioSpot raises the concern that children will be exposed to carbaryl pet collars well beyond December 30, 2010, and therefore, urges EPA to consider prohibiting all persons from selling existing stocks of carbaryl pet collar products after December 30, 2010. BioSpot did not provide any information to support or substantiate this concern.

Based on its use pattern, the Agency understands that the shelf-life for treated pet collars, in general, is short. Further, based on conversations with the registrant, the Agency understands that a 3 month shelf-life for the registrant's pet collar products is typical, and therefore, the EPA expects that any existing stocks of carbaryl pet collars will move through the channels of trade quickly. This is reflected in the existing stocks provision which only allows the registrant to sell or distribute existing stocks for 3 months after the effective date of this order. Additionally, these products are labeled for up to 4 months of effective flea protection; direct the user to replace the collar after 4 months, if necessary; and instruct the user not to reuse the collar. The Agency believes if the collars are used in the manner consistent with the labeling, and the law, and discarded properly as directed, the existing stocks will, again, move through the channels of trade quickly. Thus, EPA disagrees with BioSpot's claim that the existing stock provision in this Notice will allow exposure to carbaryl pet collars to extend ''well beyond'' December 30, 2010.

In addition, the Agency's Existing Stocks Policy (56 FR 29362) June, 26, 1991, generally provides that if the Agency has not identified a particular risk concern, registrants will generally be permitted to sell or distribute existing stocks for 1 year after the cancellation request was received and that persons other than the registrant will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted. The policy also explains that where EPA has identified a particular risk issue, the Agency will generally weigh the risk against the benefits of allowing any continued sale, distribution, or use on a case-by-case basis. In doing so, one of the factors that the Agency may take into consideration is the degree to which the registrant's actions accelerated the removal of the pesticide from the market, and whether the

cancellation would have occurred at all without the existing stocks provision. (56 FR 29365).

The registrant's voluntary cancellation request is conditioned upon the inclusion of the proposed existing stocks provision. Thus, one of the things EPA has considered in deciding whether to allow any continued sale, distribution, or use of existing stocks is the exposure that might result absent the voluntary cancellation—even if EPA otherwise would have initiated cancellation proceedings. EPA has determined that granting this request with the proposed existing stocks provision will result in the removal of carbaryl pet collar products from the market sooner (and certainly with the expenditure of far fewer resources) than if EPA were to initiate cancellation proceedings. For these reasons, the Agency does not believe that the comments submitted during the comment period merit further review or a denial of the requests for voluntary cancellation.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the carbaryl registrations identified in Table 1 of Unit II. Accordingly, effective September 30, 2010, the Agency orders that the carbaryl product registrations identified in Table 1 of Unit II are canceled. After September 30, 2010, any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit VI. will be considered a violation of FIFRA.

V. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a Notice of Receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this Notice includes the following existing stocks provisions.

The registrant may sell or distribute existing stocks of the products identified in Table 1 of Unit II until December 30, 2010. All sale or distribution of existing stocks by the registrant is prohibited after December 30, 2010, unless that sale or distribution is solely for the purpose of facilitating disposal or export of the product. The Agency will allow persons other than the registrant to continue to sell and/or use existing stocks of canceled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 9, 2009.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. E9–29894 Filed 12–15–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0821; FRL–8797–3]

Notice of Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of an initial filing of a pesticide petition proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before January 15, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0821 and the pesticide petition number (PP) 9F7619, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0821 and the pesticide petition number (PP) 9F7619. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–

4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Colin G. Walsh, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0298; e-mail address: *walsh.colin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, 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 claimed as CBI. In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

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vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have a typical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petition described in this notice contains data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerance

PP 9F7619. EPA–HQ–OPP–2009–0821. EPA has received a pesticide petition PP 9F7619, from Plant Impact plc, 12 South Preston Office Village, Cuerdan Way, Bamber Bridge, Preston, PR5 6BL United Kingdom, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, to establish an exemption from the requirement of a tolerance for the biochemical pesticide tagetes oil, CAS Number 8016–84–0 in or on all food commodities including use on all food crops in EPA's crop groups 1–21.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 23, 2009.

Keith A. Matthews,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E9–29896 Filed 12–15–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0870; FRL–8802–8]

Registration Review; Pesticide Dockets Opened for Review and Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established registration review dockets for the pesticides listed in the table in Unit III.A. With this document, EPA is opening the public comment period for these registration reviews. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration—that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Registration review dockets contain information that will assist the public in understanding the types of information and issues that the Agency may consider during the course of registration reviews. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment. This document also announces the Agency's intent not to open registration review dockets for aldoxycarb, 1 RS cis-permethrin, and cyhexatin. These pesticides do not currently have any actively registered pesticide products and are therefore not scheduled for review under the registration review program. Additionally, this document announces that the Agency is not opening a registration review docket for carbofuran because cancellation is in process.

DATES: Comments must be received on or before February 16, 2010.

ADDRESSES: Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit III.A., by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit III.A. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. 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. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information contact*: The Chemical Review Manager identified in the table in Unit III.A. for the pesticide of interest.

For general information contact: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin @epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farmworker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may 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 person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, 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 claimed as CBI. In addition to one complete version of the comment that includes 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. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. Authority

EPA is initiating its reviews of the pesticides identified in this document pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations identified in the table in this unit to assure that they continue to satisfy the FIFRA standard for registration—that is, they can still be used without unreasonable adverse effects on human health or the environment. A pesticide's registration review begins when the Agency establishes a docket for the pesticide's registration review case and opens the docket for public review and comment. At present, EPA is opening registration review dockets for the cases identified in the following table:

TABLE—REGISTRATION REVIEW DOCKETS OPENING

Registration Review Case Name and Number	Docket ID Number	Chemical Review Manager Telephone Number, E-mail Address
Azoxystrobin (7020)	EPA–HQ–OPP–2009–0835	Kelly Ballard 703–305–8126 Ballard.kelly@epa.gov
Cyphenothrin (7412)	EPA–HQ–OPP–2009–0842	Joy Schnackenbeck 703–308–8072 Schnackenbeck.joy@epa.gov
Difenzoquat (0223)	EPA–HQ–OPP–2009–0787	Eric Miederhoff 703–347–8028 Miederhoff.eric@epa.gov
Diquat Dibromide (0288)	EPA–HQ–OPP–2009–0846	Eric Miederhoff 703–347–8028 Miederhoff.eric@epa.gov
Esfenvalerate (7406)	EPA–HQ–OPP–2009–0301	Molly Clayton 703–603–0522 Clatyton.molly@epa.gov
Metalaxyl & Mefenoxam (0081)	EPA–HQ–OPP–2009–0863	Katherine St Clair 703–347–8778 St clair.katherine@epa.gov
Propoxur (2555)	EPA–HQ–OPP–2009–0806	Monica Wait 703–347–8019 Wait.monica@epa.gov
Thiodicarb (2675)	EPA–HQ–OPP–2009–0432	Dana Friedman 703–347–8827 Friedman.dana@epa.gov
Fenbutatin Oxide (245)	EPA–HQ–OPP–2009–0841	James Parker 703–306–0469 Parker.james@epa.gov

EPA is also announcing that it will not be opening a docket for aldoxycarb, 1 RS cis-permethrin, and cyhexatin because these pesticides are not included in any products actively registered under FIFRA section 3. The Agency will take separate actions to cancel any remaining FIFRA section 24(c) Special Local Needs registrations

with these active ingredients and to propose revocation of any affected tolerances that are not supported for import purposes only. Additionally, this document announces that the Agency is not opening a registration review docket for carbofuran because cancellation is in process.

B. Docket Content

1. *Review dockets.* The registration review dockets contain information that the Agency may consider in the course of the registration review. The Agency may include information from its files including, but not limited to, the following information:

- An overview of the registration review case status.
- A list of current product registrations and registrants.
- **Federal Register** notices regarding any pending registration actions.
- **Federal Register** notices regarding current or pending tolerances.
- Risk assessments.
- Bibliographies concerning current registrations.
- Summaries of incident data.
- Any other pertinent data or information.

Each docket contains a document summarizing what the Agency currently knows about the pesticide case and a preliminary work plan for anticipated data and assessment needs. Additional documents provide more detailed information. During this public comment period, the Agency is asking that interested persons identify any additional information they believe the Agency should consider during the registration reviews of these pesticides. The Agency identifies in each docket the areas where public comment is specifically requested, though comment in any area is welcome.

2. *Other related information.* More information on these cases, including the active ingredients for each case, may be located in the registration review schedule on the Agency's website at *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm.* Information on the Agency's registration review program and its implementing regulation may be seen at *http://www.epa.gov/oppsrrd1/registration_review.*

3. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 9, 2009.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. E9–29895 Filed 12–15–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

12/11/2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by February 16, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Cathy Williams, Federal Communications Commission (FCC), 445 12th Street, SW, Washington, DC 20554. To submit your comments by e–mail send then to: PRA@fcc.gov and to Cathy.Williams@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0182.

Title: Section 73.1620, Program Tests.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for–profit entities; Not–for–profit institutions.

Number of Respondents and Responses: 1,770 respondents; 1,770 responses.

Estimated Time per Response: 1 – 5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 1,821 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 73.1620(a)(1) requires permittees of a nondirectional AM or FM station, or a nondirectional or directional TV station to notify the FCC upon beginning of program tests. An application for license must be filed within 10 days of this notification.

47 CFR 73.1620(a)(2) requires a permittee of an AM or FM station with a directional antenna to file a request for program test authority 10 days prior to date on which it desires to begin program tests. This is filed in conjunction with an application for license.

47 CFR 73.1620(a)(3) requires a licensee of an FM station replacing a directional antenna without changes to file a modification of the license application within 10 days after commencing operations with the replacement antenna.

47 CFR 73.1620(a)(4) requires a permittee of an AM station with a directional antenna to file a request for program test authority 10 days prior to the date on which it desires to begin program test.

47 CFR 73.1620(a)(5) requires that, except for permits subject to successive license terms, a permittee of an LPFM station may begin program tests upon notification to the FCC in Washington, DC provided that within 10 days thereafter an application for license is filed. Program tests may be conducted by a licensee subject to mandatory license terms only during the term specified on such license authorization.

Section 73.1620(a) also requires licensees to notify the Commission that construction of a station has been completed and that the station is broadcasting program material.

47 CFR 73.1620(b) allows the FCC to right to revoke, suspend, or modify program tests by any station without right of hearing for failure to comply adequately with all terms of the construction permit or the provision of 47 CFR 73.1690(c) for a modification of license application, or in order to resolve instances of interference. The FCC may also require the filing of a construction permit application to bring the station into compliance with the Commission's rules and policies.

47 CFR 73.1620(f) requires licensees of UHF TV stations, assigned to the same allocated channel which a 1000 watt UHF translator station is authorized to use, to notify the licensee of the translator station at least 10 days prior to commencing or resuming operation and certify to the FCC that such advance notice has been given. This notification alerts the UHF translator station that the potential of interference exists

47 CFR 73.1620(g) requires permittees to report any deviations from their promises, if any, in their application for license to cover their construction permit (FCC Form 302) and on the first anniversary of their commencement of program tests. This report is necessary to eliminate possible abuses of the FCC's processes and to ensure that comparative promises relating to service to the public are not inflated.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. E9–29860 Filed 12–15–09; 8:45 am]

BILLING CODE: 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Submitted to the Office of Management and Budget for Review and Approval, Comments Requested

12/11/2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by January 15, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Cathy Williams, Federal Communications Commission (FCC), 445 12th Street, SW, Washington, DC 20554. To submit your comments by e–mail send then to: PRA@fcc.gov and to Cathy.Williams@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: http://www.reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called ''Currently Under Review'', (3) click on the downward–pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection send an e–mail to PRA@fcc.gov or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0692.

Type of Review: Extension of a currently approved collection.

Title: Sections 76.613 and 76.802, Home Wiring Provisions.

Form Number: Not Applicable.

Respondents: Individuals or households; Business or other for–profit entities.

Number of Respondents and Responses: 22,000 respondents; 253,010 responses.

Estimated Time per Response: 5 minutes – 2 hours.

Frequency of Response: Recordkeeping requirement; on occasion reporting requirement; annual reporting requirement; third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission has authority for this information collection under Sections 1, 4, 224, 251, 303, 601, 623, 624 and 632 of the Communications Act of 1934, as amended.

Total Annual Burden: 36,114 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 76.613(d) requires that when Multichannel Video Programming Distributors (MVPDs) cause harmful signal interference MVPDs will be required by the Commission's engineer in charge (EIC) to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures.

47 CFR 76.802(b) states during the initial telephone call in which a subscriber contacts a cable operator to voluntarily terminate cable service, the cable operator–if it owns and intends to remove the home wiring–must inform the subscriber: (1) That the cable operator owns the home wiring; (2) That the cable operator intends to remove the home wiring; (3) That the subscriber has the right to purchase the home wiring; and (4) What the per–foot replacement cost and total charge for the wiring would be (the total charge may be based on either the actual length of cable wiring and the actual number of passive splitters on the customer's side of the demarcation point, or a reasonable approximation thereof; in either event, the information necessary for calculating the total charge must be available for use during the initial phone call).

47 CFR 76.804 (a)(1) states where an MVPD owns the home run wiring in an Multiple Dwelling Unit Building (MDU) and does not (or will not at the conclusion of the notice period) have a legally enforceable right to remain on the premises against the wishes of the MDU owner, the MDU owner may give the MVPD a minimum of 90 days' written notice that its access to the entire building will be terminated to invoke the procedures in this section. The MVPD will then have 30 days to notify the MDU owner in writing of its election for all the home run wiring inside the MDU building: to remove the wiring and restore the MDU building consistent with state law within 30 days of the end of the 90–day notice period or within 30 days of actual service termination, whichever occurs first; to abandon and not disable the wiring at the end of the 90–day notice period; or to sell the wiring to the MDU building owner. If the incumbent provider elects to remove or abandon the wiring, and it intends to terminate service before the end of the 90–day notice period, the incumbent provider shall notify the MDU owner at the time of this election of the date on which it intends to terminate service. If the incumbent provider elects to remove its wiring and restore the building consistent with state law, it must do so within 30 days of the end of the 90–day notice period or within 30 days of actual service termination, which ever occurs first. For purposes of abandonment, passive devices, including splitters, shall be considered part of the home run wiring. The incumbent provider that has elected to abandon its home run wiring may remove its amplifiers or other active devices used in the wiring if an equivalent replacement can easily be reattached. In addition, an incumbent provider removing any active elements shall comply with the notice requirements and other rules regarding the removal of home run wiring. If the MDU owner declines to purchase the home run wiring, the MDU owner may permit an alternative provider that has been authorized to provide service to the MDU to negotiate to purchase the wiring.

47 CFR 76.804 (a)(2) states if the incumbent provider elects to sell the home run wiring under paragraph (a)(1) of this section, the incumbent and the MDU owner or alternative provider shall have 30 days from the date of election to negotiate a price. If the parties are unable to agree on a price within that 30–day time period, the incumbent must elect: to abandon without disabling the wiring; to remove the wiring and restore the MDU consistent with state law; or to submit the price determination to binding arbitration by an independent expert. If the incumbent provider chooses to abandon or remove its wiring, it must notify the MDU owner at the time of this election if and when it intends to terminate service before the end of the 90–day notice period. If the incumbent service provider elects to abandon its wiring at this point, the abandonment shall become effective at the end of the 90–day notice period or upon service termination, whichever occurs first. If the incumbent elects at this point to remove its wiring and restore the building consistent with state law, it must do so within 30 days of the end of the 90–day notice period or within 30 days of actual service termination, which ever occurs first.

47 CFR 76.804 (a) (3) states if the incumbent elects to submit to binding arbitration, the parties shall have seven days to agree on an independent expert or to each designate an expert who will pick a third expert within an additional seven days. The independent expert chosen will be required to assess a reasonable price for the home run wiring by the end of the 90–day notice period. If the incumbent elects to submit the matter to binding arbitration and the MDU owner (or the alternative provider) refuses to participate, the incumbent shall have no further obligations under the Commission's home run wiring disposition procedures. If the incumbent fails to comply with any of the deadlines established herein, it shall be deemed to have elected to abandon its home run wiring at the end of the 90–day notice period.

47 CFR 76.804 (a) (4) states the MDU owner shall be permitted to exercise the rights of individual subscribers under this subsection for purposes of the disposition of the cable home wiring under §76.802. When an MDU owner notifies an incumbent provider under this section that the incumbent provider's access to the entire building will be terminated and that the MDU owner seeks to use the home run wiring for another service, the incumbent provider shall, in accordance with our current home wiring rules: offer to sell to the MDU owner any home wiring within the individual dwelling units that the incumbent provider owns and intends to remove; and provide the MDU owner with the total per–foot replacement cost of such home wiring. This information must be provided to the MDU owner within 30 days of the initial notice that the incumbent's access to the building will be terminated. If the MDU owner declines to purchase the cable home wiring, the MDU owner may allow the alternative provider to purchase the home wiring upon service termination under the terms and conditions of §76.802. If the MDU owner or the alternative provider elects to purchase the home wiring under these rules, it must so notify the incumbent MVPD provider not later than 30 days before the incumbent's termination of access to the building will become effective. If the MDU owner and the alternative provider fail to elect to purchase the home wiring, the incumbent provider must then remove the cable home wiring, under normal operating conditions, within 30 days of actual service termination, or make no subsequent attempt to remove it or to restrict its use.

In the Telecommunications Act of 1996, Congress directed that every broadcaster be given a second channel for digital operations. At the end of the transition, broadcasters' analog channels will be returned to the government. Congress set a target date of December 31, 2006 for the end of the transition, although that date can be extended if

85% of viewers in a particular market do not have access to the digital signals. In addition, at the end of the transition the broadcast spectrum will contract from channels 2–69 to channels 2–51. This 108 MHz of spectrum (channels 52–69) can then be used by advanced wireless services and public safety authorities. There are several key building blocks to a successful transition. First, content – consumers must perceive something significantly different than what they have in analog. Second, distribution – the content must be delivered to consumers in a simple and convenient way. Third, equipment – equipment must be capable, affordable and consumer–friendly. And fourth, education – consumers must be educated about what digital television is, and what it can do for them. These information requests are designed to gather data in these key areas.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. E9-29861 Filed 12–15–09; 8:45 am]

BILLING CODE: 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Submitted to the Office of Management and Budget (OMB) For Review, Comments Requested

December 10, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comments on this information collection should submit comments on or before January 15, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send them to: PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to web page: http://www.reginfo.gov/public/do/PRAMain, (2) look for the section of the web page called ''Currently Under Review'', (3) click on the downward–pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the FCC list appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–1127.

Title: First Responder Emergency Contact Information in the Universal Licensing System (ULS).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit, not–for–profit institutions, and state, local or tribal government.

Number of Respondents: 133,095 respondents; 133,095 responses.

Estimated Time Per Response: .25 hours (15 minutes).

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this collection of information is contained in 47 U.S.C. Section 154(i).

Total Annual Burden: 36,601 hours.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: To protect the identities and locations of key first responder communications personnel, the Commission will treat emergency contact information submitted into the Universal Licensing System (ULS) as confidential and will not make such information publicly available. The contact information submitted into ULS by public safety licensees and non–public safety licensees designated as emergency first responders will be available only to Commission staff. Interested licensees should file their operational point of contact information in ULS in the form of a confidential pleading.

The Public Safety Homeland Security Bureau of the FCC will issue a Public Notice with step–by–step instructions on how to use the enhanced features made available to licensees to provide this information.

Need and Uses: The Commission is submitting this information collection as an extension to the Office of Management and Budget (OMB) in order to obtain the full three year clearance from them. There is no change in the reporting requirement(s); and there is no change in the Commission's burden estimates.

Public safety licensees and non–public safety licensees designated as emergency first responders operating pursuant to Part 90 of the Commission's rules should identify the following information regarding the operational point of contact for the licensees directly responsible for coordinating with the state, county and/or local emergency authorities: a) name and title; b) office telephone number; c) mobile telephone number; and d) e–mail address.

The Public Safety Homeland Security Bureau of the FCC will issue a Public Notice with step–by–step instructions on how to use the enhanced features made available to licensees to provide this information.

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. E9–29833 Filed 12–15–09; 8:45 am]

BILLING CODE: 6712–01–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2904]

PETITION FOR RECONSIDERATION OF ACTION IN RULEMAKING PROCEEDING

December 8, 2009.

SUMMARY: Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed within 15 days of the date of public notice of the petitions in the Federal Register. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of Promoting Diversification of Ownership in the Broadcasting Services (MB Docket No. 07–294)

2006 Quadrennial Regulatory Review– Review of the Commission's Broadcast Ownership Rules and other Rules Adopted Pursuant to Section 202 of The Telecommunications Act of 1996 (MB Docket No. 06–121)

2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and other Rules Adopted Pursuant to Section 202 of The Telecommunications Act of 1996 (MB Docket No. 02–277)

Cross–Ownership of Broadcast Stations and Newspapers (MB Docket No. 01–235)

Rules and Policies Concerning Multiple Ownership of Radio Broadcast Station in Local Markets (MB Docket No. 01–317)

Definition of Radio Markets (MB Docket No. 00–244)

Ways to Further Section 257 Mandate and to Build on Earlier Studies (MB Docket No. 04–228)

NUMBER OF PETITIONS FILED: 2

Federal Communications Commission.

Marlene H. Dortch,

Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. E9–29834 Filed 12–15–09; 8:45 am]

BILLING CODE: 6712-01-S

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE & TIME: Thursday, December 17, 2009, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes:

Draft Advisory Opinion 2009–27: America Future Fund Political Action by its counsel, Jason Torchinsky.

Draft Advisory Opinion 2009–28: Democracy Engine, Inc., PAC, by its Treasurer, Jonathan Zucker, Esq.

Adoption of Policy to Prepare and Publish a Guidebook for Complainants and Respondents in Enforcement Matters.

Agency Procedures.

Election of Officers.

Future Meeting Dates.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer *Telephone:* (202) 694–1220.

Signed:

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E9–29836 Filed 12–15–09; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. FFIEC–2009–0001]

Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks

AGENCY: Federal Financial Institutions Examination Council (FFIEC).

ACTION: Notice; request for comment.

SUMMARY: The Federal Financial Institutions Examination Council (FFIEC), on behalf of its members, requests comment on this proposed Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks (guidance). Upon completion of the guidance, and after consideration of comments received from the public, the Federal financial institution regulatory agencies will issue it as supervisory guidance to the institutions that they supervise and the State Liaison Committee of the FFIEC will encourage state regulators to adopt the guidance. Accordingly, institutions will be expected to use the guidance in their efforts to ensure that their risk management and consumer protection practices adequately address the compliance and reputation risks raised by reverse mortgage lending.

DATES: Comments must be received on or before February 16, 2010.

ADDRESSES: Because paper mail in the Washington, DC area and received by the FFIEC is subject to delay due to heightened security precautions, commenters are encouraged to submit comments by the Federal eRulemaking Portal, if possible. Please use the title ''Reverse Mortgage Comments'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

Federal eRulemaking Portal—''Regulations.gov'': Go to *http://www.regulations.gov*, under the ''More Search Options'' tab click next to the ''Advanced Docket Search'' option where indicated, select ''FFIEC'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''Docket Number FFIEC–2009–0001'' to submit or view public comments and to view supporting and related materials for this notice of proposed rulemaking. The ''How to Use This Site'' link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

Mail: Paul Sanford, Executive Secretary, Federal Financial Institutions Examination Council, L. William Seidman Center, Mailstop: D 8073a, 3501 Fairfax Drive, Arlington, Virginia 22226–3550.

Hand Delivery/Courier: Paul Sanford, Executive Secretary, Federal Financial Institutions Examination Council, L. William Seidman Center, Mailstop: D 8073a, 3501 Fairfax Drive, Arlington, Virginia 22226–3550.

Instructions: You must include ''FFIEC'' as the agency name and ''Docket Number FFIEC–2009–0001'' in your comment. In general, the FFIEC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information,

e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice of proposed rulemaking electronically by following these instructions: Go to *http://www.regulations.gov*, under the ''More Search Options'' tab click next to the ''Advanced Document Search'' option where indicated, select ''FFIEC'' from the agency drop-down menu, then, click ''Submit.'' In the ''Docket ID'' column, select ''Docket FFIEC–2009–0001'' to view public comments for this rulemaking action.

Docket: You may also view or request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT:

OCC: Karen Tucker, National Bank Examiner and Senior Compliance Specialist, or Jesse Butler, Bank Examiner and Compliance Specialist, Compliance Policy, (202) 874–4428; Stephen Van Meter, Assistant Director, or Nancy Worth, Counsel, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Kathleen Conley, Senior Supervisory Consumer Financial Services Analyst, (202) 452–2389; Brent Lattin, Senior Attorney, (202) 452–3667, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

FDIC: Michael R. Evans, Fair Lending Specialist, Compliance Policy Section, Division of Supervision and Consumer Protection, (202) 898–6611; Richard Schwartz, Counsel, Legal Division, (202) 898–7424, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: David Adkins, Fair Lending Specialist, (202) 906–6716, or Richard Bennett, Senior Compliance Counsel, (202) 906–7409, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

NCUA: Matthew J. Biliouris, Program Officer, (703) 518–6394, Office of Examination & Insurance, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

I. Background Information

The FFIEC is proposing to recommend to the Federal financial institution regulatory agencies guidance on managing compliance and reputation risks presented by reverse mortgage products. The six members of the FFIEC are the Federal financial institution regulatory agencies (the Office of the Comptroller of the Currency (OCC); the Board of Governors of the Federal Reserve System (Board); the Federal Deposit Insurance Corporation (FDIC); the Office of Thrift Supervision (OTS); the National Credit Union Administration (NCUA)), and the State Liaison Committee (SLC) of the FFIEC.

As part of its mission, the FFIEC makes recommendations regarding supervisory matters and the adequacy of supervisory tools to the Federal financial institution regulatory agencies. The FFIEC also establishes standards for examinations of financial institutions that shall be applied by the agencies. These agencies expect that all financial institutions that they supervise—that is, banks and their subsidiaries, bank holding companies and their nonbank subsidiaries, savings associations and their subsidiaries, savings and loan holding companies and their subsidiaries, and credit unions (''institutions'')—will effectively assess and manage risks associated with their lending activities, including those associated with reverse mortgage products. Upon completion of the guidance, and after consideration of comments received from the public, the Federal financial institution regulatory agencies will issue it as supervisory guidance to the institutions that they supervise. Accordingly, such institutions will be expected to use the guidance in their efforts to ensure that their risk management and consumer protection practices adequately address the compliance and reputation risks raised by reverse mortgage lending.

The SLC, which is composed of representatives of five State agencies that supervise financial institutions, was established to encourage the application of uniform examination principles and standards by State and Federal supervisory agencies. Upon finalization of the FFIEC guidance, the SLC will encourage the adoption of the guidance by state regulators. Entities regulated by the state agencies that adopt the guidance would be expected to use it in their efforts to ensure that their risk management and consumer protection practices adequately address the compliance and reputation risks raised by reverse mortgage lending.

Reverse mortgages are home-secured loans typically offered to elderly consumers. Institutions under the FFIEC members' supervision currently provide two basic types of reverse mortgage products: lenders' own proprietary reverse mortgage products and reverse mortgages offered under the Home Equity Conversion Mortgage (HECM) program.[1] Both HECMs and proprietary products are subject to various laws governing mortgage lending including the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Federal Trade Commission Act, and the fair lending laws. HECMs are also subject to an extensive regulatory regime established by HUD, including provisions for FHA insurance of HECM loans that protect both lenders and reverse mortgage borrowers.

Reverse mortgages enable eligible borrowers to remain in their home while accessing their home equity in order to meet emergency needs, supplement their incomes, or, in some cases, purchase a new home—without subjecting borrowers to ongoing repayment obligations during the life of the loan. The use of reverse mortgages could expand significantly in coming years as the U.S. population ages and more homeowners become eligible for reverse mortgage products. If prudently underwritten and used appropriately, these products have the potential to become an increasingly important credit product for addressing certain credit needs of an aging population.

However, reverse mortgages can be highly complex loan products, and it is particularly important to provide adequate information and other consumer protections. Typically, elderly borrowers are securing a reverse mortgage with their primary asset—their home. Thus, borrowers may depend on the reverse mortgage proceeds for the cash flow needed to pay for health care and other living expenses.

For these reasons, it is critical that institutions manage the compliance and reputation risks associated with reverse mortgages. The proposed guidance set forth in this document is intended to assist institutions in their efforts to manage these risks. While the FFIEC members have not encountered widespread use of reverse mortgage lending by the institutions that they supervise, the FFIEC members are proposing this reverse mortgage

[1] A HECM is a reverse mortgage product insured by the Federal Housing Administration (FHA), which is part of the U.S. Department of Housing and Urban Development (HUD), and subject to a range of federal consumer protection and other requirements. See 12 U.S.C. 1715z–20; 24 CFR part 206.

guidance in light of the anticipated growth in this lending product.

II. Principal Elements of the Guidance

The proposed guidance discusses the general features of, certain legal provisions applicable to, and consumer protection concerns raised by reverse mortgage products. In addition, it focuses on the need to provide adequate information to consumers about reverse mortgage products; to provide qualified independent counseling to consumers considering these products; and to avoid potential conflicts of interest. The proposed guidance also addresses related policies, procedures, and internal controls and third party risk management.

For example, the proposed guidance stresses the importance of avoiding potential conflicts of interest and abusive practices. In addition, the proposed guidance emphasizes the importance of independent credit counseling for consumers considering reverse mortgages. Pursuant to the proposed guidance, such counseling should cover the potential consequences of entering into these transactions, such as the potential effect on eligibility for needs-based public benefits.

The proposed guidance also recommends that consumers be provided clear and balanced information about the relative benefits and risks of reverse mortgage products, at a time that will help consumers' decision-making processes. Consistent with this advice, the proposed guidance suggests that institutions inform borrowers about reverse mortgage alternatives that they already offer.

III. Request for Comment

Comment is requested on all aspects of the proposed guidance.

IV. Supplemental Guidance

The FFEIC believes that illustrations of potential costs and benefits of reverse mortgages, relative to alternatives to reverse mortgages, may be useful to institutions as they seek to implement the Interagency Guidance recommendations relating to communicating fees and charges information to consumers. Thus, the FFIEC, on behalf of its members, is developing sample illustrations to assist institutions in providing consumers with information about the relative benefits and risks of reverse mortgages, as outlined in the proposed reverse mortgage guidance.

V. Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521 (PRA), the Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The proposed guidance includes reporting, recordkeeping, and disclosure requirements, some of which implicate PRA as more fully explained below.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Federal banking agencies' functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection 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.

All comments will become a matter of public record. Comments should be addressed to:

OCC: Please follow the instructions found in the **ADDRESSES** caption above for submitting comments.

FRB: Please follow the instructions found in the **ADDRESSES** caption above for submitting comments.

FDIC: Please follow the instructions found in the **ADDRESSES** caption above for submitting comments.

OTS: Please follow the instructions found in the **ADDRESSES** caption above for submitting comments.

NCUA: Please follow the instructions found in the **ADDRESSES** caption above for submitting comments.

All Agencies: A copy of the comments may also be submitted to the OMB desk officer for the Agencies: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title of Information Collection: Reverse Mortgage Products.

OMB Control Numbers: New collection; to be assigned by OMB.

Abstract: The proposed guidance includes reporting, recordkeeping, and disclosure requirements applicable to both proprietary and HECM reverse mortgages. However, a number of the requirements are currently standard business practice for proprietary and HECM reverse mortgages and, therefore, under the ''usual and customary'' standard do not require PRA clearance. There are also requirements currently covered under approved TILA-related information collections for proprietary and HECM reverse mortgages, and an approved HUD information collection for HECM reverse mortgages.

Proprietary reverse mortgage products, however, are not subject to the consumer protection provisions of the HECM program, so these requirements would normally be submitted for approval under PRA. However, recent research has shown that, despite the significant growth in reverse mortgages since inception of the HECM program in 1989, currently the market for proprietary reverse mortgages has dissipated to the point that, industry-wide, there are fewer than 10 lenders offering such products.[2] This is likely due to the recent decline in housing values, resulting in decreased equity in homes.

Given the minimal number of lenders currently offering proprietary reverse mortgages, the agencies are not now seeking OMB approval for the consumer protection provisions in the guidance applicable to proprietary reverse mortgages. The agencies will, however, seek PRA approval once this sector of the market recovers.

Lastly, there are requirements that apply to both proprietary and HECM reverse mortgages that do not meet the ''usual and customary'' standard, are not covered by already approved information collections and, therefore, require PRA clearance.

Proprietary Reverse Mortgages

Institutions offering proprietary reverse mortgages will be encouraged under the guidance to follow or adopt relevant HECM requirements for mandatory counseling, disclosures, affordable origination fees, restrictions on cross-selling of ancillary products, and reliable appraisals.

Proprietary and HECM Reverse Mortgages

Institutions offering either HECMs or proprietary reverse mortgages are encouraged to develop clear and balanced product descriptions and make them available to consumers shopping for a mortgage. They should set forth a description of how disbursements can

[2] See the Board's Divisions of Research & Statistics and Monetary Affairs Finance and Economics Discussion Series paper ''Reversing the Trend: The Recent Expansion of the Reverse Mortgage Market,'' *http://www.federalreserve.gov/pubs/feds/2009/200942/200942pap.pdf.*

be received and include timely information to supplement the TILA and other disclosures. Promotional materials and product descriptions should include information about the costs, terms, features, and risks of reverse mortgage products.

Institutions should adopt policies and procedures that prohibit directing a consumer to a particular counseling agency or contacting a counselor on the consumer's behalf. They should adopt clear written policies and establish internal controls specifying that neither the lender nor any broker will require the borrower to purchase any other product from the lender in order to obtain the mortgage. Policies should be clear so that originators do not have an inappropriate incentive to sell other products that appear linked to the granting of a mortgage. Legal and compliance reviews should include oversight of compensation programs so that lending personnel are not improperly encouraged to direct consumers to particular products.

Institutions making, purchasing, or servicing reverse mortgages through a third party should conduct due diligence and establish criteria for third party relationships and compensation. They should set requirements for agreements and establish systems to monitor compliance with the agreement and applicable laws and regulations. They should also take corrective action if a third party fails to comply. Third party relationships should be structured in a way that does not conflict with RESPA.

Affected Public:

OCC: National banks, their subsidiaries, and federal branches or agencies of foreign banks.

Board: Bank holding companies and state member banks.

FDIC: Insured state nonmember banks.

OTS: Federal savings associations and their affiliated holding companies.

NCUA: Federally-insured credit unions.

Type of Review: Regular.

Estimated Burden:

OCC:

Number of respondents: 77.

Burden per respondent: 40 hours to implement policies and procedures and to provide training; 8 hours annually to maintain program.

Total estimated annual burden: 3,696 hours.

Board:

Number of respondents: 18.

Burden per respondent: 40 hours to implement policies and procedures and to provide training; 8 hours annually to maintain program.

Total estimated annual burden: 864 hours.

FDIC:

Number of respondents: 48.

Burden per respondent: 40 hours to implement policies and procedures and to provide training; 8 hours annually to maintain program.

Total estimated annual burden: 2,304 hours.

OTS:

Number of respondents: 20.

Burden per respondent: 40 hours to implement policies and procedures and to provide training; 8 hours annually to maintain program.

Total estimated annual burden: 960.

NCUA:

Number of respondents: 85.

Burden per respondent: 40 hours to implement policies and procedures and to provide training; 8 hours annually to maintain program.

Total estimated annual burden: 4,080 hours.

The text of the proposed interagency Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks follows:

Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks

Introduction

The members of the Federal Financial Institutions Examination Council (FFIEC or Agencies)—consisting of the Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), and State Liaison Committee (SLC)—are issuing guidance to assist financial institutions [1] in managing risks presented by reverse mortgage products. Reverse mortgages are home-secured loans, typically offered to elderly consumers, which present consumer protection issues that raise compliance and reputation risks for the institutions offering them.

Expected increases in the elderly population of the United States and other factors suggest that the use of reverse mortgages could expand significantly in coming years as more homeowners become eligible for reverse mortgage products. These loan products enable eligible borrowers to access the equity in their homes in order to meet emergency needs, to supplement their incomes, or to purchase a new home.[2] Reverse mortgages can meet these objectives without subjecting borrowers to ongoing repayment obligations during the life of the loan, while enabling borrowers to remain in their homes. As a result, the Agencies believe that reverse mortgages, offered appropriately, could become an increasingly important mechanism for institutions to address credit needs of an aging population.

Nevertheless, reverse mortgages are complex loan products that present a wide range of complicated options to borrowers. Moreover, the need to provide adequate information about reverse mortgages and to ensure appropriate consumer protections is particularly high. This is because reverse mortgages are typically secured by the borrower's primary asset—his or her home. Consequently, a reverse mortgage may provide the only funds available to a consumer to pay for health care needs and other living expenses.[3]

For these and other reasons, reverse mortgages present substantial risks both to institutions and to consumers, and, as with any type of loan that is secured by a consumer's home, it is crucial that consumers understand the terms of the product and the nature of their obligations. While this guidance addresses consumer protection concerns that raise compliance and reputation risks, the Agencies recognize that reverse mortgage products may present other risks, too, such as credit, interest rate, and liquidity risks,[4] especially for proprietary reverse mortgage products lacking the insurance offered under the federal Home Equity Conversion Mortgage (HECM) program.[5]

[1] This guidance applies to all banks and their subsidiaries, bank holding companies (other than foreign banks) and their nonbank subsidiaries, savings associations and their subsidiaries, savings and loan holding companies and their subsidiaries, credit unions, and U.S. branches and agencies of foreign banks engaged in reverse mortgage transactions.

[2] The Federal Housing Administration (FHA) has announced a program that would enable eligible borrowers to use the proceeds of a federally-insured reverse mortgage for the purchase of a new principal residence. *See* U.S. Department of Housing and Urban Development (HUD) Mortgagee Letter 2008–23 (October 20, 2008) and HUD Mortgagee Letter 2009–11 (March 27, 2009).

[3] In 2007, the typical reverse mortgage borrower was 73 years old, had a home valued at $261,500, and had financial assets of less than $33,000. AARP, Reverse Mortgage: Niche Product or Mainstream Solution, Dec. 2007 (available at *http://assets.aarp.org/rgcenter/consume/2007_22_revmortgage.pdf*).

[4] Institutions also should manage these other risks appropriately. In this regard, institutions are advised to conform their reverse mortgage lending activities to any applicable guidance from their respective supervisory agencies, and to consult with those agencies with respect to any such safety and soundness issues.

[5] A HECM is a reverse mortgage product insured by the FHA, part of the HUD, and is subject to a range of consumer protection and other

Continued

As explained in further detail below, the complex nature of reverse mortgages presents the risk that consumers will not understand the costs, terms, and consequences of the products. Consumers also may be harmed by any conflicts of interest or abusive or fraudulent practices related to the sale of ancillary products or services. In contrast to HECM reverse mortgages, proprietary reverse mortgages also present the risk that lenders will be unable to meet their obligations to make payments due to consumers.[6]

As with other lending products, institutions should manage the compliance and reputation risks associated with reverse mortgages. This guidance is intended to assist institutions in their efforts to manage these risks. This guidance focuses on ways an institution may provide adequate information about reverse mortgage products and qualified independent counseling to consumers and on ways to avoid potential conflicts of interest. The guidance also addresses related policies, procedures, internal controls, and third party risk management for institutions.

This guidance may be particularly useful for institutions that offer proprietary reverse mortgage products that are not subject to the regulatory requirements applicable to reverse mortgages offered under the HECM program. Depending on how they are structured, proprietary reverse mortgage products may contain a higher degree of risk than HECMs. Therefore, to address these risks effectively, proprietary products may warrant careful scrutiny under the principles, considerations, and risks discussed in this guidance.

The Agencies expect institutions to use this guidance to ensure that risk management practices adequately address compliance and reputation risks associated with reverse mortgages. Failure to address the risks discussed in this guidance could significantly affect the overall effectiveness of an institution's compliance efforts with respect to reverse mortgages. The Agencies will review risk management processes in this area and will request remedial actions if institutions do not adequately manage these risks.

requirements. *See* 12 U.S.C. 1715z–20; 24 CFR 206. A lender making a HECM loan may assign it to HUD when the outstanding balance reaches 98% of the maximum claim amount. *See* 24 CFR 206.107(a)(1).

[6] Under the FHA insurance program for HECM loans, HUD will make payments to a consumer if a HECM lender fails to make a payment due to the consumer. *See* 24 CFR 206.117 and 206.121.

Background

The reverse mortgage market currently consists of two basic types of reverse mortgage products: Proprietary products offered by an individual institution and FHA-insured reverse mortgages offered under the HECM program. To date, HECM reverse mortgages have accounted for approximately 90% of all reverse mortgages.[7]

Reverse mortgages generally are non-recourse, home-secured loans that provide one or more cash advances to borrowers and require no repayments until a future time. Both HECMs and proprietary reverse mortgages generally must be repaid only when the last surviving borrower dies, all borrowers permanently move to a new principal residence, or the loan is in default. For example, repayment would be required when the borrower sells the home or has not resided in the home for a year. A borrower may be in default on a reverse mortgage when the borrower fails to pay property taxes, fails to maintain hazard insurance, or lets the property fall into unreasonable disrepair. When a reverse mortgage becomes due, the home must be sold or the borrower (or surviving heirs) must repay the full amount of the loan (including accrued interest), even if the balance is greater than the property value. If the home is sold, the borrower or estate generally would not be liable to the lender for any amounts in excess of the value of the home.

To obtain a reverse mortgage, the borrower must occupy the home as a principal residence and generally be at least 62 years of age. Reverse mortgages are typically structured as first lien mortgages,[8] and require that any prior mortgage be paid off either before obtaining the reverse mortgage or with the funds from the reverse mortgage.

The funds from a reverse mortgage may be disbursed in several different ways:

➢ A single lump sum [9] that distributes up to the full amount of the principal limit [10] in one payment;

➢ A credit line that permits the borrower to decide the timing and amount of the loan advances;

➢ A monthly cash advance, either for a fixed number of years selected by the borrower or for as long as the borrower lives in the home; or

➢ Any combination of the above selected by the borrower.

Generally, the size of the loan will be larger when the borrower is older, the home is more valuable, or interest rates are lower. Interest rates on a reverse mortgage may be fixed or variable.

Legal Considerations

Both HECMs and proprietary reverse mortgage products are subject to laws and regulations governing mortgage lending. The following are particularly relevant to the issues addressed in this guidance:

• *Federal Trade Commission Act (FTC Act).* Section 5 of the FTC Act prohibits unfair or deceptive acts or practices.[11] The OCC, the Board, the FDIC, and the OTS enforce this provision of the FTC Act and any applicable regulations under authority granted in the FTC Act and section 8 of the Federal Deposit Insurance Act. The NCUA enforces this provision of the FTC Act and any applicable regulations under authority granted in the FTC Act and sections 120 and 206 of the Federal Credit Union Act.[12]

Practices may be found to be *deceptive* and thereby unlawful under section 5 of the FTC Act if: (1) There is a representation, omission, act, or practice that is likely to mislead the consumer; (2) the act or practice would be deceptive from the perspective of a reasonable consumer; and (3) the representation, omission, act, or practice

[7] AARP, *Reverse Mortgage: Niche Product or Mainstream Solution,* Dec. 2007, at 1 (available at *http://assets.aarp.org/rgcenter/consume/2007_22_revmortgage.pdf).*

[8] HECMs, by statute, must be first lien mortgages. 12 U.S.C. 1715z–20(b)(3).

[9] While HECM payment plans do not include a separate ''lump sum'' option, HECMs provide an effective substitute for such an option through a line of credit that can be fully drawn at consummation.

[10] The principal limit is the maximum payment that can be made to the borrower. The principal limit depends on the age of the youngest borrower, the expected interest rate, and the ''maximum claim amount.'' The maximum claim amount is either (1) the lower of the actual value or FHA loan limit (for HECMs) or (2) the loan-to-value ratio established by the lender (for proprietary mortgages). The maximum claim amount includes the principal limit (cash available to the borrower), accrued interest, and any set-asides for repairs or servicing fees required by the loan terms.

[11] Supervisory guidance to financial institutions has been issued concerning unfair or deceptive acts or practices. *See* OCC Advisory Letter 2002–3—*Guidance on Unfair or Deceptive Acts or Practices,* March 22, 2002; Joint Board and FDIC Guidance on Unfair or Deceptive Acts or Practices by State-Chartered Banks, March 11, 2004. *See also Unfair or Deceptive Acts or Practices,* 74 FR 5498 (Jan. 29, 2009) (final rule issued by the Board, OTS, and NCUA discussing unfairness and deception standards). Federally-insured credit unions are prohibited from using any advertising or promotional material that is inaccurate, misleading, or deceptive in any way concerning its products, services, or financial condition. 12 CFR 740.2. The OTS also has a regulation that prohibits savings associations from using advertisements or other representations that are inaccurate or misrepresent the services or contracts offered. 12 CFR 563.27. This regulation supplements its authority under the FTC Act.

[12] 12 U.S.C. 1766 and 1786.

is material.[13] A practice may be found to be *unfair* and thereby unlawful under section 5 of the FTC Act if (1) the practice causes or is likely to cause substantial consumer injury; (2) the injury is not outweighed by benefits to the consumer or to competition; and (3) the injury caused by the practice is one that consumers could not reasonably have avoided.[14]

• *Truth in Lending Act (TILA).* TILA and the Board's implementing Regulation Z contain rules governing disclosures that institutions must provide for mortgages in advertisements, with an application, before loan consummation, and when interest rates change. Reverse mortgage borrowers must receive all disclosures that are required under TILA,[15] including notice of their right to rescind the loan.[16]

Reverse mortgages may be structured as open-end credit or as closed-end credit within the meaning of Regulation Z. Disclosures required by TILA relating to open-end or closed-end mortgages must be provided, as appropriate.[17] For closed-end, variable rate loans, lenders must provide the variable rate program disclosures,[18] as well as required notices of interest rate adjustments.[19]

In addition, TILA requires that a Total Annual Loan Cost (TALC) form be provided to reverse mortgage borrowers.[20] The total annual loan cost rates shown on the TALC form include the upfront costs (e.g., origination fee, third-party closing fee, and any upfront mortgage insurance premium), interest, and ongoing charges (e.g., monthly service fee and any annual mortgage insurance premium).

• *Real Estate Settlement Procedures Act (RESPA).* RESPA and HUD's implementing Regulation X contain rules that, among other things, require disclosure of early estimated and final settlement costs and prohibit referral fees and other charges that are not for services actually performed. As a general matter, an institution may neither pay nor accept any fee or other thing of value in exchange for the referral of business related to a reverse mortgage transaction.

Institutions that offer reverse mortgage products must ensure that they do so in a manner that complies with the foregoing and all other applicable laws and regulations, including the following Federal laws:

➢ Equal Credit Opportunity Act;
➢ Fair Housing Act; and
➢ National Flood Insurance Act.

State laws, including laws regarding unfair or deceptive acts or practices, also may apply to reverse mortgage transactions. Currently, more than twenty states have laws or regulations governing various aspects of reverse mortgages. In addition, all state financial institution regulators have the authority to supervise the mortgage-related activities of entities subject to their respective jurisdictions, including activities related to reverse mortgages.[21]

HECM reverse mortgages also are subject to the consumer protections and other special provisions set forth in HUD regulations.[22] HECM consumer protections include information provided to consumers through qualified independent counselors. Before obtaining a HECM reverse mortgage, the borrower must receive counseling from a HUD-approved housing counseling agency.[23] The counseling agency is required to discuss with the borrower: (1) Alternatives to HECMs, (2) the financial implications of entering into a HECM (including tax consequences), (3) the effect on eligibility for assistance under Federal and State programs, and (4) the impact on the estate and heirs of the homeowner.[24] HUD encourages, but does not require, that HECM counseling be conducted in person.[25] HECMs also carry particular disclosure requirements under HUD rules, including a requirement that the lender provide copies of the mortgage, note, and loan agreement to the borrower at the time that the borrower's application is completed.

Recent statutory changes to the HECM program established additional consumer protections.[26] For example, Congress adopted consumer protections to guard against potential conflicts of interest, including: (1) Special requirements for HECM lenders that are associated with any other ''financial or insurance activity,'' (2) a prohibition on lenders' conditioning the availability of the HECM on the purchase of other financial or insurance products (with limited exceptions), and (3) a requirement that the HECM borrower receive adequate counseling from an independent third party who is not compensated by or associated with a party connected to the transaction.

Compliance and Reputation Risks

While reverse mortgages may provide a valuable source of funds for some borrowers, they are complex home-secured loans offered to borrowers who typically have limited income and few assets other than the home securing the loan.[27] Thus, lenders must institute controls to protect consumers and to minimize the compliance and reputation risks for the institutions themselves. These concerns and risks are especially pronounced with respect to proprietary products that are not subject to the core consumer protection provisions of the HECM program.

The Agencies are concerned that:

(1) Consumers may enter into reverse mortgage loans without understanding the costs,[28] terms, risks, and other consequences of these products, or may be misled by marketing and advertisements promoting reverse mortgage products;

(2) counseling may not be provided to borrowers or may not be adequate to remedy any misunderstandings;

(3) appropriate steps may not be taken to determine and to assure that consumers will be able to pay required taxes and insurance; and

(4) potential conflicts of interest and abusive practices may arise in connection with reverse mortgage

[13] These principles are derived from the *Policy Statement on Deception,* issued by the Federal Trade Commission on October 14, 1983.

[14] 15 U.S.C. 45(n). *See* also the *Policy Statement on Unfairness,* issued by the Federal Trade Commission on December 17, 1980.

[15] *See* 12 CFR 226.33(b), 226.5b(d), and 226.18.

[16] 12 CFR 226.15 and 226.23. Rescission rights and notices are not available, however, for home purchase transactions.

[17] *See* 12 CFR 226.33(b), 226.5b(d), and 226.18.

[18] 12 CFR 226.19(b)(1). Closed-end, variable rate reverse mortgages, particularly under the HECM program, have been less common than the open-end line of credit structure.

[19] 12 CFR 226.20(c).

[20] *See* 15 U.S.C. 1648; 12 CFR 226.33(b)(2) and 226.33(c)(1) and related commentary in Supplement I to 12 CFR 226; and 12 CFR 226, Appendix K (including model TALC form).

[21] Federal financial institution regulators also have the authority to supervise the activities of the entities subject to their respective jurisdictions to ensure their compliance with all applicable laws and regulations, and that the institutions are operating in a safe and sound manner consistent with supervisory standards.

[22] HUD also provides model forms for HECMs. *See Home Equity Conversion Mortgage Handbook 4235.1* (available at *http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4235.1/index.cfm*)

[23] HUD has proposed regulatory changes and is developing counseling protocols that would require counselors to take a HECM examination before providing counseling on reverse mortgages. *Home Equity Conversion Mortgage (HECM) Counseling Standardization and Roster,* 72 FR 869 (Jan. 8, 2007).

[24] *See* 12 U.S.C. 1715z–20.

[25] Applicable state laws, however, may have other requirements pertaining to counseling for reverse mortgages, including requirements that counseling be conducted in person.

[26] Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, § 2122(a)(9) (July 30, 2008).

[27] *See* note 3, *supra.*

[28] If a HECM borrower finances his or her closing costs, the closing costs are included in the outstanding balance of the loan. Costs of a HECM loan include an origination fee, third-party closing costs, a monthly servicing fee, and mortgage insurance premiums determined by an FHA formula.

transactions, including with the use of loan proceeds and the sale of ancillary investment and insurance products.

Consumer Information and Understanding—Litigation, consumer complaints, and testimony before Congress about reverse mortgage products have provided both anecdotal evidence of misrepresentations to consumers and clear indications that borrowers do not consistently understand the terms, features, and risks of their loans.[29]

For example, consumers are not always adequately informed that reverse mortgages are loans that must be repaid (and not merely ways to access home equity). In fact, some marketing material has prominently stated that the consumer is not incurring a mortgage, even though the fine print states otherwise. Consumer misunderstanding about these matters also may be the result of advertisements declaring that reverse mortgage borrowers have no risk of losing their homes or are guaranteed to retain ownership of their homes for life. These advertisements do not clearly indicate the circumstances in which the reverse mortgage becomes immediately due and payable or in which borrowers may lose their homes. For example, advertisements that are potentially misleading include ''income for life,'' ''you'll never owe more than the value of your home,'' ''no payments ever,'' and ''no risk.'' Consumer misunderstanding also may be the result of misrepresentations that reverse mortgages constitute ''government benefits'' or a ''government program,'' with no explanation that the products are loans made by private entities and that the only government program for reverse mortgages is the federally-insured HECM program.[30]

In addition, consumers may not be provided sufficient information about alternatives to reverse mortgages that may be more appropriate for their circumstances. Such alternative products include home equity lines of credit, sale-leaseback financing, and deferred payment loans. Consumers may not be aware that the fees for both HECMs and proprietary reverse mortgages—particularly up-front costs—may be higher than those for other types of mortgages, such as home equity lines of credit, that can be used to access a consumer's home equity.[31] Borrowers also may not receive sufficient information about other potential alternatives to reverse mortgages that may meet their financial needs, including state property tax relief programs, other public benefits, and community service programs.

The complex structure of reverse mortgages may prevent a borrower from fully understanding the products. For example, the ability to access the loan proceeds in a variety of ways may provide flexibility for a borrower. However, some payment options may adversely affect a borrower's ability to qualify for needs-based public benefits, such as Supplemental Security Income.

In addition, reverse mortgages are not typically structured with a requirement to escrow account for taxes and hazard insurance (or for the lender to pay these amounts and add them to the loan balance). If the borrower does not pay taxes and insurance, the reverse mortgage itself may become due, which could result in the borrower losing the home. Without adequate analysis of the borrower's ability to make these required payments through available assets or loan proceeds, or the establishment of an escrow, both the borrower and the lender can face substantial risks. Institutions offering reverse mortgages should clearly advise consumers about their obligation to make payments for taxes and insurance if they do not escrow.

Existence and Effectiveness of Consumer Counseling—Another risk to the consumer is that consumer counseling may not be effective. Further, while counseling is considered an integral part of the reverse mortgage process and is mandatory for HECM transactions, it may not be required for proprietary products, depending on applicable state law. Even when provided, consumer counseling may not be fully effective in helping borrowers make informed decisions about reverse mortgage products. Counseling conducted over the telephone, in particular, may not be adequate in all cases, in part because it may be more difficult for counselors to assess a borrower's understanding of the product over the telephone. More generally, counseling may not always provide all the relevant information or answer all questions and concerns raised by homeowners. For example, at least one study has suggested that a significant proportion of HECM borrowers who received counseling did not understand the costs and other features of their loans.[32]

Conflicts of Interest and Abusive Practices—The potential for inappropriate sales tactics and other abusive practices in connection with reverse mortgages is greater where the lender or another party involved in the transaction has conflicts of interest, or has an incentive to market other products and services. For example, when a consumer obtains funds through a reverse mortgage, the consumer could also be offered financial products, such as annuities, or non-financial products, such as home repair services. Such products and services may be inconsistent with consumers' needs, and, on occasion, have been known to be associated with fraud. The risk is especially strong where, for example: (1) The lender or its affiliate engages in cross-marketing of another financial product; (2) the other product is sold at the same time as the reverse mortgage product; (3) a significant portion of the proceeds of the reverse mortgage is used to purchase another product; or (4) in contrast to the reverse mortgage itself, the other product would not provide the consumer with funds to meet emergency needs or to pay ordinary living expenses.

Guidance

The consumer protection concerns discussed above raise compliance and reputation risks for institutions offering reverse mortgages. The Agencies have developed the guidance set forth below to assist institutions in managing these risks effectively. Institutions should manage the compliance and reputation risks raised by reverse mortgage lending through implementation of communication, disclosure, and counseling practices such as those discussed below and by taking actions to avoid potential conflicts of interest. The Agencies will assess whether institutions have taken adequate steps to address the risks discussed in this guidance.

Lenders offering proprietary products should be especially diligent regarding effective compliance risk management

[29] *See* Testimony presented at Hearings of the U.S. Senate Special Committee on Aging conducted on December 12, 2007, available on the Internet at *http://aging.senate.gov/hearing_detail.cfm?id=296507. See also* AARP report reference in note 7, above.

[30] Regulation Z prohibits misrepresentations about government endorsements in advertisements for closed-end credit secured by a dwelling. 12 CFR 226.24.

[31] For example, HECMs carry upfront origination and mortgage insurance fees that may total four percent of the loan amount (in addition to other closing costs and ongoing insurance and servicing fees). In HERA, Congress required the U.S. Government Accountability Office (GAO) to study ways of reducing borrower costs and insurance premiums. See GAO report entitled: ''Reverse Mortgages: Policy Changes Have Had Mostly Positive Effects on Lenders and Borrowers, but These Changes and Market Developments have Increased HUD's Risk'' (GAO–09–836).

[32] *See* AARP, *Reverse Mortgage: Niche Product or Mainstream Solution,* Dec. 2007, at 72, 98 (available at *http://assets.aarp.org/rgcenter/consume/2007_22_revmortgage.pdf).*

since proprietary reverse mortgages are not subject to the consumer protection requirements applicable to HECM reverse mortgages.[33] The Agencies expect institutions offering proprietary reverse mortgage products to follow or to adopt as appropriate relevant HECM requirements in the general areas of mandatory counseling, disclosures, affordable origination fees, restrictions on cross-selling of ancillary products, and reliable appraisals. Taking this step should help to ensure that institutions are addressing the full range of consumer protection concerns raised by reverse mortgages. Moreover, the Agencies expect institutions to take appropriate steps to determine that consumers will be able to pay required taxes and insurance.

Communications with Consumers—Many of the consumer protection concerns regarding reverse mortgages relate to the adequacy of information provided to consumers. Institutions offering reverse mortgage products should take steps to manage compliance and reputation risks by providing consumers with information designed to help them make informed decisions when selecting financial products, including reverse mortgages and the options for receiving loan advances from them.

To promote effective risk management, institutions should review advertisements and other marketing materials to ensure that important information is disclosed clearly and conspicuously. For example, institutions should review the prominence of marketing claims and any related clarifying statements to ensure that potential borrowers are not misled or deceived. Institutions also are responsible for ensuring that marketing materials do not provide misleading information about product features, loan terms, or product risks, or about the borrower's obligations with respect to taxes, insurance, and home maintenance. The Agencies will evaluate potentially misleading marketing materials and take appropriate action to address any marketing that violates the FTC Act prohibition on deception.

Institutions also should be attentive to the timing, content, and clarity of all information presented to consumers. For example, institutions should develop clear and balanced product descriptions and make them available when a consumer is shopping for a mortgage and not just upon the submission of an application or at consummation.[34] Such information should describe how disbursements from the reverse mortgage can be received. The provision of timely and descriptive information would serve as an important supplement to the disclosures currently required under TILA and other laws.

Accordingly, in order to assist consumers in their product selection decisions, an institution should use promotional materials and other product descriptions that provide information about the costs, terms, features, and risks of reverse mortgage products. This information would normally include but need not be limited to:

- Borrower and property eligibility;
- When marketing proprietary products, the fact that these reverse mortgages are not government insured and the resulting risks to consumers;
- Determination of principal limits based on home value, borrower age, and expected interest rates;
- Lump sum and other disbursement options and their possible implications;
- The circumstances under which the loan must be repaid;
- The actions the borrower must take to prevent the loan from becoming in default and therefore due and payable, including the need to continue to pay taxes and insurance on the property;
- Fees and charges associated with reverse mortgages;
- The requirement to make payments for real estate taxes and insurance if not escrowed;
- Alternatives to reverse mortgage products that are offered by the institution and may address the homeowner's needs; and
- The importance of reverse mortgage counseling and information about how to find a qualified independent counselor so that the borrower is informed about possible alternatives to a reverse mortgage, the potential consequences of entering into a reverse mortgage, and the potential effect on eligibility for needs-based public benefits.

Qualified Independent Counseling—To further promote consumer understanding and manage compliance risks, reverse mortgage lenders offering proprietary products should require counseling from qualified independent counselors before a consumer submits an application for reverse mortgage loan or pays an application fee. To ensure the independence of counselors, institutions should adopt policies that prohibit steering a consumer to any one particular counseling agency and that prohibit contacting a counselor on the consumer's behalf. Similarly, an institution's policies could prohibit the institution from contacting a counselor to discuss a particular consumer, a particular transaction, or the timing or content of a counseling session unless the consumer is involved. Institutions should also strongly encourage borrowers to obtain counseling in person and to attend counseling sessions with family members. Family members or other trusted individuals may be able to help explain the transaction and its consequences to the consumer.

As a general matter, qualified independent counselors should provide adequate time to discuss these matters in detail and to address questions and concerns raised by homeowners, and should be able to inform the consumer about the following and other relevant matters:

- The availability of other housing, social service, health, and financial options;
- Financing options other than reverse mortgages, including other mortgage products, sale-leaseback financing, and deferred payment loans;
- The differences between HECM loans and proprietary reverse mortgages;
- The financial implications and tax consequences of entering into a reverse mortgage;
- The impact of a reverse mortgage on eligibility for federal and state needs-based assistance programs, including Supplemental Security Income; and
- The impact of the reverse mortgage on the estate and heirs.

The Agencies note that the provision of such information would be consistent with HUD guidance for HECM lenders regarding consumer counseling.

Avoidance of Potential Conflicts—To manage the compliance and reputation risks associated with reverse mortgages, institutions should take all reasonably necessary steps to avoid any appearance of a conflict of interest. For example, reverse mortgage lenders should:

- Adopt clear written policy and internal controls stating that neither the lender nor any broker will require the borrower to purchase any other financial or other product from the

[33] HECM lenders must comply with requirements of the HECM program. This guidance is intended to supplement, and not conflict with, existing guidance and rules for HECM lenders. It is also intended to provide HECM lenders guidance on managing compliance and reputation risks.

[34] When developing consumer information, institutions should: (1) Focus on information that is important to consumer decision making; (2) highlight key information so it will be noticed; (3) employ a user-friendly and readily navigable format for presenting the information; and (4) use plain language, with concrete and realistic examples. A consumer may benefit from comparative tables describing key features of reverse mortgages (including the different draw options).

lender in order to obtain the reverse mortgage; [35]

➢ Adopt clear policies so that originators do not have an inappropriate incentive to sell other products that may appear to be linked to the granting of a mortgage. For example, the institution's policy could state that neither the lender nor any broker will offer to the borrower or refer the borrower to a provider of an annuity or other product or service prior to the closing of the reverse mortgage or, if applicable, the expiration of the borrower's right to rescind the loan; and

➢ Adopt clear compensation policies to guard against other inappropriate incentives for loan officers and third parties, such as mortgage brokers and correspondents, to make a loan.

In addition, conflicts are less likely to be a concern if the borrower has received information and access to independent counseling as described above.

Policies, Procedures, and Internal Controls—Institutions should have policies and procedures to address the concerns expressed in this guidance, including those involving conflicts of interest and the provision of consumer information. In addition, institutions should have effective internal controls to monitor whether actual practices are consistent with their policies and operating procedures relating to reverse mortgages. To achieve these objectives, training should be designed so that relevant lending personnel are able to convey information to consumers about product terms and risks in a timely, accurate, and balanced manner. Furthermore, institutions' independent monitoring should assess how well lending personnel are following internal policies and procedures and evaluate the nature and extent of policy exceptions. Findings should be reported to relevant management. In addition, institutions' legal and compliance reviews should include oversight of compensation programs to ensure that lending personnel are not improperly encouraged to direct consumers to particular products. Finally, institutions should also review consumer complaints to identify potential compliance and reputation risks.

Third Party Risk Management—When making, purchasing, or servicing reverse mortgages through a third party, such as a mortgage broker or correspondent, institutions should take steps to manage the compliance and reputation risks presented by such relationships. These steps would include: (1) Conducting due diligence and establishing criteria for entering into and maintaining relationships with such third parties; (2) establishing criteria for third-party compensation that are designed to avoid providing incentives for originations inconsistent with the institution's policies and procedures; (3) setting requirements for agreements with such third parties; (4) establishing internal procedures and systems to monitor ongoing compliance with applicable agreements, institution policies, and laws and regulations; and (5) implementing appropriate corrective actions in the event that the third party fails to comply with such agreements, policies, or laws and regulations. In addition, institutions should structure third party relationships so as not to contravene RESPA's general prohibition against paying or receiving any fee or other thing of value in exchange for the referral of business related to a reverse mortgage transaction. Fees must be paid only for the permissible services provided by the third party, consistent with the provisions of Section 8 of RESPA.

Moreover, institutions should not accept fees from any third party without providing appropriate services to warrant any such fee.

Dated: December 11, 2009.

Federal Financial Institutions Examination Council.

Paul Sanford,

Executive Secretary.

[FR Doc. E9–29882 Filed 12–15–09; 8:45 am]

BILLING CODE 6210–01–P

[35] The anti-tying provisions of Section 106(b) of the Bank Holding Company Act of 1970 applicable to banks, and comparable anti-tying provisions for savings associations, savings and loan holding companies, and their affiliates, prohibit these institutions from, among other things, requiring a customer to purchase certain nonbanking products or services, including insurance and annuity products, as a condition to obtaining or varying the price of credit. *See* 12 U.S.C. 1972, 1464(q), and 1467a(n), respectively. In addition, banks and savings associations that offer insurance and annuities are specifically prohibited from engaging in practices that would cause a consumer to believe that an extension of credit is conditioned on the purchase of insurance or an annuity from the creditor. *See* 12 U.S.C. 1831x and Consumer Protection in Sales of Insurance Rules, 12 CFR 14.30, 208.83, 343.30, and 536.30. The Agencies examine institutions for compliance with these legal requirements and will take appropriate action to address any violations.

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 11, 2010.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Bank4Texas Holdings Inc., Tomball Texas, to become a bank holding company by, acquiring 100 percent of Northern Bancshares, Inc., Chillicothe, Texas, and indirectly acquire The First National Bank of Chillicothe, Chillicothe, Texas.

Board of Governors of the Federal Reserve System, December 11, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–29873 Filed 12–15–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the

Federal Register. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 011656–003.

Title: West Coast Industrial Express Joint Service Agreement.

Parties: Associated Transport Line, LC.; Industrial Maritime Carriers, LLC; and West Coast Industrial Express, LLC.

Filing Party: Wade S. Hooker, Esq.; 211 Central Park W.; New York, NY 10024.

Synopsis: The amendment deletes ATL Investment Ltd. as a party and revises the ownership stake of the remaining parties.

Agreement No.: 011792–003.

Title: NYK/WWL/CSAV South America Space Charter Agreement.

Parties: Compania Sud Americana de Vapores S.A. and Nippon Yusen Kaisha.

Filing Party: Patricia M. O'Neill, Esq.; NYK Line (North America) Inc.; 300 Lighting Way, 5th Floor; Secaucus, NJ 07094.

Synopsis: The amendment authorizes CSAV to charter space to NYK to RORO vessels to each other in the trade between the U.S. East coast and South America.

Agreement No.: 012032–003.

Title: CMA CGM/MSC/Maersk Line North and Central China-U.S. Pacific Coast Two-Loop Space Charter, Sailing and Cooperative Working Agreement.

Parties: A.P. Moller-Maersk A/S, CMA CGM S.A., and Mediterranean Shipping Company S.A.

Filing Party: Wayne R. Rohde, Esq.; Sher and Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment clarifies space allocations under the agreement.

Agreement No.: 201157–002.

Title: USMX–ILA Master Contract between United States Maritime Alliance, Ltd. and International Longshoremen's Association.

Parties: United States Maritime Alliance, Ltd., on behalf of Management, and the International Longshoremen's Association, AFL–CIO.

Filing Parties: William M. Spelman, Esq.; The Lambos Firm; 29 Broadway, 9th Floor; New York, NY 10006 and Andre Mazzola, Esq.; Marrinan & Mazzola Mardon, P.C.; 26 Broadway, 17th Floor; New York, NY 10004.

Synopsis: The amendment extends the terms and conditions of USMX–ILA Master Contract to September 30, 2012, and revises the tonnage assessments under the contract.

Dated: December 11, 2009.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. E9–29936 Filed 12–15–09; 8:45 am]

BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0285]

Agency Information Collection Activities; Submission for OMB Review; USASpending/IT Dashboard Feedback Mechanisms Information Collection

AGENCY: Interagency Policy and Management Division, Office of Governmentwide Policy, U.S. General Services Administration (GSA).

ACTION: Notice of request for comments regarding a new OMB clearance.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that GSA is planning to submit a request to replace an emergency Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting this ICR to OMB for review and approval, GSA is soliciting comments on specific aspects of the proposed information collection as described below. A request for public comments was published in the **Federal Register** at 74 FR 45452, on September 2, 2009. No comments were received.

DATES: Submit comments on or before January 15, 2010.

ADDRESSES: Submit comments including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–0285, USASpending/IT Dashboard Feedback Mechanisms Information Collection, in all the correspondence.

FOR FURTHER INFORMATION CONTACT: Lalit Bajaj, Interagency Policy and Management Division, Office of Governmentwide Policy, General Services Administration, 1800 F Street NW., Room 2227, Washington, DC 20405–0001; telephone number: 202–208–7887; fax number: 202–501–3136; or e-mail address: *lalit.bajaj@gsa.gov.*

SUPPLEMENTARY INFORMATION:

What Information Is GSA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, GSA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, GSA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that GSA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for GSA?

You may find the following suggestions helpful for preparing your comments.

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of 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 the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by GSA, be sure to identify the ICR title on the first page of your response. You may also provide the **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply To?

Title: USA Spending/IT Dashboard Feedback Mechanisms Information Collection.

OMB Control Number: 3090–0285.

The USAspending.gov Web site, provides information, as collected from Federal agencies, to the public in accordance with the Federal Funding Accountability and Transparency Act of 2006 (Transparency Act).

USAspending.gov is a public-friendly Web site that provides details regarding each Federal award, such as: the name and location of the entity receiving the award, the amount of the award, funding agency for the award, *etc.* Additionally, the IT dashboard Web site, which is a part of USAspending.gov, provides details of Federal Information Technology (IT) investments and is based on data received from agency reports to the Office of Management and Budget (OMB). The ability to look at contracts, grants, loans, Information Technology investments, and other types of spending across many agencies, in greater detail, is a key ingredient to building public trust in government and credibility in the professionals who use these agreements. USAspending.gov visitors will be provided opportunities to provide feedback in the spirit of the President's open government and transparency initiative. Examples of feedback mechanisms are:

(1) A ''Contact Us'' entry page with an optional contact e-mail address for those visitors wishing to identify themselves on the USAspending.gov Web page,

(2) A ''Contact Us'' entry page with a contact e-mail address on the IT dashboard Web page; and

(3) A Collaborative Work Environment using wiki Web pages, e-mail discussion forum, message archive, shared file workspace, full text search capability, etc.

Additional feedback mechanisms may be placed in the future but additional details have not yet been defined regarding them. This information collection request for a generic clearance is a replacement of the emergency ICR approved by OMB. It is being submitted in order to fulfill the public feedback aspects of this important initiative.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average up to 500 hours per year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or 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 which have subsequently changed; 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.

The estimated annual burden request is summarized here:

Affected entities: Anyone that chooses to visit USASpending.gov, including the IT Dashboard Web site.

Estimated total number of respondents: 5,000.

Frequency of responses: 105 per week.

Total Responses: 5000.

Average Burden Hours Per Response: 6 minutes.

Estimated total annual burden hours: 500 hours.

What Is the Next Step in the Process for This ICR?

GSA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 3090–0285, USASpending/IT Dashboard Feedback Mechanisms, in all correspondence.

Dated: December 9, 2009.

Casey Coleman,

Chief Information Officer, General Services Administration.

[FR Doc. E9–29837 Filed 12–15–09; 8:45 am]

BILLING CODE 6820–WY–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0173]

Submission for OMB Review; Limitations on Pass-Through Charges

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding a new OMB information clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Regulatory Secretariat (MVPR) will be submitting to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding Limitations on Pass-Through Charges.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 15, 2010.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVPR), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0173, Limitations on Pass-Through Charges, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Chambers, Procurement Analyst, Contract Policy Branch, at telephone (202) 501–3221 or via e-mail to *Edward.chambers@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. Purpose

To enable contracting officers to verify that pass-through charges are not excessive, the provision at 52.215–22 requires offerors submitting a proposal for a contract, task order, or delivery order to provide the following information with its proposal: (1) The percent of effort the offeror intends to perform and the percent expected to be performed by each subcontractor. (2) If the offeror intends to subcontract more than 70 percent of the total cost of work to be performed—(i) The amount of the

offeror's indirect costs and profit/fee applicable to the work to be performed by the subcontractor(s); and (ii) A description of the value added by the offeror as related to the work to be performed by the subcontractor(s). (3) If any subcontractor intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed under its subcontract—(i) The amount of the subcontractor's indirect costs and profit/fee applicable to the work to be performed by the lower-tier subcontractor(s); and (ii) A description of the value added by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

B. Annual Reporting Burden

Respondents: 25,380.
Responses per Respondent: 1.
Hours per Response: 147,515.
Total Burden Hours: 13,260.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0173, Limitations on Pass-Through Charges, in all correspondence.

Dated: December 10, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–29876 Filed 12–15–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the twenty-first meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 8:30 a.m. to approximately 5:30 p.m. on Thursday, February 4, 2010, and from 8 a.m. to approximately 3 p.m. on Friday, February 5, 2010, at the Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008. The meeting will be open to the public with attendance limited to space available. The meeting also will be Web cast.

The main agenda items involve the review of a revised report on gene patents and licensing practices, the review of a public consultation draft report on genetics education and training, and an information-gathering session on the mechanisms and policies related to genomic data sharing. Other agenda items include a preliminary discussion to help plan a future session on implications of an affordable genome; a report on activities of the Clinical Utility and Comparative Effectiveness Task Force; and updates from Federal agencies on activities related to the implementation of the Genetic Information Nondiscrimination Act, the coverage and reimbursement of genetic tests, the oversight of genetic testing, and the retention and use of residual dried blood spot specimens after newborn screening.

As always, the Committee welcomes hearing from anyone wishing to provide public comment on any issue related to genetics, health and society. Individuals who would like to provide public comment should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at 301–496–9838 or e-mail at *carrs@od.nih.gov*. The SACGHS office is located at 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892. Anyone planning to attend the meeting who needs special assistance, such as sign language interpretation or other reasonable accommodations, is also asked to contact the Executive Secretary.

Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic and genomic technologies and, as warranted, to provide advice on these issues. The draft meeting agenda and other information about SACGHS, including information about access to the Web cast, will be available at the following Web site: *http://oba.od.nih.gov/SACGHS/sacghs_meetings.html.*

Dated: December 10, 2009.

Jennifer Spaeth,

Director, NIH Office of Federal Advisory Committee Policy.

[FR Doc. E9–29899 Filed 12–15–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

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), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: February 5, 2010.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Open: 11 a.m. to 5 p.m.

Agenda: Opening remarks by the Director of the National Center for Complementary and Alternative Medicine, presentation of a new research initiative, and other business of the Council.

Place: National Institutes of Health, Neuroscience Building, 6001 Executive Boulevard, Conference Rooms C & D, Bethesda, MD 20892.

Contact Person: Martin H. Goldrosen, Ph.D., Executive Secretary, Director, Division of Extramural Activities, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–2014.

The public comments session is scheduled from 4:30–5 p.m., but could change depending on the actual time spent on each agenda item. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Martin H. Goldrosen, National Center for

Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland, 20892, 301–594–2014, Fax: 301–480–9970. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on February 1, 2010. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Martin H. Goldrosen at the address listed above up to ten calendar days (February 15, 2010) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by contacting Dr. Martin H. Goldrosen, Executive Secretary, NACCAM, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–594–2014, Fax 301–480–9970, or via e-mail at *naccames@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.701, ARRA Related Biomedical Research and Research Support Awards.; 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: December 10, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–29898 Filed 12–15–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Bariatric Surgery, T2DM and CVS Complications.

Date: February 24, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: D.G. Patel, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@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: December 10, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–29901 Filed 12–15–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council on Aging.

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.

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 Advisory Council on Aging.

Date: January 26–27, 2010.

Closed: January 26, 2010, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Open: January 27, 2010, 8 a.m. to 1:30 p.m.

Agenda: Call to order and reports from the Task Force on Minority Aging Research, the Working Group on Program, the Council of Councils, Program Highlights, Intramural Research Program, and a presentation from Dr. Francis Collins, Director, NIH.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Closed: January 27, 2010, 1:30 p.m. to 2 p.m.

Agenda: To review and evaluate the Intramural Research Program.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robin Barr, Ph.D., Director, National Institute on Aging, Office of Extramural Activities, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 496–9322, *barrr@nia.nih.gov*.

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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/nia/naca/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 10, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–29902 Filed 12–15–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of 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. App.), 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. NIDDK DEM Fellowships.

Date: February 17–18, 2010.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Wellner, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4721, *rw175w@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Urothelium Program Project.

Date: March 1, 2010.

Time: 1 p.m. to 5 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: Atul Sahai, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–2242, *sahaia@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: December 10, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–29900 Filed 12–15–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Customs Declaration (Form 6059B)

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Revision of an existing information collection: 1651–0009.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Customs Declaration (Form 6059B). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 51870) on October 8, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before January 15, 2010.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Customs Declaration.

OMB Number: 1651–0009.

Form Number: 6059B.

Abstract: The Customs Declaration, CBP Form 6059B, requires basic information to facilitate the clearance of persons and goods arriving in the United States and helps CBP officers determine if any duties or taxes are due. The form is also used for the enforcement of CBP and other agencies laws and regulations. CBP proposes to increase the burden hours for this collection as a result of better estimates regarding the number of respondents filling out the Form 6059B. Specifically, CBP is revising the number of respondents to this information collection from 60,000,000 to 105,606,000. This increase in the number of respondents also results in an increase to the burden hours. In addition, CBP proposes to make a minor change to the estimated time per response by decreasing the time from 4 minutes and 5 seconds to 4 minutes. No changes were made to the Form.

Current Actions: CBP is proposing to revise the burden hours as a result of better estimates regarding the number of respondents and response time associated with this collection of information.

Type of Review: Extension (with change).

Affected Public: Individuals.

Estimated Number of Respondents: 105,606,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 105,606,000.

Estimated Time per Response: 4 minutes.

Estimated Total Annual Burden Hours: 7,075,602.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: December 10, 2009.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. E9–29857 Filed 12–15–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0013]

Incident Command System (ICS) Forms Booklet FEMA 502–2

AGENCY: Federal Emergency Management Agency; Department of Homeland Security

ACTION: Notice of availability; Request for comment.

SUMMARY: FEMA is requesting public comments on revisions to the National Incident Management System (NIMS) Incident Command System (ICS) Forms Booklet, FEMA 502–2. The ICS Forms Booklet was developed to assist emergency response personnel in the use of ICS and corresponding documentation during incident operations.

DATES: Comments must be received by January 15, 2010.

ADDRESSES: You may submit comments, identified by Docket ID FEMA–2009–0013, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

E-mail: FEMA–POLICY@dhs.gov. Include Docket ID FEMA–2009–0013 in the subject line of the message.

Fax: 703–483–2999.

Mail/Hand Delivery/Courier: Regulation & Policy Team, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Mark Kurisko, Program Specialist, 999 E Street, NW., Room 301, Washington, DC 20463, 202–646–2840.

SUPPLEMENTARY INFORMATION: The National Incident Management System (NIMS) Incident Command System (ICS) Forms Booklet (FEMA 502–2) is designed to assist emergency response personnel in the use of ICS and corresponding documentation during incident operations. This booklet is a companion document to the NIMS ICS Field Operating Guide (FOG), FEMA 502–1, which provides general guidance to emergency responders on implementing ICS. This booklet is also meant to complement existing incident management programs and does not replace relevant emergency operations plans, laws, and ordinances. These forms are designed for use within the Incident Command System, and are not targeted for use in Area Command or in Multi-Agency Coordination Systems. This updated version of the ICS Forms Booklet incorporates best practices, lessons learned, and input from emergency response stakeholders.

The ICS Forms Booklet (FEMA 502–2) is available for reviewing at *http://www.regulations.gov* under FEMA–2009–0013. FEMA is accepting comments during this public comment period and will incorporate them, as appropriate, to finalize and release the ICS Forms Booklet.

Authority: The authority for the ICS Forms Booklet is derived from Homeland Security Act of 2002 and Homeland Security Presidential Directive (HSPD)—5.

Dated: November 17, 2009.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–29937 Filed 12–15–09; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1861–DR; Docket ID FEMA–2008–0018]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1861–DR), dated December 3, 2009, and related determinations.

DATES: *Effective Date:* December 3, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 3, 2009, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Arkansas resulting from severe storms, tornadoes, and flooding beginning on October 29, 2009, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, W. Michael Moore, of FEMA is appointed to act as the

Federal Coordinating Officer for this major disaster.

The following areas of the State of Arkansas have been designated as adversely affected by this major disaster:

Boone, Bradley, Calhoun, Carroll, Cleburne, Cleveland, Columbia, Conway, Cross, Dallas, Franklin, Fulton, Grant, Izard, Jackson, Johnson, Lafayette, Lawrence, Lincoln, Logan, Marion, Monroe, Nevada, Newton, Ouachita, Poinsett, Prairie, Pulaski, Randolph, Saint Francis, Scott, Sharp, Stone, Union, Van Buren, White, and Woodruff Counties for Public Assistance. Direct Federal Assistance is authorized.

All counties within the State of Arkansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–29953 Filed 12–15–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–100]

Survey of New Manufactured (Mobile) Home Placements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This survey is used to collect data on the placement of new manufactured (mobile) homes. The data are collected from manufactured home dealers. The principal user, HUD, uses the statistics to monitor trends in this type of low-cost housing; to formulate policy, draft legislation, and evaluate programs.

DATES: *Comments Due Date: January 15, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0029) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Survey of New Manufactured (Mobile) Home Placements.

OMB Approval Number: 2528–0029.

Form Numbers: C–MH–9A.

Description of the Need for the Information and its Proposed Use:

This survey is used to collect data on the placement of new manufactured (mobile) homes. The data are collected from manufactured home dealers. The principal user, HUD, uses the statistics to monitor trends in this type of low-cost housing; to formulate policy, draft legislation, and evaluate programs.

Frequency of Submission: Monthly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	2,400	2		0.5		2,400

Total Estimated Burden Hours: 2,400.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 10, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–29955 Filed 12–15–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5284–N–02]

Notice of Proposed Information Collection: Comment Request; Federal Labor Standards Payee Verification and Payment Processing

AGENCY: Office of Departmental Operations and Coordination, Office of Labor Relations, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: February 16, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to

the proposal by name and/or OMB control number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410 or *Lillian.L.Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Jade Banks, Senior Policy Advisor, Office of Labor Relations, Department of Housing and Urban Development, 451 7th Street, SW., Room 2102, Washington, DC 20410 or *Jade.M.Banks@hud.gov*, telephone (202) 402–5475 (this is not a toll-free number) for additional information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Federal Labor Standards Payee Verification and Payment Processing.

OMB Control Number, if applicable: 2501–0021.

Description of the need for this information and proposed use: HUD, and State, local, and Tribal agencies administering HUD-assisted programs must enforce Federal labor standards requirements, including the payment of prevailing wage rates to laborers and mechanics employed on HUD-assisted construction and maintenance work that is covered by these requirements. Enforcement activities include securing funds to ensure the payment of wage restitution that has been or may be found due to laborers and mechanics who were employed on HUD-assisted projects, and the payment of liquidated damages that may be assessed for violations of Contract Work Hours and Safety Standards Act (CWHSSA) overtime violations. Ultimately, these funds are deposited to an account in the U.S. Treasury. If the labor standards discrepancies are resolved, HUD refunds associated amounts to the depositor. As underpaid laborers and mechanics are located, HUD sends wage restitution payments to the affected workers. Liquidated damages assessed for CWHSSA overtime violations are retained by HUD.

In order to make refunds and wage restitution payments, HUD must verify the identity of the payee to ensure that the refund is made to the correct depositor or wage restitution to the correct worker before payment is made. In order to complete these verifications, HUD will request information such as the depositor's or payee's tax identification number (*i.e.,* employer identification number or Social Security Number); the project name or number; and/or the worker's employer's name.

All refunds from labor standards deposit accounts are made, electronically. Depositors entitled to a refund must provide to HUD the name, address, and the account information for the banking institution to which the depositor wants the refund sent. Wage restitution payments may be made by check or electronically, at the payee's choice. HUD must collect either the payee's mailing address, so that a check may be sent to them, or banking information for an electronic payment.

Agency form numbers: HUD–4734, Labor Standards Deposit Voucher. This form is completed by HUD staff after depositor or payee verification and the collection of payment processing information, *i.e.,* banking details or mailing address.

Members of affected public: Developers and prime contractors engaged on HUD-assisted construction or maintenance work subject to Federal labor standards requirements; construction and maintenance laborers and mechanics employed on HUD-assisted projects subject to Federal labor standards requirements that are entitled to wage restitution.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: The estimated number of respondents is 50 per year. The estimated number of hours needed per respondent is .1 hours. The total public burden is estimated to be 5 hours per year. Payees do not need to complete a form; the information may be collected by HUD in person, by telephone, or in writing, at the payee's option.

Status: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 8, 2009.

Waite H. Madison,

Director, Office of Labor Relations.

[FR Doc. E9–29956 Filed 12–15–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2009–N267; 80221–1113–0000–F5]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: Comments on these permit applications must be received on or before January 15, 2010.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; *see* **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may

be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit No. TE–148556

Applicant: Deborah M. Van Dooremolen, Las Vegas, Nevada. The applicant requests an amendment to an existing permit (April 9, 2007; 72 FR 17576) to take (harass by survey) the southwestern willow flycatcher (*Empidonax trailli extimus*) in conjunction with surveys in Clark County, Nevada, for the purpose of enhancing its survival.

Permit No. TE–231424

Applicant: Seth A. Shanahan, Las Vegas, Nevada. The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax trailli extimus*) and Yuma clapper rail (*Rallus longirostris yumanensis*) in conjunction with surveys in Clark County, Nevada, for the purpose of enhancing their survival.

Permit No. TE–231425

Applicant: Robert C. Fletcher, San Diego, California. The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–231427

Applicant: John R. Ivanov, Pasadena, California. The applicant requests a permit to take (harass by survey and monitor nests) the southwestern willow flycatcher (*Empidonax trailli extimus*) and least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and population monitoring throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–170381

Applicant: Bill Stagnaro, San Francisco, California. The applicant requests an amendment to an existing permit (February 13, 2008; 73 FR 8344) to take (harass by survey) the light-footed clapper rail (*Rallus longirostris levipes*), the California clapper rail (*Rallus longirostris obsoletus*), and the Yuma clapper rail (*Rallus longirostris yumanensis*) in conjunction with surveys throughout the range of the species in California, Nevada, Arizona, and Utah for the purpose of enhancing their survival.

Permit No. TE–802089

Applicant: Patricia Tatarian, Santa Rosa, California. The applicant requests an amendment to an existing permit (November 7, 2002; 67 FR 67863) to take (attach radio transmitters, radio track, release, collect voucher specimens; and construct, place, and monitor artificial egg laying structures in the wild) the California tiger salamander (*Ambystoma californiense*) in conjunction with research, surveys, and population monitoring activities throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–231612

Applicant: James M. Steele, Clearlake Oaks, California. The applicant requests a permit to take (survey, capture, handle, translocate, and release) the San Francisco garter snake (*Thamnophis sirtalis*) in conjunction with surveys and habitat enhancement activities in San Mateo County, California, for the purpose of enhancing its survival.

Permit No. TE–012973

Applicant: ECORP Consulting Incorporated, Rocklin, California. The applicant requests an amendment to an existing permit issued on June 14, 1999, to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys throughout the range of each species in California. The applicant is requesting to take (collect soil containing Federally listed fairy shrimp cysts of the above-mentioned species, translocate, and inoculate cysts into restored vernal pools) in conjunction with vernal pool restoration and population enhancement activities throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–233291

Applicant: Margaret R. Mulligan, San Diego, California. The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–797267

Applicant: H.T. Harvey and Associates, Los Gatos, California. The applicant requests an amendment to an existing permit (February 16, 1996; 61 FR 6253) to take (capture, measure, hair-clip, and release) the giant kangaroo rat (*Dipodomys ingens*), and take Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) and Fresno kangaroo rat (*Dipodomys nitratoides exilis*) in conjunction with surveys and population studies throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–233332

Applicant: Maya E. Mazon, Oceanside, California. The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–233331

Applicant: Bureau of Land Management, Arcata, California. The applicant requests a permit to remove/reduce to possession *Erysimum menziesii* ssp. *eurekense* (Humboldt Bay wallflower), *Layia carnosa* (beach layia), and *Arabis macdonaldiana* (McDonald's rockcress) from Federal lands in conjunction with botanical surveys and voucher/seed bank collection activities in Arcata County, California, for the purpose of enhancing their survival.

Permit No. TE–233367

Applicant: Laura E. Gorman, Redondo Beach, California. The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–233373

Applicant: Mary Anne Flett, Pt. Reyes Station, California. The applicant requests a permit to take (harass by survey) the California clapper rail (*Rallus longirostris obsoletus*) in conjunction with surveys and population monitoring studies in Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties, California, for the purpose of enhancing its survival.

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Dated: December 10, 2009.

Michael Long,

Regional Director, Region 8, Sacramento, California.

[FR Doc. E9–29867 Filed 12–15–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision on Final General Management Plan and Environmental Impact Statement, Fort Stanwix, National Monument, Rome, NY

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability of a Record of Decision on the Final General Management Plan and Environmental Impact Statement for Fort Stanwix National Monument.

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the National Park Service (NPS) announces the availability of the Record of Decision for the Final General Management Plan and Environmental Impact Statement (GMP/EIS) for Fort Stanwix National Monument, New York. The Regional Director, Northeast Region, has approved the Record of Decision for the GMP/EIS, selecting Alternative 2—Preferred Action, which was described as the preferred alternative in the Final GMP/EIS which was issued for the required 30-day no action period beginning on July 31, 2009 and ending August 31, 2009. The Record of Decision includes a description of the background of the project, a statement of the decision made, synopses of other alternatives considered, the basis for the decision, findings on impairment of park resources and values, a description of the environmentally preferred alternative, a listing of measures to minimize environmental harm, and an overview of public and agency involvement in the decision-making process. As soon as practicable, the NPS will begin to implement the selected alternative.

Copies of the Record of Decision may be downloaded from the NPS Planning, Environment and Public Comment (PEPC) Web site (*http://parkplanning.nps.gov/fost*) or a hardcopy may be obtained from the contact listed below.

FOR FURTHER INFORMATION CONTACT: Debbie Conway, Superintendent, Fort Stanwix National Monument, 112 East Park Street, Rome, New York 13440; 315–338–7730.

SUPPLEMENTARY INFORMATION: Fort Stanwix National Monument has needed a General Management Plan (GMP) since it has been reliant on a 1967 Master Plan and a 1974 Development Concept Plan. The Fort Stanwix National Monument GMP describes and explains the resource conditions that should exist and the visitor experiences that should be available at Fort Stanwix National Monument. The GMP provides a consistent framework for coordinating and integrating all subsequent planning and management decisions concerning the park.

The selected alternative, Alternative 2, the Preferred Action, would broaden interpretation to emphasize the role of Fort Stanwix in the greater Northern Frontier and Mohawk Valley regional context; expand its interpretation of the Six Nations Confederacy; and, within available funding and authority, foster programmatic coordination as well as technical assistance to thematically related sites within the Northern Frontier and Mohawk Valley. Fort Stanwix National Monument would also use existing authorities to increase its capacity to pursue community outreach and regional partnership initiatives, particularly in seeking hike and bike trail linkages or shuttle vehicle connections with related sites. Efforts would be made to modify a limited part of the lawn area near the reconstructed fort to establish landscape conditions, using native grasses and other vegetation more evocative (not a reconstruction) of the historic meadow landscape while still maintaining sufficient lawn area to support community events. Certain fort structures that have not been reconstructed due to fiscal constraints and that are important to interpreting the history at Fort Stanwix, such as the Ravelin, may be reconstructed if it is feasible, fully funded by outside sources, and meets with the Secretary of the Interior's Standards for the Treatment for Historic Structures and applicable Section 106 compliance requirements. Vacated fort spaces would be adapted for public use, relying on enhanced interpretation to educate visitors and provide for the essential comprehension of the fort's original appearance.

In addition to the selected alternative, a No Action alternative was presented and analyzed in the Draft and Final Environmental Impact Statements. The No Action alternative describes current management practices and conditions at Fort Stanwix National Monument with no major new actions. Current management directions, practices, and conditions would continue largely unchanged. This alternative has an interpretive focus on the siege of Fort Stanwix during the Revolutionary War.

The issues explored through the GMP/EIS planning process include protection of cultural resources, visitor services, partnership opportunities, carrying capacity, and the lack of a properly defined boundary. The planning team established a set of criteria and goals against which each alternative was compared to determine which alternative best fulfilled the purpose and objectives of the GMP.

Resource Preservation Goals

- NPS addresses planning issues associated with cultural resource management of the fort structure, grounds, collections, and archeological resources. NPS should establish cultural landscape conditions to make it more evocative of historic era while maintaining sufficient lawn area to support community events.

Visitor Experience Goals

- Visitors understand the history of Fort Stanwix during the 18th century, particularly the events that occurred there during the American Revolutionary War in 1777. Visitors also understand the significance of treaties negotiated at Fort Stanwix between 1768 and 1790 with Indian Tribes.
- The visitor experience fully reflects the park's purpose, significance and themes. This includes enhancing the visitor experiencing and interpreting the regional historical context of Fort Stanwix to include Oriskany Battlefield, Northern Frontier, and Mohawk Valley.
- Interpretation in broadened to emphasize the role of Fort Stanwix in the greater Northern Frontier and Mohawk Valley regional context and expanding interpretation of the Six, Nations Confederacy.
- Interpretive media, exhibits, wayside exhibits, and other programs are updated to enhance visitor understanding of interpretive stories.

Transportation Goals

- Fort Stanwix National Monument works with local authorities to improve traffic conditions and improve pedestrian, bicycle, and shuttle vehicle linkages with related sites, including the Oriskany Battlefield.

Park Administration Goals

- Administrative, interpretive, maintenance, and other staff, as well as facilities and other infrastructure, sustain the programs and operations of the Fort Stanwix National Monument and accomplish the NPS mission.

• Fort Stanwix National Monument staff enjoys healthy and safe working conditions.

Collaboration and Partnership Goal

• Formal partnerships and informal associations with other agencies and organizations assist with the preservation and public enjoyment of the Fort Stanwix National Monument. These partnerships and other collaborative projects support the NPS and Fort Stanwix National Monument missions.

• Fort Stanwix National Monument increases programmatic coordination and offering technical assistance to partners in the Northern Frontier and Mohawk valley regions.

After careful consideration and review of the purpose and significance of Fort Stanwix National Monument and its establishing laws and policies, as well as input received from other agencies and the public during the planning process, Alternative 2 was chosen by NPS as the alternative to be implemented. The selected alternative best fulfills the mandates of the founding legislation, the purpose and significance, and the other laws and policies guiding the NPS and the National Monument. The selected alternative, which builds upon key aspects of the 1967 Master Plan but also recognizes current historical scholarship and cultural resource management practices, best supports the park's purpose, significance and goals, while also providing management direction that best protects resources, offers high-quality visitor experiences, and takes advantage of partnership opportunities.

The environmental consequences of the selected alternative are fully documented in the Draft GMP/EIS and the Final GMP/EIS. All practicable means to avoid or minimize environmental harm that could result from the implementation of the selected alternative have been identified and incorporated. After a review of the potential environmental effects, the alternative selected for implementation will not impair park resources of values and will not violate the NPS Organic Act.

This decision is the result of a public planning process that began in 1997. A Notice of Intent to Prepare an Environmental Impact Statement for the Fort Stanwix GMP was published in the **Federal Register** in 1999. Throughout the planning process, extensive research and consultation was conducted with many subject matter experts, local community representatives, and institutions. A public scoping meeting was held on October 23, 2008, at the Rome, New York City Hall, and 12 members of the public were in attendance. Two studies were undertaken to examine areas that are geographically and thematically relevant to Fort Stanwix National Monument—Oriskany Battlefield State Historic Site in Whitestown, NY, and the Northern Frontier encompassing a ten-county area of central New York. The Oriskany Battlefield study found it to be nationally significant and suitable to be added to the national park system; however, the study did not find it feasible at the time to include in the national park system because of New York State's interest in continuing to manage the battlefield site. The park will continue to explore with New York State officials the feasibility of a future boundary adjustment and agreements to manage the site cooperatively or include the site in the national park system. The Northern Frontier study addressed the possible definition and designation of a national heritage area but did not recommend establishment of a new national park system unit or a new national heritage area. The recommendations focused on broader outreach efforts by Fort Stanwix National Monument to better integrate and affiliate with Northern Frontier interpretive themes and related sites.

A Notice of Availability of the Draft GMP/EIS was published on September 26, 2008 and the Draft GMP/EIS was made available for public review through December 1, 2008. A public meeting was held on October 23, 2008 at the City Hall in Rome, NY, to solicit public comments. Fourteen (14) comments were received during the comment period. The consensus of the public comments received was that the NPS was pursuing the correct path for the park in Alternative 2, the Preferred Action. Slight modifications to the preferred alternative were made in response to comments on the Draft GMP/EIS. A Notice of Availability of the Final GMP/EIS was published in the **Federal Register** on July 31, 2009. The Final GMP/EIS presents the modified preferred alternative and includes letters from governmental agencies, substantive comments on the Draft GMP/EIS, and NPS responses to those comments. The no-action period on the Final GMP/EIS ended on August 31, 2009.

The official primarily responsible for implementing the updated General Management Plan is the Superintendent of Fort Stanwix National Monument.

Richard L. Harris,

Acting Regional Director Northeast Region, National Park Service.

[FR Doc. E9–29852 Filed 12–15–09; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a Record of Decision (ROD) for the Final Environmental Impact Statement/ General Management Plan Amendment (FEIS/GMPA), Elkmont Historic District, Great Smoky Mountains National Park

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of a Record of Decision (ROD) for the Final Environmental Impact Statement/ General Management Plan Amendment (FEIS/GMPA), Elkmont Historic District, Great Smoky Mountains National Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 332(2)(C), the National Park Service (NPS) announces the availability of the ROD for the FEIS/ GMPA for the Elkmont Historic District in the Great Smoky Mountains National Park, Tennessee.

On June 30, 2009, the Regional Director, NPS, Southeast Region, approved the ROD for the project. As soon as practicable, the NPS will begin to implement the FEIS/GMPA, described as the selected action (the preferred Alternative C) contained in the FEIS/GMPA issued on May 1, 2009. Under the selected alternative, the NPS will preserve a representative collection of 19 historic buildings in the District of the park. The District is listed in the National Register of Historic Places (NRHP). Within the District, the core of the former Appalachian Club resort community known as ''Daisy Town'' will be preserved including the Appalachian Clubhouse and a cluster of 16 cabins. Fifteen of these cabins are identified as contributing to the significance of the District. An additional non-contributing cabin will be preserved to maintain the visual continuity of the Daisy Town streetscape. The exteriors of these buildings will be restored to approximate the appearance of this portion of the District during its early 20th century period of significance. The Appalachian Clubhouse interior will be rehabilitated for public rental and day use activities. The 16 cabins will be retained for interpretive purposes.

In addition to the Daisy Town buildings, the exterior of the Chapman cabin in the ''Society Hill'' portion of the District will be restored to the early 20th century period of significance and retained for interpretive purposes, the exterior of the Spence cabin in ''Millionaire's Row'' will also be restored and its interior rehabilitated for public rental and day use. The gravel pathway from the Appalachian Clubhouse to Jakes Creek Cemetery will be restored. Historic plantings that are not invasive would be retained throughout the District. To provide access and circulation, existing parking areas will be reconfigured and resurfaced, and a new day use parking area will be constructed.

Altogether, 30 buildings identified as contributing to the District's significance will be removed. Buildings slated for removal include the Wonderland Hotel Annex, 26 cabins, and 3 garages. The remains of the structurally failed Wonderland Hotel were removed in December 2006.

The preserved buildings and cultural landscape features, along with wayside exhibits and other interpretive media, will be used to enhance visitor understanding of the history and development of the Elkmont vacation community, its architecture, and the area's important cultural and natural resources.

To increase species diversity, improve and increase wildlife habitat, and provide soil stabilization within the District, the NPS will restore native plant communities in suitable areas, including the sites where buildings have been removed. Removal of buildings within the Little River floodplain would allow for gradual succession to native communities.

The selected alternative will not generate wastewater discharge above the permitted allowable level from the sewage treatment plant or contribute nonpoint runoff into the Little River or its tributaries. No additional structures or activities within the 100-year floodplain are proposed.

The approved plan enhances opportunities for visitors to interact with and appreciate the historic district's resources while providing for the preservation or adaptive use of the park's resources when implemented. The Record of Decision includes a description of the project's background, a statement of the decision made, synopses of other alternatives considered, the basis for the decision, findings on impairment of park resources and values, a description of the environmentally preferred alternative, a listing of measures to minimize environmental harm, and an overview of public involvement in the decision-making process.

DATES: The ROD was signed by the Regional Director, NPS, Southeast Region, on June 30, 2009.

ADDRESSES: Copies of the ROD are available from the Superintendent, Great Smoky Mountains National Park, 107 Park Headquarters Road, Gatlinburg, Tennessee 37738; telephone: 865–436–1201.

SUPPLEMENTARY INFORMATION: The NPS evaluated six other alternatives for the treatment and management of the District in the GMPA/EIS. These alternatives are described in full in the FEIS/GMPA. Among the alternatives considered, the selected alternative best protects the diversity of park resources while also maintaining a range of quality visitor experiences, meets NPS purposes and goals for the Elkmont Historic District of Great Smoky Mountains National Park, and meets National Environmental Policy Act goals. The selected alternative will not result in the impairment of park resources and will allow the NPS to conserve park resources and provide for their enjoyment by visitors.

Authority: The authority for publishing this notice is 40 CFR 1506.6 (b).

FOR FURTHER INFORMATION CONTACT: Contact the Superintendent, Great Smoky Mountains National Park, at the address and telephone number shown above. An electronic copy of the document is available on the Internet at *http://parkplanning.nps.gov/.*

The responsible official for this FEIS is the Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Dated: October 5, 2009.

David Vela,

Regional Director, Southeast Region.

[FR Doc. E9–29853 Filed 12–15–09; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2009–N186; 40136–1265–0000–S3]

Ernest F. Hollings ACE Basin National Wildlife Refuge, Charleston, Beaufort, Colleton, and Hampton Counties, SC

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Final comprehensive conservation plan and finding of no significant impact.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment for Ernest F. Hollings ACE Basin National Wildlife Refuge (ACE Basin NWR). In the final CCP, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: You may obtain a copy of the CCP by writing to: Mr. Van Fischer, Refuge Planner, South Carolina Lowcountry Refuge Complex, 5801 Highway 17 North, Awendaw, SC 29429. You may also access and download the document from the Service's Web site: *http://southeast.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Mr. Van Fischer; telephone: 843/928–3264; E-mail: *van_fischer@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for ACE Basin NWR. We started this process through a notice in the **Federal Register** on January 3, 2007 (72 FR 141). For more about the process, see that notice. ACE Basin NWR was established on September 20, 1990, and was renamed the Ernest F. Hollings ACE Basin National Wildlife Refuge on May 16, 2005. The refuge is a partner in the ACE Basin Task Force, a coalition consisting of the Service, the South Carolina Department of Natural Resources, Ducks Unlimited, The Nature Conservancy, The Low Country Open Land Trust, Mead Westvaco, and private landowners of the ACE Basin system. The refuge's two separate units (Edisto and Combahee) are further broken down into subunits, with the Edisto Unit containing the Barrelville, Grove, and Jehossee subunits; and the Combahee Unit containing the Bonny Hall, Combahee Fields, and Yemassee subunits. The refuge is divided into 9 management units or compartments, ranging in size from 350 to 3,355 acres. Compartment boundaries are established along geographic features that can be easily identified on the ground (*i.e.,* rivers, roads, and trails).

We announce our decision and the availability of the final CCP and FONSI for ACE Basin NWR in accordance with the National Environmental Policy Act (NEPA) [40 CFR 1506.6(b)] requirements. We completed a thorough analysis of impacts on the human environment, which we included in the Draft Comprehensive Conservation Plan and Environmental Assessment (Draft CCP/EA). The CCP will guide us in managing and administering ACE Basin

NWR for the next 15 years. Alternative C is the foundation for the CCP.

The compatibility determinations for upland game hunting, fishing/boating, wildlife observation and photography, environmental education and interpretation, bicycling, research, exotic and nuisance wildlife control, forest management—commercial timber harvest, and cooperative farming are also available in the CCP.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Comments

Approximately 120 copies of the Draft CCP/EA were made available for a 30-day public review period as announced in the **Federal Register** May 4, 2009 (74 FR 20495). Written comments were received from local citizens and the South Carolina Department of Natural Resources.

Selected Alternative

After considering the comments we received, we have selected Alternative C for implementation. Our primary focus under Alternative C will be to increase overall wildlife and habitat diversity. Although waterfowl will remain a focus of management, wetland habitat manipulations will also consider the needs of multiple species, such as marsh and wading birds. We will more actively manage upland forests and fields for neotropical migratory birds. Landscape level consideration of habitat management will include a diversity of open fields, upland and wetland forests, and additional wetlands. Upland loblolly pine plantations (*e.g.,* relic industrial forests) will be heavily thinned to encourage multi-strata vegetation composition and hardwood interspersion. More xeric loblolly pine plantations will be converted to longleaf pine savannas and subjected to frequent growing season prescribed fires to favor warm season grasses and forbs and the potential reintroduction of red-cockaded woodpeckers in the ACE Basin Project Area. Multiple species consideration will include species and habitats identified by the South Atlantic Migratory Bird Initiative and the State's Strategic Conservation Plan.

This alternative will expand our monitoring of migratory neotropical and breeding songbirds and other resident species. Monitoring efforts will be increased with the assistance of additional staff, trained volunteers, and academic researchers. Greater effort will be made to recruit academic researchers to the refuge to study and monitor refuge resources.

Hunting and fishing will continue to be allowed on the refuge. However, hunting will be managed with a greater focus on achieving biological needs of the refuge, such as deer population management and feral hog elimination. Education and interpretation will continue, but with additional education and outreach efforts aimed at the importance of landscape ecology and diversity. A much broader effort will be made with outreach to nearby developing urban communities and a growing human population.

The refuge will be staffed the same as the 2008 staffing model to enhance all refuge services and management programs. We will place greater emphasis on recruiting and training volunteers, and expanding worker-camper opportunities to facilitate maintenance programs and other refuge goals and objectives. We will actively seek funding for research needs. We will place greater emphasis on developing and maintaining active partnerships, including seeking grants to assist the refuge in reaching primary objectives.

Alternative C is considered to be the most effective for meeting the purposes of the refuge by conserving, restoring, and managing the refuge's habitats and wildlife, while optimizing wildlife-dependent public uses. Alternative C will best achieve national, ecosystem, and refuge-specific goals and objectives and it positively addresses significant issues and concerns expressed by the public.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: September 30, 2009.

Jacquelyn B. Parrish,

Acting Regional Director.

[FR Doc. E9–29869 Filed 12–15–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2009–N172; 40136–1265–0000–S3]

Mandalay National Wildlife Refuge, Terrebonne Parish, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Final comprehensive conservation plan and finding of no significant impact.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of our final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment for Mandalay National Wildlife Refuge (NWR). In the final CCP, we describe how we will manage this refuge for the next 15 years.

ADDRESSES: You may obtain a copy of the CCP by writing to: Mr. Paul Yakupzack, Refuge Manager, Mandalay NWR, 3599 Bayou Black Drive, Houma, LA 70360. You may also access and download the document from the Service's Web site: *http://southeast.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Mr. Paul Yakupzack; telephone: 985/853–1078; fax: 985/853–1079; e-mail: *paul_yakupzack@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Mandalay NWR. We started this process through a notice in the **Federal Register** on March 19, 2007 (72 FR 12811). For more about the process, see that notice. .

Mandalay NWR, approximately 5 miles west of Houma, Louisiana, was established on May 2, 1996, with the purchase of 4,416 acres under the authority of the Migratory Bird Conservation Act of 1929 and the Endangered Species Act of 1973. The refuge, predominately freshwater marsh and cypress-tupelo swamp, provides excellent habitat for waterfowl, wading birds, and neotropical migratory songbirds.

We announce our decision and the availability of the final CCP and FONSI for Mandalay NWR in accordance with the National Environmental Policy Act

(NEPA) [40 CFR 1506.6(b)] requirements. We completed a thorough analysis of impacts on the human environment, which we included in the draft comprehensive conservation plan and environmental assessment (Draft CCP/EA). The CCP will guide us in managing and administering Mandalay NWR for the next 15 years.

The compatibility determinations for boating, recreational fishing, recreational hunting, wildlife observation/photography, control of mammals (nutria) and alligators, and environmental education/interpretation are available in the CCP.

Background

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every15 years in accordance with the Administration Act.

Comments

Approximately 100 copies of the Draft CCP/EA were made available for a 30-day public review period as announced in the **Federal Register** on May 28, 2009 (74 FR 25577). We received 11 comments from local citizens, the Safari Club, the Louisiana Department of Wildlife and Fisheries, and the Louisiana Department of Natural Resources.

Selected Alternative

After considering the comments we received, and based on the professional judgment of the planning team, we selected Alternative B to implement the CCP. The primary focus of the CCP is to optimize migratory bird and resident wildlife habitats. We consider Alternative B to be the most effective for meeting the purposes of the refuge by maintaining and enhancing a diversity of habitats for a variety of fish and wildlife species, enhancing resident wildlife populations, restoring wetlands, and providing opportunities for a variety of compatible wildlife-dependent recreation, education, and interpretive activities.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: August 24, 2009.

Patrick Leonard,

Acting Regional Director.

[FR Doc. E9–29866 Filed 12–15–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2009-N258]
[96300-1671-0000-P5]

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species and/or marine mammals.

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 to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703-358-2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703-358-2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.Endangered Species

ENDANGERED SPECIES

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
179638	Samuel K. Wasser/University of Washington	74 FR 41454; August 17, 2009	October 9, 2009
206026	Earl E. Wismer	74 FR 37241; July 28, 2009	November 5, 2009
207047	Hidden Harbor Marine Environmental Project	74 FR 28523; June 16, 2009	November 6, 2009
213672	James L. Scull, Jr.	74 FR 32192; July 7, 2009	August 28, 2009
216076	William R. Morgan, III	74 FR 32192; July 7, 2009	August 28, 2009
216464	Hidden Harbor Marine Environmental Project	74 FR 37240; July 28, 2009	November 6, 2009
216468	Donald E. Coon	74 FR 32192; July 7, 2009	August 28, 2009
218607	Philadelphia Zoo	74 FR 37240; July 28, 2009	November 4, 2009
219116	Jon L. Blocker	74 FR 37240; July 28, 2009	August 28, 2009
220562	Richard R. Arend	74 FR 49017; September 25, 2009	October 26, 2009
220718	James R. Boyd	74 FR 40230; August 11, 2009	October 16, 2009
221391	Florida Fish & Wildlife Conservation Commission	74 FR 46222; September 8, 2009	November 5, 2009
221404	Ralph D. Miller	74 FR 221404; September 8, 2009	October 15, 2009
222050	Mark Peterson	74 FR 46222; September 8, 2009	October 15, 2009
222864	Joe B. Tinney	74 FR 49017; September 25, 2009	November 2, 2009

ENDANGERED SPECIES—Continued

Permit number	Applicant	Receipt of application Federal Register notice	Permit issuance date
222865	Leigh M. Barry	74 FR 46222; September 8, 2009	October 15, 2009
223348	Wilson Walter Crook	74 FR 55062; October 26, 2009	November 27, 2009
223386	Frank M. Cole	74 FR 53297; October 16, 2009	November 20, 2009
225797	New York University, College of Dentistry	74 FR 46222; September 8, 2009	October 14, 2009
226642	Vance S. Johnson	74 FR 47821; September 17, 2009	October 27, 2009
227930	Sandra A. Summers	74 FR 55062; October 26, 2009	November 27, 2009
228076	Bradford T. Black	74 FR 55062; October 26, 2009	November 25, 2009
215979	Patrick D. McCown	74 FR 37240; July 28, 2009	November 25, 2009
227937	Dennis F. Gaines	74 FR 53297; October 16, 2009	December 3, 2009

MARINE MAMMALS

Permit number	Applicant	Receipt of application Federal Register notice	Permit issuance date
049136	Charles Grossman, Xavier University	74 FR 46222; September 8, 2009	November 6, 2009
192878	University of Illinois Veterinary Diagnostic Laboratory	74 FR 25767; May 29, 2009	November 12, 2009
221257	Emma K. Napper, The Natural World, BBC Natural History Unit.	74 FR 46222; September 8, 2009	November 6, 2009

Dated: December 4, 2009

Brenda Tapia,

Program Analyst, Branch of Permits, Division of Management Authority

[FR Doc. E9–29884 Filed 12–15–09; 8:45 am]

BILLING CODE 4310-55-S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2009-N266]

[96300-1671-0000-P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for permits to conduct certain activities with endangered species. The Endangered Species Act requires that we invite public comment on these permit applications.

DATES: Written data, comments or requests must be received by January 15, 2010.

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 212, 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.*). Submit your written data, comments, or requests for copies of the complete applications to the address shown in **ADDRESSES**.

Applicant: The Phoenix Zoo, Phoenix, AZ, PRT-230742

The applicant requests a permit to re-export one captive-born male jaguar (*Panthera onca*) to Centro Ecologico de Sonora, Mexico, for the purpose of enhancement of the survival of the species.

Applicant: Virginia Safari Park and Preservation Center, Inc., Natural Bridge, VA, PRT-228648

The applicant requests a permit to import two female cheetahs (*Acinonyx jubatus*) captive-born at De Wildt Cheetah Breeding Centre, De Wildt, South Africa, for the purpose of enhancement of the survival of the species.

Applicant: National Zoological Park, Washington, DC, PRT-233622

The application requests a permit to export one male captive-bred giant panda (*Ailuropoda melanoleuca*) born at the zoo in 2005 and owned by the Government of China, to the China Wildlife Conservation Association under the terms of their loan agreement with China. This export is part of the approved loan program for the purpose of enhancement of the survival of the species through scientific research as outlined in National Zoo's original permit (MA 007870).

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) 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.

Applicant: John Meldrum, Metamora, MI, PRT-233599

Applicant: Carl Wagner, Harwood, MD, PRT-234069

Dated: December 4, 2009

Brenda Tapia

Program Analyst, Branch of Permits, Division of Management Authority

[FR Doc. E9–29885 Filed 12–15–09; 8:45 am]

BILLING CODE 4310-55-S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–694]

In the Matter of Certain Multimedia Display and Navigation Devices and Systems, Components Thereof, and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on November 13, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Pioneer Corporation of Tokyo, Japan and Pioneer Electronics (USA) Inc. of Long Beach, California. A letter supplementing the complaint was filed on December 4, 2009. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain multimedia display and navigation devices and systems, components thereof, and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 5,365,448; 6,122,592; and 5,424,951. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's ADD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDI) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher G. Paulraj, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–3052.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2009).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 9, 2009, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of multimedia display and navigation devices and systems, components thereof, and products containing same that infringe one or more of claims 1 and 2 of U.S. Patent No. 5,365,448; claims 1 and 2 of U.S. Patent No. 6,122,592; and claims 1 and 2 of U.S. Patent No. 5,424,951, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Pioneer Corporation, 1–4–1 Meguro, Meguro-ku, Tokyo 153–8654, Japan.

Pioneer Electronics (USA) Inc., 2255 E. 220th Street, Long Beach, CA 90810.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Garmin International, Inc., 1200 E. 151st Street, Olathe, KS 66062.

Garmin Corporation, No. 68, Jangshu 2nd Road, Shijr, Taipei County, Taiwan.

Honeywell International Inc., 101 Columbia Road, Morristown, NJ 07960.

(c) The Commission investigative attorney, party to this investigation, is Christopher G. Paulraj, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: December 10, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–29824 Filed 12–15–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Resource Conservation and Recovery Act and the Emergency Planning and Community Right-To-Know Act

Notice is hereby given that on December 10, 2009, a proposed Consent Decree in *United States* v. *Elan Chemical Company, Inc.,* Civil Action No. 2:09–CV–06183 KSH, was lodged with the United States District Court for the District of New Jersey.

The proposed Consent Decree will resolve the United States' claims under Section 3008 of the Resource Recovery and Conservation Act, as amended, 42 U.S.C. 6928(a), and Section 313 and 325(c) of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. 11023 and 11045(c)

against Elan Chemical Company, Inc. (''Defendant''). The United States alleges the Defendant violated various RCRA requirements, incorporated by reference into the New Jersey authorized hazardous waste program regarding the storage and generation of hazardous waste, and a violation under EPCRA. The complaint alleges the following violations: Failure to make a hazardous waste determination in accordance with of 40 CFR 262.11, incorporated by reference at N.J.A.C. § 7:26G–6.1(a); storage of hazardous waste without a permit pursuant to RCRA Section 3005, 42 U.S.C. 6925, and 40 CFR 270.1, incorporated by reference at N.J.A.C. § 7:26G–12.1(a); failure to conduct monthly monitoring of pumps in gas/vapor or light liquid service pursuant to 40 CFR 265.1052(a)(1), incorporated by reference at N.J.A.C. § 7:26G–9.1(a); failure to conduct monthly monitoring of valves in gas/vapor or light liquid service pursuant to 40 CFR 265.1057, incorporated by reference at N.J.A.C. § 7:26G–9.1(a); failure to conduct annual inspections of tanks pursuant to 40 CFR 265.1085(c)(4)(ii), incorporated by reference at N.J.A.C. § 7:26G–9.1(a); failure to keep a log of equipment subject to subpart BB of part 265 pursuant to 40 CFR 265.1064(g), incorporated by reference at N.J.A.C. § 7:26G–9.1(a); and failure to timely file its 2004 toxic release inventory pursuant to EPCRA Section 313, 42 U.S.C. § 10023, and 40 CFR part 372.

The Consent Decree requires Defendant to pay a civil penalty of $200,000. The Consent Decree also provides for injunctive relief to be implemented at the Defendant's facility, consisting of maintenance of ongoing compliance with the hazardous waste regulations, and submission of reports demonstrating such compliance.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Elan Chemical, Inc.,* Civil Action No. 2:09–CV–06183, D.J. Ref. No. 90–7–1–08984.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Jersey, Peter Rodino Federal Building, 970 Broad Street, Suite 700, Newark, NJ 07102, and at the United States Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–29883 Filed 12–15–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement: Document Development—Working With Mental Illness in Corrections: A Framework, Strategies and Best Practices

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The National Institute of Corrections (NIC) is soliciting proposals from organizations, groups or individuals to enter into a cooperative agreement for the development of a document to provide correctional administrators and practitioners in jails, prisons and community corrections a framework/model and guide to implement best strategies and practices to work with offenders diagnosed with mental illness or demonstrate mental health problems.

DATES: Applications must be received by 4 p.m. EST on Friday, February 12, 2010.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, dial 7–3106, extension 0 for pickup.

Faxed applications will not be accepted. Electronic applications can be submitted via *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this announcement and a link to the required application forms can be downloaded from the NIC Web page at *http://www.nicic.gov.* All technical or programmatic questions concerning this announcement should be directed to Michael Dooley, Correctional Program Specialist (CPS), National Institute of Corrections (NIC) at *mdooley@bop.gov.*

SUPPLEMENTARY INFORMATION:

Background: Correctional systems are confronted with substantial numbers of persons with mental illness who are detained, committed and/or are under supervision through the nation's jails, prisons and community corrections. According to the New Freedom Commission on Mental Health: Subcommittee on Criminal Justice, ''people with serious mental illnesses who come in contact with the criminal justice system are typically poor and uninsured, are disproportionately members of minority groups, and often are homeless and have co-occurring substance abuse and mental disorders. They cycle in and out of homeless shelters, hospitals, and jails, occasionally receiving mental health and substance abuse services, but most likely receiving no services at all (APA, 2000).''

A recent study on the prevalence of adults with serious mental illnesses in jails suggest that of more than 20,000 adults entering five local jails are documented with serious mental illnesses in 14.5 percent of the men and 31 percent of the women, rates in excess of three to six times those found in the general population (Steadman, Osher, Robbins, Case and Samuels, June 2009).

In a NIC 2008 Needs Assessment, interviewees noted that problems with mental illness continue to challenge both prison and jail operations, and there is a critical need for more collaboration with providers of services for the mentally ill, and a review of policies driving them into the corrections system. According to the 2005 NIC Needs Assessment ''Adequacy of offender mental health care'' was the second highest (2.48) concern to senior corrections officials (Clem and Eggers, 2005).

The challenges to corrections are significant and multi-faceted, having a significant adverse impact on

corrections, public safety and government spending, not to mention the devastating impact for these individuals and their families.

The large and disproportionate number of offenders under correctional custody and supervision continue to be a serious management and safety problem in both our correctional institutions and our communities.

Project Goal: The overall goal of the initiative is to provide corrections mental health professionals, practitioners, policy makers and others with an interest in mental health and corrections, a framework and guide to implement best practice strategies to effectively work with and manage offenders in custody and/or under community supervision and who are challenged with mental health problems.

Document Requirements: The following are the expected document requirements. **Note:** Publications produced under this award must follow the ''Guidelines for Preparing and Submitting Manuscripts for Publication'' as found in the General Guidelines for Cooperative Agreements included in this award package. All final publications submitted for posting on the NIC Web site must meet the Federal government's requirement for accessibility (508 PDF or HTML file).

Document Length: The number of pages is to be determined. The document must include appendices and a bibliography.

Document Audience: Administrators, mental health and other program management staff, and line correctional staff in jails, prisons and community corrections agencies. The document will also target community mental health providers and policy makers.

Use of Document: The document will be an implementation guide to help State and local, and urban and rural correctional agencies implement a comprehensive framework/model and strategies to build and maintain partnerships with community-based mental health and social service providers to effectively manage and treat persons with mental illness.

Document Distribution: NIC expects to distribute the document widely. It will be made available on the NIC Web site and in print through the NIC Information Center, upon request and free of charge. It will also be made available through other agencies and organizations with an interest in providing services in the area of mental illness in criminal justice and corrections.

Document Content: The document will cover at a minimum: (1) The background and nature of the problem as it relates to managing offenders with mental illness in any correctional setting. This should include the impact of the problem in jail settings, prison settings and community supervision settings, and the impact on offenders diagnosed with mental illness, as well as how these systems can interface and increase efficacy with this group; (2) supporting research and evidence, surveys and assessments around the most effective models and practices for treating and managing the offenders with diagnosed mental illness. This should lead to the development or assembly of a best practice framework and model for the effective management and treatment of offenders diagnosed with mental illness, and collaboration with corrections, community mental health providers and other key stakeholders; (3) the roles of policy makers, administrators, program managers and line practitioners, from both corrections and mental health fields in addressing the problem and implementing solutions; (4) descriptions of strategies and practices that show the most promise in working effectively and efficiently with a mental health offender population. This must include strategies and practices for collaboration with corrections, the mental health provider community and the offenders and families. This discussion should focus on the differences and variable needs between large and small jurisdictions, and urban/metropolitan and rural jurisdictions, as well as the differences at the state, county and local levels; (5) examples of programs and strategies that have been implemented and demonstrate responsiveness to the needs and interests of corrections, mental health and offenders; (6) barriers to planning and implementing strategies and programs for working with mentally ill offenders, and systems working collaboratively to address the problems and needs of this population. The document will also provide suggestions for overcoming barriers, with examples around ''lessons learned'' from jurisdictions that have experienced success in this area; the development and presentation of a coherent framework/model for implementation of the best practice strategies and programs most likely to succeed in large urban and small rural jurisdictions, and at the state, county and local levels.

Note that this is only a preliminary schedule of content to be included. The document content and layout may be modified once the award recipient begins the document development work and consults with NIC project managers. It is expected that the award recipient build in a process and format to identify and inform the structure and content of the document, such as a focus group with key leaders and subject matter experts in this field.

General Scope of Work: The award recipient will produce a completed document that has received initial editing from a professional editor. NIC will be responsible for the final editing process and document design. The award recipient will remain available during this time to answer questions and to make revisions to the document. Document development will begin upon award of this agreement and must be completed 12 months after the award date.

Project Requirements: The following list shows the major activities required to complete the project. The schedule for completion of activities should include, at a minimum, the following activities on the part of the award recipient: Submit a detailed work plan with time lines and milestones for accomplishing project activities to the assigned CPS for approval prior to any work being performed under this agreement; meet with NIC project manager for an overview of the project and initial planning; review materials provided by NIC; complete the initial outline of document content and layout; meet with NIC project manager to review, discuss and agree on content outline; research content topics and related resources; submit draft sections of document to NIC for review; revise draft sections for NIC's approval; submit document to editor hired by award recipient for first content edit; submit draft of entire document to NIC for review; revise document for NIC's approval; submit document to NIC in hard copy and on disk in Microsoft Word format.

Throughout the project period, the award recipient must make provisions for meetings with NIC staff at critical planning and review points in document development.

Applicant Web-conference: A web-conference will be conducted for persons with the intent to apply to the solicitation on Thursday, January 7, 2009 at 12 p.m. EST. In this conference NIC project managers will respond to questions regarding the solicitation and expectation of work to be performed. This is optional and not a requirement of the application process. You must pre-register to attend the conference. You may register by going to *https://nic.webex.com/nic/onstage/g.php?t=a&d=715880766* and following the registration instructions. You will be

provided instructions for accessing the session.

Application Requirements: Applications should be concisely written, typed double spaced and reference the ''NIC Opportunity Number'' and Title provided in this announcement. The application package must include: OMB Standard Form 424, Application for Federal Assistance; a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period of fiscal year that the applicant operates under (*e.g.*, July 1 through June 30), and an outline of projected costs. The following forms must also be included: OMB Standard Form 424A, Budget Information—Non Construction Programs, OMB Standard Form 424B, Assurances—Non Construction Programs (available at *http://www.grants.gov*), and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (available at *http://www.nicic.gov/Downloads/PDF/certif-frm.pdf*.)

Applications may be submitted in hard copy, or electronically via *http://www.grants.gov*. If submitted in hard copy, there needs to be an original and three copies of the full proposal (program and budget narratives, application forms and assurances). The original should have the applicant's signature in blue ink.

The narrative portion of the application must be limited to no more than 12 double spaced pages, exclusive of resumes and summaries of experience. The narrative should include, at a minimum: A brief paragraph indicating the applicant's understanding of the purpose of the document and the issues to be addressed; a brief paragraph that summarizes the project goals and objectives; a clear description of the methodology that will be used to complete the project and achieve its goals; a statement or chart of measurable project milestones and time lines for the completion of each milestone; a description of the qualifications of the applicant organization and a resume for the principle and each staff member assigned to the project that documents relevant knowledge, skills and ability to carry out the project; a minimum of three references for which the applicant has provided a similar service; a budget that details all costs for the project, shows consideration for all contingencies for this project, and notes a commitment to work within the proposed budget; and a sample of a least one document completed by the applicant. The applicant must specify its role in the production of the sample document(s).

Authority: Public Law 93–415.

Funds Available: NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may only be used for the activities that are linked to the desired outcome of the project.

This project will be a collaborative venture with the NIC Prisons Division.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual or team with expertise in the described areas.

Review Considerations: Applications will be reviewed by a team of NIC staff. Among the criteria used to evaluate the applications are: Indication of a clear understanding of the project requirements; background, experience, and expertise of the proposed project staff, including any sub-contractors; effectiveness of the creative approach to the project; clear, concise description of all elements and tasks of the project, with sufficient and realistic time frames necessary to complete the tasks; technical soundness of project design and methodology; financial and administrative integrity of the proposal, including adherence to Federal financial guidelines and processes; a sufficiently detailed budget that shows consideration of all contingencies for this project and commitment to work within the budget proposed; and indication of availability to meet with NIC staff.

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866—705–5711 and select option 1).

Registration in the CCR can be done online at the CCR Web site: *http://www.ccr.gov*. A CCR handbook and worksheet can also be viewed at the Web site.

Number of Awards: One.

NIC Opportunity Number: 10P08. This number should appear as a reference line in the cover letter, where indicated on Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.601.

Executive Order 12372: This project is not subject to the provisions of Executive Order 12372.

Thomas J. Beauclair,

Deputy Director, National Institute of Corrections.

[FR Doc. E9–29958 Filed 12–15–09; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Employment and Training Administration

[OMB 1205–0353]

Comment Request for the Proposed Extension of the Collection of Information With the ETA 9048, Worker Profiling and Reemployment Services Activity, and the ETA 9049, Worker Profiling and Reemployment Services Outcomes, Extension Without Revisions

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public, State, and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of data on ETA 9048 and ETA 9049.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before February 16, 2010.

ADDRESSES: Submit written comments to Diane Wood, Office of Workforce Security, 200 Constitution Ave. NW., Room S–4231, Washington, DC 20210; telephone 202–693–3212; fax 202–693–3975 (these are not toll-free numbers) or e-mail *wood.diane@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Worker Profiling and Reemployment Services (WPRS) program allows for the targeting of reemployment services to those most likely to exhaust their benefits. The ETA 9048 and ETA 9049 are the only means of tracking the activities in the WPRS program. The ETA 9048 reports on the numbers and flows of claimants at the various stages of the WPRS system from initial profiling through the completion of specific reemployment services. This allows for evaluation and monitoring of the program. The ETA 9049 gives a limited, but inexpensive, look at the reemployment experience of profiled claimants who were referred to services by examining the State's existing wage record files to identify the subsequent quarter in which the referred individuals became employed, what wages they earned and whether they have changed industries.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension without changes.

Title: ETA 9048, Worker Profiling and Reemployment Services Activity and the ETA 9049, Worker Profiling and Reemployment Services Outcomes.

OMB Number: 1205–0353.

Affected Public: State governments.

Forms: ETA–9048 and ETA 9049.

Total Respondents: 53.

Frequency: Quarterly.

Total Annual Responses: 424.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): 0.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 106 hours.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 9, 2009.

Jane Oates

Assistant Secretary, Employment and Training Administration.

[FR Doc. E9–29863 Filed 12–15–09; 8:45 am]

BILLING CODE 4510–FN–P

MILLENNIUM CHALLENGE CORPORATION

[MCC 10–02]

Notice of Quarterly Report (July 1, 2009–September 30, 2009)

AGENCY: Millennium Challenge Corporation.

SUMMARY: The Millennium Challenge Corporation (MCC) is reporting for the quarter July 1, 2009 through September 30, 2009, on assistance provided under section 605 of the Millennium Challenge Act of 2003 (22 U.S.C. 7701 *et seq.*), as amended (the Act), and on transfers or allocations of funds to other Federal agencies under section 619(b) of the Act. The following report will be made available to the public by publication in the **Federal Register** and on the Internet Web site of the MCC (*http://www.mcc.gov*) in accordance with section 612(b) of the Act.

Dated: December 11, 2009.

James Mazzarella,

Acting Vice President, Congressional & Public Affairs, Millennium Challenge Corporation.

ASSISTANCE PROVIDED UNDER SECTION 605

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Madagascar Year: 2009 Quarter 4 Total Obligation: $109,773,00 Entity to which the assistance is provided: MCA Madagascar Total quarterly Disbursement: $11,414,683				
Land Tenure Project	$36,28,000	Increase Land Titling and Security.	$26,659,117	Area secured with land certificates or titles in the Zones. Proportion of the population informed about land tenure reforms in the Zones. Legal and regulatory reforms adopted. Number of land documents inventoried in the Zones and Antananarivo. Number of land documents restored in the Zones and Antananarivo. Number of land documents digitized in the Zones and Antananarivo. Average time for Land Services Offices to issue a duplicate copy of a title. Average cost to a user to obtain a duplicate copy of a title from the Land Services Offices. Number of land cetificates delivered in the Zones during the period. Number of new guichets fonciers operating in the Zones. The 256 Plan Local d'Occupation Foncier—Local Plan of Land Occupation (PLOFs) are completed.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objective	Cumulative disbursements	Measures
Finance Project	$32,445,000	Increase Competition in the Financial Sector.	$23,558,985	Volume of funds processed annually by the national payment system. The components necessary to implement the national payment system are operational: network equipment and integrator, real time gross settlement system (RTGS), retail payment clearing system, telecommunication facilities. Number of accountants and financial experts registered to become Certified Public Accountant (CPA). Percent of Micro-Finance Institution (MFI) loans recorded in the Central Bank database.
Agricultural Business Investment Project.	$17,683,000	Improve Agricultural Projection Technologies and Market Capacity in Rural Areas.	$13,800,987	Number of farmers that adopt new technologies or engage in higher value production. Number of enterprises that adopt new technologies or engage in higher value production. Number of farmers receiving technical assistance. Number of farmers employing technical assistance. Number of businesses receiving technical assistance. Number of Ministère de l'Agriculture, de l'Elevage et de la Pêche-Ministry of Agriculture, Livestock, and Fishing (MAEP) agents trained in marketing and investment promotion. Zones identified and description of beneficiaries within each zone submitted. Number of people receiving information from Agricultural Business Center (ABCs) on business opportunities. Zonal investment strategies for the Zones are developed. Number of ABC clients who register as formal enterprises, cooperatives, or associations. Number of marketing contracts of ABC clients.
Program Administration * and Control, Monitoring and Evaluation.	$23,617,000	.....	$16,910,798	
Pending subsequent reports **.	.....	.....	$614,876	
Country: Honduras Year: 2009 Quarter 4 Total Obligation: $215,000,000 Entity to which the assistance is provided: MCA Honduras Total Quarterly Disbursement: $28,849,927				
Rural Development Project.	$74,557,000	Increase the productivity and business skills of farmers who operate small and medium-size farms and their employees.	$38,143,299	Number of program farmers harvesting high-value horticulture crops. Number of hectares harvesting high-value horticulture crops. Number of business plans prepared by program farmers with assistance from the implementing entity. Total value of net sales. Total number of recruited farmers receiving technical assistance. Value of loans disbursed (disaggregated by trust fund, leveraged from trust fund, and institutions receiving technical assistance from ACDI–VOCA). Number of loans disbursed (disaggregated by trust fund, leveraged from trust fund, and institutions receiving technical assistance from ACDI–VOCA). Percentage of loan portfolio at risk (disaggregated by trust fund and institutions receiving technical assistance from ACDI–VOCA). Funds lent from the trust fund to financial intermediaries through lines of credit.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objective	Cumulative disbursements	Measures
				Number of hectares under irrigation. Number of beneficial biological control agents developed for use by program farmers or other farmers for pilot testing. Number of improved coffee hybrids available for cloning. Number of farmers connected to the community irrigation system. Number of certified deliverables across all agricultural public goods grant.
Transportation Project	$123,621,876	Reduce transportation costs between targeted production centers and national, regional and global markets.	$61,769,408	Freight shipment cost from Tegucigalpa to Puerto Cortes. Average annual daily traffic volume—CA–5. International roughness index (IRI)—CA–5. Kilometers of road upgraded—CA–5. Percent of contracted road works disbursed—CA–5. Average annual daily traffic volume—secondary roads. International roughness index (IRI)—secondary roads. Kilometers of road upgraded—secondary roads. Percent of contracted road works disbursed—secondary raods. Average annual daily traffic volume—rural roads. Average speed—rural roads. Kilometers of road upgrated—rural roads. Percent of contracted road works disbursed—rural roads. Signed contracts for feasibility and/or design studies. Percent of contracted studies disbursed. Kilometers (km) of roads under design. Signed contracts for roads works. Kilometers (km) or roads under works contracts.
Program Administration * and Control, Monitoring and Evaluation.	$16,821,124	.....	$7,695,345	
Pending subsequent reports **.	.....	.....	$1,521,767	
Country: Cape Verde Year: 2009 Quarter 4 Total Obligation: $110,078,488 Entity to which the assistance is provided: MCA Cape Verde Total Quarterly Disbursement: $9,470,384				
Watershed and Agricultural Support.	$11,001,130	Increase agricultural production in three targeted watershed areas on three islands.	$7,850,113	Productivity: Horticulture, Paul watershed. Productivity: Horticulture, Faja watershed. Productivity: Horticulture, Mosteiros watershed. Number of farmers adopting drip irrigation. Area irrigated with drip irrigation. Percent of contracted irrigation works disbursed (cumulative). Reservoirs constructed. Number of farmers that have completed training in at least 3 of 5 core agricultural disciplines.
Infrastructure Improvement.	$83,160,208	Increase integration of the internal market and reduce transportation costs.	$42,188,579	Travel time ratio: percentage of beneficiary population further than 30 minutes from nearest market. Kilometers of roads rehabilitated. Percent of contracted Santiago Roads works disbursed (cumulative). Percent of contracted Santo Antao Bridge works disbursed (cumulative). Kilometers (km) of roads under design. Signed contracts for roads works. Kilometers (km) of roads under works contracts. Port of Praia: percent of contracted port works disbursed (cumulative).

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objective	Cumulative disbursements	Measures
				Cargo village: percent of works completed. Quay 2 improvements: percent of works completed. Access road: percent of works completed.
Private Sector Development	$2,081,223	Spur private sector development on all islands through increased investment in the priority sectors and through financial sector reform.	$976,634	Micro-Finance Institution (MFI) recovery rate, adjusted. MFI portfolio at risk, adjusted. Ratio of MFIs operationally self-sufficient.
Program Administration * and Control, Monitoring and Evaluation.	$13,835,927	.....	$8,603,553	
Pending subsequent reports **.	.....	.....	$1,471,195	
Country: Nicaragua Year: 2009 Quarter 4 Total Obligation: $175,000,000 Entity to which the assistance is provided: MCA Nicaragua Total Quarterly Disbursement: $11,505,614				
Property Regularization Project.	$22,000,000	Increase Investment by strengthening property rights.	$7,418,507	Automated database of registry and cadastre installed in the 10 municipalities of Leon Value of land, urban. Value of land, rural. Time to conduct a land transaction. Number of additional parcels with a registered title, urban. Number of protected areas demarcated. Area covered by cadastral mapping. Cost to conduct a land transaction.
Transportation Project	$105,193,200	Reduce transportation costs between Leon and Chinandega and national, regional and global markets.	$37,933,257	Annual Average daily traffic volume: N1 Section R1. Annual Average daily traffic volume: N1 Section R2. Annual Average daily traffic volume: Port Sandino (S13). Annual Average daily traffic volume: Villanueva—Guasaule Annual. Average daily traffic volume: Somotillo-Cinco Pinos (S1). Annual average daily traffic volume: León–Poneloya–Las Peñitas. International Roughness Index: N–I Section R1. International Roughness Index: N–I Section R2. International Roughness Index: Port Sandino (S13). International Roughness Index: Villanueva—Guasaule. International roughness index: Somotillo–Cinco Pinos. International roughness index: León–Poneloya–Las Peñitas. Kilometers of NI upgraded: R1 and R2 and S13. Kilometers of NI upgraded: Villanueva—Guasaule. Kilometers of S1 road upgraded. Kilometers of S9 road upgraded. Kilometers of designed primary roads (including N–I/Puerto Sandino and V–G). Kilometers of designed secondary roads.
Rural Development Project.	$32,897,500	Increase the value added of farms and enterprises in the region.	$20,640,918	Number of beneficiaries with business plans prepared with assistance from the Rural Development Business Project. Numbers of *manzanas (1 Manzana = 1.7 hectares),* by sector, harvesting higher-value crops.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objective	Cumulative disbursements	Measures
				Number of manzanas of beneficiaries of the program that harvest higher-value crops with irrigation or commercial reforestation under Improvement of Water Supply Activities. Number of beneficiaries implementing business plans. Average increase in income of beneficiaries due to program.
Program Administration,* Due Diligence, Monitoring and Evaluation.	$14,909,300	.....	$9,735,986	
Pending subsequent reports**.	.....	.....	$0	
Country: Georgia Year: 2009 Quarter 4 Total Obligation: $395,300,000 Entity to which the assistance is provided: MCA Georgia Total Quarterly Disbursement: $31,417,923				
Regional Infrastructure Rehabilitation.	$310,650,000	Key Regional Infrastructure Rehabilitated.	$95,018,048	Household savings from Infrastructure Rehabilitation Activities Savings in vehicle operating costs (VOC). International roughness index (IRI). Annual average daily traffic (AADT). Travel time. Kilometers of road paved. Percent of contracted works disbursed. Signed contracts for feasibility and/or design studies. Percent of contracted studies disbursed. Kilometers of roads under design. Signed contracts for road works. Kilometers of toads under works contracts. Sites rehabilitated (phases I, II, III)—pipeline. Construction works completed (phase II)—pipeline. Savings in household expenditures for all subprojects. Population Served by all subprojects. Subprojects completed. Value of project grant agreements signed. Value of project works and goods contracts signed. Subprojects with works initiated.
Regional Enterprise Development.	$52,300,000	Enterprises in Regions Developed.	$34,110,317	Jobs Created by Agribusiness Development Activity (ADA) and by Georgia Regional Development Fund (GRDF). Household net income—ADA and GRDF. Jobs created—ADA. Firm income—ADA. Household net income—ADA. Beneficiaries (direct and indirect)—ADA. Grant agreements signed—ADA. Increase in gross revenues of portfolio companies (PC). Increase in portfolio company employees. Increase in wages paid to the portfolio company employees. Cumulative number of portfolio companies. Funds disbursed to the portfolio companies.
Program Administration,* Due Diligence, Monitoring and Evaluation.	$32,350,000	.....	$15,546,209	
Pending subsequent reports**.	.....	.....	$1,271,467	

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Vanuatu Year: 2009 Quarter 4 Total Obligation: $65,690,000 Entity to which the assistance is provided: MCA Vanuatu Total Quarterly Disbursement: $7,043,069				
Transportation Infrastructure Project.	$60,228,579	Facilitate transportation to increase tourism and business development.	$35,918,153	Number of international tourists—Efate. Number of international tourists—Santo. Number of room nights occupied—Efate. Number of room nights occupied—Santo. Average annual daily traffic—Efate. Average annual daily traffic—Santo. Kilometers of road upgraded—Efate. Kilometers of roads upgraded—Santo. Signed contracts for feasibility and/or design studies. Percent of contracted studies disbursed. Kilometers (km) of roads under design. Signed contracts for roads works. Kilometers (km) of roads under works contracts. Percent of contracted roads works disbursed.
Program Administration,* Due Diligence, Monitoring and Evaluation.	$5,461,421	.....	$2,654,537	
Pending subsequent reports **.	.....	.....	$0	
Country: Armenia Year: 2009 Quarter 4 Total Obligation: $235,650,000 Entity to which the assistance is provided: MCA Armenia Total Quarterly Disbursement: $6,128,447				
Irrigated Agriculture Project (Agriculture and Water).	$145,080,000	Increase agricultural productivity and Improve Quality of Irrigation.	$23,712,563	Recovery of Water User Associations (WUA) operations and maintenance cost by water charges. Primary canals rehabilitated. Tertiary canals rehabilitated. Percent of contracted irrigation works disbursed. Value of signed contracts for irrigation works. Number of farmers using better on-farm water management. Number of farmers trained. Number of agribusinesses assisted. Value of agricultural loans to farmers/agribusinesses.
Rural Road Rehabilitation Project.	$67,100,000	Better access to economic and social infrastructure.	$7,534,152	Average annual daily traffic. International roughness index. Kilometers of roads rehabilitated. Percent of contracted roads works disbursed. Signed contracts for roads works. Percent of contracted studies disbursed. Kilometers (km) of roads under design. Signed contracts for feasibility and/or design studies. Kilometers (km) of roads under works contracts.
Program Administration,* Due Diligence, Monitoring and Evaluation.	$23,470,000	.....	$8,947,797	
Pending subsequent reports **.	.....	.....	$1,145,001	
Country: Benin Year: 2009 Quarter 4 Total Obligation: $307,298,040 Entity to which the assistance is provided: MCA Benin Total Quarterly Disbursement: $16,227,236				
Access to Financial Services.	$19,650,000	Expand Access to Financial Services.	$2,734,029	Volume of credits granted by the Micro-Finance Institutions (MFI). Volume of saving collected by the Micro-Finance Institutions. Average portfolio at risk >90 days of microfinance institutions at the national level.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objective	Cumulative disbursements	Measures
				Operational self-sufficiency of MFIs at the national level. Average time required by Cellule de Surveillance des Structures Financières Décentralisées (CSSFD) in treating MFI applications. Number of institutions receiving grants through the Facility. Second call for proposal for grants launched. Number of MFIs *inspected by CSSFD*.
Access to Justice	$34,270,000	Improved Ability of Justice System to Enforce Contracts and Reconcile Claims.	$1,558,603	Average time to enforce a contract. Percent of firms reporting confidence in the judicial system. Number of cases processed at Arbitration Center per year. Number of Information, Education and Communication Campaign (IEC) sessions hosted by Chamber of Commerce (CAMeC). Passage of new legal codes. Average time required for Tribunaux de premiere instance-arbitration centers and courts of first instance (TPI) to reach a final decision on a case. Average time required for Court of Appeals to reach a final decision on a case. Percent of cases resolved in TPI per year. Percent of cases resolved in Court of Appeals per year. Number of Court inspections per year. Number of Court employees trained. Number of beneficiaries of legal aid services. Complete construction on 9 new court houses. Average time required to register a business (*société*). Average time required to register a business (sole proprietorship). Number of businesses accessing CAMEC service. Business registration center (CFE) information and outreach campaign executed throughout Benin.
Access to Land	$36,019,999	Strengthen property rights and increase investment in rural and urban land.	$10,288,868	Total value of investment in targeted urban land parcels. Total value of investment in targeted rural land parcels. Average cost required to obtain a new land title through on demand process. Average cost required to convert occupancy permit to land title through systematic process. Percentage of respondents perceiving land security in the Occupancy Permit (PH) into Land titles (TF) or Rural Land Plan Foncier Rural (PFR) areas.. Number of new land disputes reported by commune heads. Seven studies complete. Land code texts adopted (laws, decrees and land code). Value ($) of equipment purchased. Number of land certificates issued within MCA-Benin implementation. Number of habitation permits converted to land titles. Number of Continuously Operating Reference (CORS) stations installed. Number of public and private surveyors trained. Number of communes with new cadastres. Land market information system established.
Access to Markets	$169,447,000	Improve Access to Markets through Improvements to the Port of Cotonou.	$15,508,504	Volume of merchandise traffic through the Port Autonome de Cotonou. Bulk ship carriers waiting times at the port. Container ship waiting times at the port.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objective	Cumulative disbursements	Measures
				Port design-build contract awarded. Port crime levels (number of thefts). Internal port circulation time. Average time to clear customs. Execution rate of training plan. Port meets—international port security standards (ISPS). Public consultation completed (3). Environmental permits issued.
Program Administration,* Due Diligence, Monitoring and Evaluation.	$47,911,041	.....	$18,654,249	
Pending subsequent reports**.	.....	.....	$283,061	
Country: Ghana Year: 2009 Quarter 4 Total Obligation: $547,009,000 Entity to which the assistance is provided: MCA Ghana Total Quarterly Disbursement: $17,606,940				
Agriculture Project	$227,899,382	Enhance Profitability of cultivation, services to agriculture and product handling in support of the expansion of commercial agriculture among groups of smallholder farms.	$50,461,093	Number of farmers trained. Number of agribusinesses assisted. Number of hectares under production with MCC support. Value of agricultural loans to farmers/agribusinesses.. Value of signed contracts for feasibility and/or design studies (irrigation). Percent of contracted (design/feasibility) studies complete (irrigation). Value of signed contracts for irrigation works (irrigation). Percent of contracted irrigation works disbursed. Percent of people aware of their land rights. Total number of parcels surveyed in the Pilot Land Registration Areas (PLRAs). Volume of products passing through post-harvest treatment.
Rural Development Project.	$89,361,539	Strengthen the rural institutions that provide services complementary to, and supportive of, agricultural and agriculture business development.	$7,956,184	Number of students enrolled in schools affected by Education Facilities Sub-Activity. Number of schools rehabilitated. Number of basic school blocks constructed to Ministry of Education (MOE) construction standards. Number of schools designed and due diligence completed. Distance to collect water. Time to collect water. Incidence of guinea worm. Average number of days lost due to guinea worm. Number of people affected by Water and Sanitation Facilities Sub-Activity. Number of stand-alone boreholes/wells/nonconventional water systems constructed/rehabilitated. Number of small-town water systems constructed. Number of pipe extension projects constructed. Number of stand-alone boreholes/wells/non-conventional water systems identified and due diligence performed for rehabilitation/construction. Number of small-town water systems designed and due diligence completed for construction. Number of pipe extension projects designed and due diligence completed for construction. Number of agricultural processing plants in target districts with electricity due to Rural Electrification Sub-Activity. Number of electricity projects identified and due diligence completed.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objective	Cumulative disbursements	Measures
Transportation	$174,285,120	Reduce the transportation costs affecting agriculture commerce at sub-regional levels.	$14,218,114	International roughness index. Annualized average daily traffic. Kilometers of road completed. Percent of contracted road works disbursed. Value of signed contracts for road works. Kilometers of road designed. Percent of contracted design/feasibility studies completed. Value of signed contracts for feasibility and/or design studies. Travel time for walk-on passengers.. Travel time for small vehicles. Travel time for trucks. Annual average daily traffic (vehicles). Annual average daily traffic (passengers). Landing stages rehabilitated. Ferry terminal upgraded. Rehabilitation of Akosombo Floating Dock completed. Percent of contracted work disbursed landings and terminals. Value of signed contracts for works: ferry and floating dock. Value of signed contracts for works: landings and terminals.
Program Administration,* Due Diligence, Monitoring and Evaluation.	$55,462,959	.....	$16,099,667	
Pending subsequent reports**.	.....	.....	$0	
Country: El Salvador Year: 2009 Quarter4 Total Obligation: $460,940,000 Entity to which the assistance is provided: MCA El Salvador Total Quarterly Disbursement: $18,083,019				
Human Development Project.	$94,963,736	Increase human and physical capital of residents of the Northern Zone to take advantage of employment and business opportunities.	$7,898,797	Employment rate of graduates of middle technical schools. Graduation rates of middle technical schools Middle technical schools remodeled and equipped. Scholarships granted to students of middle technical schools. Students of non-formal training. Cost of water. Time collecting water. Households benefiting from water solutions built. Potable water and basic sanitation systems with construction contracts signed. Cost of electricity. Electricity consumption. Households benefiting from a connection to the electricity network. Household benefiting from the installation of isolated solar systems. Kilometers of new electrical lines with construction contracts signed. Population benefiting from strategic infrastructure. Community Infrastructure Works with Construction Contracts Signed.
Productive Development Project.	$87,850,853	Increase production and employment in the Northern Zone.	$17,296,662	Number of hectares under production with MCC support. Number of farmers trained. Value of agricultural loans to farmers/agribusinesses. Number of agribusinesses assisted.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objective	Cumulative disbursements	Measures
Connectivity Project	$233,389,335	Reduce travel cost and time within the Northern Zone, with the rest of the country, and within the region.	$13,092,695	Average annual daily traffic. International roughness index. Kilometers of roads rehabilitated Kilometers of roads under works contract. Signed contracts for roads works. Percent of contracted roads works disbursed.
Program Administration * and Control, Monitoring and Evaluation.	$44,736,076	.....	$10,987,647	
Pending Subsequent Report **.	.....	.....	$0	
Country: Mali Year: 2009 Quarter 4 Total Obligation: $460,811,164 Entity to which the assistance is provided: MCA Mali Total Quarterly Disbursement: $18,402,797				
Bamako Sénou Airport Improvement Project.	$181,254,264	Establish an independent and secure link to the regional and global economy.	$8,212,510	Total wage bill of tourism industry. Freight volume. Employment at airport. Signature of design contract. Average number of weekly flights (arrivals). Passenger traffic (annual average). Percent works complete. Airside Infrastructure Design, and Airside Infrastructure Construction Supervision, (AIR A01) and Landside Infrastructure Design (New Terminal & Associated Works) and Landside Construction Supervision is launched. Time required for passenger processing at departures and arrivals. Passenger satisfaction level. Percent works complete. Percent of airport management and maintenance plan implemented. Airport meets Federal Aviation Administration (FAA) and International Civil Aviation Organization (ICAO) security standards. Technical assistance delivered to project.
Alatona Irrigation Project	$234,884,675	Increase the agricultural production and productivity in the Alatona zone of the ON.	$21,244,320	Number of agricultural jobs created in Alatona zone. Main season rice yields. International roughness index (IRI) on the Niono-Goma Coura Route. Average daily vehicle count. Percentage works complete. Total irrigated land in the Alatona zone. Irrigation system efficiency on Alatona Canal during the rainy season and the dry season. Kilometers of road under design/feasibility study. Value of signed contracts for road works. Kilometers of road under works contract. Percent of works completed on main system construction. Percent of contracted irrigation works disbursed for tranche 1. Value of signed contracts for irrigation works. Value of signed contracts for feasibility and/or design studies. Percent of contracted (design/feasibility) studies disbursed. Area planted by new settlers (wet season). Titles registered in the land registration office of the Alatona zone (for 5- or 10-hectare farms). Total land payments made. Total market gardens allocated in Alatona zones for the populations affected by the project (PAPs).

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objective	Cumulative disbursements	Measures
				Decree transferring legal control of the project impact area is passed. Selection criteria for new settlers approved. Contractor implementing the ''Mapping of Agricultural and Communal Land Parcels'' contract is mobilized. School enrollment rate. Percent of Alatona population with access to drinking water. Number of schools available in the Alatona. Number of health centers available in the Alatona. Number of concessions that have been compensated. Resettlement census verified. Adoption rate of improved agriculture techniques among populations affected by the project (PAPs). Number of operational mixed cooperatives. Area planted by PAPs (wet season rice). Area planted with shallots during dry season. Number of farmers completing literacy training. Number of people completing the rice and shallot production techniques module. Number of farmers completing land titling training. Water management system design and capacity building strategy implemented. Call for proposals for the applied research grants launched. Average portfolio at risk among Alatona microfinance institutions. Average loan repayment rate of Alatona clients (farmers organizations or individual farmers). Amount of credit extended to Alatona farmers. Number of farmers accessing grant assistance for first loan from financial institutions. Financial institution partners identified (report on assessment of the financial institutions in the Office du Niger—Office of Niger zone (ON zone).
Industrial Park Project	$2,643,432	Develop a platform for industrial activity to be located within the Airport domain..	2,637,472	Occupancy level. Average number of days required for operator to connect to Industrial Park water and electricity services.
Program Administration * and Control, Monitoring and Evaluation.	$42,028,793	.....	$14,078,641	
Pending Subsequent Report **.	.....	.....	$184,332	
Country: Mongolia Year: 2009 Quarter 4 Total Obligation: $284,911,363 Entity to which the assistance is provided: MCA Mongolia Total Quarterly Disbursement: $2,653,062				
Property Rights Project	$22,912,286	Increase security and capitalization of land assets held by lower-income Mongolians, and increased peri-urban herder productivity and incomes.	$614,859	Number of studies completed. Legal and regulatory reforms adopted. Number of landholders reached by public outreach efforts. Personnel Trained. Number of Buildings rehabilitated/constructed. Value of equipment purchased. Rural hectares Mapped. Urban Parcels Mapped. Rural Hectares Formalized. Urban parcels formalized.
Rail Project	$188,378,000	Increase rail traffic and shipping efficiency.	$369,560	Increase in gross domestic product due to rail improvements. Freight turnover. Mine traffic. Percent of wagons leased by private firms.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objective	Cumulative disbursements	Measures
				Railway operating ratio. Customer satisfaction. Wagon time to destination. Average locomotive availability.
Vocational Education Project.	$25,492,856	Increase employment and income among unemployed and underemployed Mongolians.	$612,843	Rate of employment. Students completing newly designed long-term programs. Percent of active teachers receiving certification training. Technical and vocational education and training (TVET) legislation passed.
Health Project	$16,977,119	Increase the adoption of behaviors that reduce non-communicable diseases (NCDIs) among target populations and improved medical treatment and control of NCDIs.	$740,455	Diabetes and hypertension controlled. Percentage of cancer cases diagnosed in early stages. Road and traffic safety activity finalized and key interventions developed.
Program Administration * and Control, Monitoring and Evaluation.	$31,151,102	.....	$5,306,252	
Pending subsequent reports **.	.....	.....	$250,000	
Country: Mozambique Year: 2009 Quarter 4 Total Obligation: $506,924,053 Entity to which the assistance is provided: MCA Mozambique Total Quarterly Disbursement: $4,126,956				
Water and Sanitation Project.	$203,585,393	Increase access to reliable and quality water and sanitation facilities.	$1,581,000	Time to get to non-private water source. Percent of urban population with improved water sources. Percent of urban population with improved sanitation facilities. Number of private household water connections in urban, areas. Number of private household sanitation connections in urban areas. Number of standpipes in urban areas. Final detailed design for 5 towns submitted. Final detailed design for 3 cities submitted. Percent of rural population with access to improved water sources. Number of rural water points constructed. Final design report 1 (400 WP) submitted. Final design report II (200 Water points) submitted. Implementing agreement signed with the Administration for Water and Sanitation (AIAS) Infrastructure. Change in international roughness index (IRI). Average annual daily traffic volume.
Road Rehabilitation Project.	$176,307,480	Increase access to productive resources and markets.	$278,247	Kilometers of road rehabilitated. Kilometers of road under design. Percent of Namialo–Rio Lúrio Road–Metoro feasibility, design, and supervision contract disbursed. Percent of Rio Ligonha–Nampula feasibility, design, and supervision contract disbursed. Percent of Chimuara–Nicoadala feasibility, design, and supervision contract disbursed. Kilometers of roads under works contract. Percent of Namialo–Rio Lúrio Road construction contract disbursed. Percent of Rio Lúrio–Metro Road construction contract disbursed. Percent of Rio Ligonha–Nampula Road construction contract disbursed.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objective	Cumulative disbursements	Measures
				Percent of Chimuara–Nicoadala Road construction contract disbursed. Feasibility/Environmental and Social Assessment studies, design, supervision, and construction contract (ESA) for Namialo–Rio Lúrio–Metoro segment signed. Feasibility/ESA contract for Rio Ligonha–Nampula Road segment signed. Feasibility/ESA contract for Chimuara–Nicoadala Road signed. Time to get land usage rights direito de uso e aproveitamento da terra (State-granted land right) (DUAT). Cost to get land usage rights DUAT.
Land Tenure Services Peoject.	$39,068,307	Establish efficient, secure land access for households and investors.	$819,327	Total number of officials and residents reached with land strategy and policy awareness and outreach messages. Land strategy approved. Number of buildings rehabilitated or built. Total value of procured equipment and materials. Number of people trained. Rural hectares mapped in Site Specific Activity. Rural hectares mapped in Community Land Fund Initiative. Urban parcels mapped. Rural hectares formalized through Site Specific Activity. Rural hectares formalized through Community Land Fund Initiative. Urban parcels formalized. Number of communities delimited. Number of households having land formalized. Income from coconuts and coconut products. Survival rate of coconut seedling.
Farmer Income Support Project.	$17,432,211	Improve coconut productivity and diversification into cash crop.	$1,126,384	Number of diseased or dead palm trees cleard. Number of coconut seedlings planted. Hectares under production. Number of farmers trained in pest and disease control. Number of farmers trained in crop diversification technologies. Contract for project implementation signed.
Program Administration * and Control, Monitoring and Evaluation.	$70,530,662	.....	$7,364,965	
Pending Subsequent Report **.	.....	.....	$317,157	
Country: Lesotho Year: 2009 Quarter 4 Total Obligation: $362,527,119 Entity to which the assistance is provided: MCA Lesotho Total Quarterly Disbursement: $4,063,018				
Water Project	$164,027,999	Improve the water supply for industrial and domestic needs, and enhance rural livelihoods through improved watershed management.	$5,010,593	School days lost due to water borne diseases. Diarrhea notification at health centers. Time saved due to access to water source. Rural household (HH) provided with access to improved water supply. Rural HH provided with access to improved ventilated latrines. Rural water points constructed. Number of new latrines built. Urban HH with access to potable water supply. Number of enterprises connected to water network. Households connected to improved water network. Cubic meters of treated water from metolong dam delivered through a conveyance system to Water and Sewerage Authority (WASA). Value of water treatment contract works award.

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objective	Cumulative disbursements	Measures
				Value of conveyance system contract work award. Species population. Livestock grazing per area. Area put under conservation.
Health Project	$122,398,000	Increase access to life-extending ART and essential health services by providing a sustainable delivery platform.	$1,668,400	People with HIV still alive 12 months after initiation of treatment. TB notification (per 100,000 pop.). Proportion of blood units collected annually. Deliveries conducted in the health centers. Immunization coverage rate. Number of Health Centers (H/C) constructed and fully equipped. Value of contract works for health center construction. Percentage of contract works for health center construction disbursed. Percentage of contract works for Botshalo Complex disbursed. Percentage of contract works for Out-Patient Department (OPD) Centers disbursed. Percentage of HSS Contract disbursed. Proportion of People Living With AIDS (PLWA) receiving Antiretroviral treatment (ARV) (by age and sex). Referred tests from central laboratory per year by types (number).
Private Sector Development Project.	$36,720,318	Stimulate investment by improving access to credit, reducing transaction costs and increasing the participation of women in the economy.	$1,361,240	Average time (days) required to enforce a contract. Pending commercial cases. Cases filed at the commercial court. Value of commercial cases. Judicial staff trained. Administrative and clerical staff trained. Awareness campaigns. Portfolio of loans. Loan processing time. Bank accounts. Paper-based payments. Electronic payments. Value of contract services signed. Debit/smart cards issued. Mortgage bonds registered. Value of registered mortgage bonds. New land disputes brought to the Land Tribunal and Courts of Law. Time to complete a land transaction. Time to complete transfer of land rights. Land transactions recorded. Land parcels formalized. Number of land administration personnel trained. Land Act adopted. People trained on gender equality and economic rights. ID cards issued. Population registered in the national database.
Program Administration * and Control, Monitoring and Evaluation.	$39,404,682	.....	$9,110,760	
Pending Subsequent Report **.	.....	.....	$1	

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objective	Cumulative disbursements	Measures
Country: Morocco Year: 2009 Quarter 4 Total Obligation: $697,500,000 Entity to which the assistance is provided: MCA Lesotho Total Quarterly Disbursement: $7,420,954				
Fruit Tree Productivity	$300,898,445	Reduce volatility of agricultural production and increase volume of fruit agricultural production.	$6,506,766	Total annual volume of production of dates and olives. Cropped area covered by olive trees. Survival rate of newly planted olive trees after 2 years project-supported establishment period. Yield of rehabilitated olive trees. Cropped area covered by date trees. Yield of rehabilitated date palms.
Small Scale Fisheries	$116,168,027	Improve quality of fish moving through domestic channels and assure the sustainable use of fishing resources.	$1,060,336	State of fish stock. Domestic fish consumption level. Fisherman net revenue. Average fisherman sales price at Points de Débarquement Aménagés (PDA). Volume sold at wholesale markets. Fish sale price. Average sales price. Volume of sales among mobile fish vendors.
Artisan and Fez Medina ..	$111,873,858	Increase value added to tourism and artisan sectors.	$315,994	Average revenue of potters receiving Artisan Production Activity. Employment and wages among project graduates. Tourist arrivals. Artisan profits (artisans engaged in product finishing and points of sale). Employment created. Small and Medium Enterprises (SME) value added.
Financial Services	$46,200,000	Increase supply and decrease costs of financial services available to microenterprises.	$6,498,275	Gross loan portfolio outstanding of microcredit associations. Portfolio at risk >30 days ratio. Operating expense ratio.
Enterprise Support	$33,850,000	Improved survival rate of new SMEs and INDH-funded income generating activities; increased revenue for new SMEs and INDH-funded income generating activities.	$949,985	Average annual sales of participating businesses. Survival rate of participating businesses.
Program Administration * and Control, Monitoring and Evaluation.	$88,511,670	.....	$6,694,261	
Pending Subsequent Report **.	$0	.....	$173,509	
Country: Tanzania Year: 2009 Quarter 4 Total Obligation: $698,136,000 Entity to which the assistance is provided: MCA Tanzania Total Quarterly Disbursement: $4,959,848				
Energy Sector	$206,471,000	Increase value added to businesses.	$1,741,033	New power customers. Energy generation—Kigoma. Transmission capacity. Percentage disbursed for design and supervision contract Consulting Engineer (CE) year 1 budgeted.
Transport Sector	$372,776,000	Increase cash crop revenue and aggregate visitor spending.	$2,093,683	International roughness index (Tunduma, Tanga, Nantumbo, Peramiho). Average annual daily traffic (Tunduma, Tanga, Nantumbo, Peramiho). Kilometers upgraded/completed (Tunduma, Tanga, Nantumbo, Peramiho). Percent disbursed on construction works (Tunduma, Tanga, Nantumbo, Peramiho).

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objective	Cumulative disbursements	Measures
				Signed contracts for construction works (Tunduma, Tanga, Nantumbo, Peramiho). Percent disbursed for feasibility and/or design studies (Tunduma, Tanga, Nantumbo, Peramiho). Signed contracts for feasibility and/or design studies (Tunduma, Tanga, Nantumbo, Peramiho). Kilometers of roads under design (Tunduma, Tanga, Nantumbo, Peramiho). International roughness index (Zanzibar Rural Roads). Average annual daily traffic (Zanzibar Rural Roads). Kilometers upgraded/completed (Zanzibar Rural Roads). Percent disbursed on construction works (Zanzibar Rural Roads). Signed contracts for construction works (Zanzibar Rural Roads). Percent disbursed for feasibility and/or design studies (Zanzibar Rural Roads). Signed contracts for feasibility and/or design studies (Zanzibar Rural Roads). Kilometers of roads under design (Zanzibar Rural Roads). Passenger arrivals. Percentage of upgrade complete (airport). Percent disbursed on construction works (airport). Signed contracts for construction works (airport).
Water Sector Project	$66,335,000	Increase investment in human and physical capital and to reduce the prevalence of water-related disease.	$828,087	Prevalence of diarrhea (Dar es Salaam). Prevalence of diarrhea (Morogoro). Prevalence of cholera (Dar es Salaam). Prevalence of cholera (Morogoro). Volume of individual water consumption (Dar es Salaam). Volume of individual water consumption (Morogoro). Number of households using improved source for drinking water (Dar es Salaam). Number of households using improved source for drinking water (Morogoro). Number of businesses using improved water source (Dar es Salaam). Number of businesses using improved water source (Morogoro). Volume of water produced (Lower Ruvu). Volume of water produced (Morogoro). Volume of non-revenue water (Dar es Salaam). Operations and maintenance cost recovery ratio (Dar es Salaam). Operations and maintenance cost recovery ratio (Morogoro). Percent disbursed on construction works. Signed contracts for construction works.
Program Administration * and Control, Monitoring and Evaluation.	$52,554,000	.....	$3,046,283	
Pending Subsequent Report **.	.....	.....	$206,197	
Country: Burkina Faso Year: 2009 Quarter 4 Total Obligation: $478,943,569 Entity to which the assistance is provided: MCA Burkina Faso Total Quarterly Disbursement: $28,104,341				
Roads Project	$194,130,681	Enhance access to markets through investments in the road network.	$0	To Be Determined (TBD).

ASSISTANCE PROVIDED UNDER SECTION 605—Continued

Projects	Obligated	Objective	Cumulative disbursements	Measures
Rural Land Governance Project.	$59,934,614	Increase investment in land and rural productivity through improved land tenure security and land management.	$191,878	TBD.
Agriculture Development Project.	$141,910,059	Expand the productive use of land in order to increase the volume and value of agricultural production in project zones.	$17,851	TBD.
Bright 2 Schools Project ..	$26,829,669	Increase primary school completion rates.	$26,829,669	TBD.
Program Administration * and Control, Monitoring and Evaluation.	$56,138,546	.....	$4,715,805	
Pending Subsequent Report **.	.....	.....	$65,145	
Country: Namibia Year: 2009 Quarter 4 Total Obligation: $304,477,816 Entity to which the assistance is provided: MCA Namibia Total Quarterly Disbursement: $1,591,979				
Education Project	$144,976,558	Improve the enducation sector's effectiveness, efficiency and quality.	$0	To Be Determined (TBD).
Tourism Project	$66,959,291	Increase incomes and create employment opportunities by improving the marketing, management and infrastructure of Etosha National Park.	$0	TBD.
Agriculture Project	$46,965,320	Sustainably improve the economic performance and profitability of the livestock sector and increase the volume of the indigenous natural products for export.	$0	TBD.
Program Administration * and Control, Monitoring and Evaluation.	$45,576,647	.....	$2,038,940	
Pending Subsequent Report **.	.....	.....	$0	

* Program administration funds are used to pay items such as salaries, rent, and the cost of office equipment.

** These amounts represent disbursements made that will be allocated to individual projects in the subsequent quarter(s) and reported as such in subsequent quarterly report(s)

* November 2008, MCC and the Georgian government signed a Compact amendment making up to $100 million of additional funds available to the Millennium Challenge Georgia Fund. These funds will be used to complete works in the Roads, Regional Infrastructure Development, and Energy Rehabilitation Projects contemplated by the original Compact. The amendment was ratified by the Georgian parliament and entered into force on January 30, 2009.

[FR Doc. E9–29952 Filed 12–15–09; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that seven meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

State & Regional/Arts Education (State Partnership Agreements review): January 6–7, 2010 in Room 716. This

meeting, from 9 a.m. to 10:15 a.m. and from12:30 p.m. to 5:30 p.m. on January 6th and from 9 a.m. to 2:30 p.m. on January 7th, will be open. A policy discussion will be held on January 7th from 11:30 a.m. to 12:30 p.m.

Media Arts (application review): January 11–13, 2010 in Room 730. This meeting, from 10 a.m. to 5:45 p.m. on January 11th, from 9 a.m. to 6 p.m. on January 12th, and from 9 a.m. to 4 p.m. on January 13th, will be closed.

Folk and Traditional Arts/National Heritage Fellowships (review of nominations): January 12–15, 2010 in Room 716. This meeting, from 9 a.m. to 6:30 p.m. on January 12th and 13th, from 9 a.m. to 5:30 p.m. on January 14th, and from 9 a.m. to 3:30 p.m. on January 15th, will be closed.

State & Regional (State Partnership Agreements review): January 20–21, 2010 in Room 716. This meeting, from 9:30 a.m. to 6 p.m. on January 20th and from 9 a.m. to 4 p.m. on January 21st, will be open. A policy discussion is scheduled for January 21st at 2 p.m.

State & Regional (Regional Partnership Agreements review): January 21, 2010 in Room 716. This meeting, from 4:30 p.m. to 5:30 p.m., will be open. A policy discussion is scheduled for 5:15 p.m.

State & Regional/Folk Arts (State Partnership Agreements review): January 22, 2010 in Room 716. This meeting, from 9 a.m. to 5:30 p.m., will be open. A policy discussion is scheduled from 4 p.m. to 5 p.m.

American Masterpieces/Presenting (application review): January 25–26, 2010 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on January 25th and from 9 a.m. to 2:45 p.m. on January 26th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of November 10, 2009, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202–682–5532, TTDY–TDD 202–682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202–682–5691.

Dated: December 11, 2009.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E9–29859 Filed 12–15–09; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395; NRC–2009–0559]

South Carolina Electric and Gas Company, Virgil C. Summer Nuclear Station, Unit 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, Section 50.12, ''Specific Exemptions,'' for Facility Operating License No. NPF–12, issued to South Carolina Electric & Gas Company (the licensee), for operation of the Virgil C. Summer Nuclear Station, Unit 1, located in Fairfield County, South Carolina. Therefore, as required by 10 CFR 51.21, the NRC performed an environmental assessment. Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would provide a one-time exemption to the requirements of 10 CFR 50, Appendix E, ''Emergency Planning and Preparedness for Production and Utilization Facilities,'' Section IV.F.2.b, to postpone the onsite portion of the biennial emergency preparedness exercise from calendar year 2009 until April 2010.

The proposed action is in accordance with the licensee's application dated October 15, 2009, as supplemented by letter dated November 3, 2009.

The Need for the Proposed Action

The licensee states that it has made a good faith effort to comply with the regulation in that the biennial exercise was previously scheduled to be performed on October 7, 2009. The licensee further states that ''However, a plant trip occurred on October 2, 2009, due to failure of the main generator output breaker. The plant trip required redirection of station resources to respond to the forced outage and to perform recovery activities. Since the recovery efforts were a major distraction, the decision was made to postpone the exercise.'' The licensee states that it did participate in the offsite portion of the exercise on October 7, 2009, with Federal, state and local authorities. Since the scenario for the exercise would thus be known to the licensee emergency response organization (ERO) team members designated for the offsite portion of the exercise, the scenario will require modification for the forthcoming onsite portion of the exercise and a new ERO team will need to be selected to participate in the onsite portion of the biennial exercise.

In summary, as a result of the impact of the combined need to repair the generator output breaker, an ongoing extensive refueling outage, the associated unavailability of key station personnel and the need to perform activities to support the onsite portion of the exercise, the licensee proposes to reschedule the onsite portion of the exercise for April 2010.

Environmental Impacts of the Proposed Action

The underlying purpose of 10 CFR 50, Appendix E, Section IV.F.2.b, requiring licensees to conduct a biennial exercise, is to ensure that ERO personnel are familiar with their duties and to test the adequacy of emergency plans. In addition, 10 CFR 50, Appendix E, Section IV.F.2.b, also requires licensees to maintain adequate emergency response capabilities during the intervals between biennial exercises by conducting drills to exercise the principal functional areas of emergency response. In order to accommodate the scheduling of full participation exercises, the NRC has allowed licensees to schedule the exercises at any time during the calendar biennium. Conducting the VCSNS full-participation exercise in calendar year 2010 places the exercise past the previously scheduled biennial calendar year of 2009. Since the last biennial exercise on October 2, 2007, the licensee has conducted nine full-station participation training drills to exercise these principal functional areas, including an after-hours augmentation drill. In addition, at the request of the Federal Emergency Management Agency (FEMA), the licensee supported the State and local authorities with the offsite portion of the biennial exercise

on October 7, 2009, thereby facilitating the FEMA evaluation of the State and local authorities. The NRC staff considers the intent of this requirement is met by having conducted these series of training drills.

The NRC has completed its evaluation of the proposed action and concludes that it does not create new accident precursors and that the probability and consequences of postulated accidents are not significantly increased.

The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have any foreseeable impacts to land, air, or water resources, including impacts to biota. In addition, there are also no known socioeconomic or environmental justice impacts associated with such proposed action. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Virgil C. Summer Nuclear Station, Unit No. 1, NUREG–0719, dated May 1981, and Final Supplemental Environmental Impact Statement (NUREG–1437 Supplement 15) dated February 2004.

Agencies and Persons Consulted

In accordance with its stated policy, on November 25, 2009, the staff consulted with the South Carolina State official, Ms. Susan Jenkins of the South Carolina Department of Health and Environmental Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 15, 2009, as supplemented by letter dated November 3, 2009. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (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 send an e-mail to *pdr.resource@nrc.gov*.

Dated at Rockville, Maryland, this 10th day of December 2009.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Plant Licensing Branch 2–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–29874 Filed 12–15–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Week of January 4, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of January 4, 2010

Thursday, January 7, 2010

12:15 p.m. Affirmation Session (Public Meeting) (Tentative).

a. *PPL Bell Bend, LLC* (Combined License Application for Bell Bend Nuclear Power Plant), LBP–09–18 (Ruling on Standing and Contention Admissibility) (Tentative).

b. *Shieldalloy Metallurgical Corp.* (License Amendment Request for Decommissioning the Newfield Site), Shieldalloy's Amended Motion for Stay Pending Judicial Review of Commission Action Transferring Regulatory Authority Over Newfield, New Jersey Site to the State of New Jersey (Oct. 14, 2009) (Tentative).

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: December 11, 2009.

Kenneth R. Hart,

Office of the Secretary.

[FR Doc. E9–30012 Filed 12–14–09; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61152; File No. 10–191]

In the Matter of the Application of C2 Options Exchange, Incorporated for Registration as a National Securities Exchange Findings, Opinion, and Order of the Commission

December 10, 2009.

I. Introduction

On January 21, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'') submitted to the Securities and Exchange Commission (''Commission'') an Application for Registration as a National Securities Exchange (''Form 1'') seeking registration under Section 6 of the Securities Exchange Act of 1934 [1] (the ''Act'') of a second national securities exchange, referred to as C2 Options Exchange, Incorporated (''C2'' or the ''Exchange''). Notice of the application was published for comment in the **Federal Register** on March 3, 2009.[2] The Commission received one comment letter regarding the C2 Form 1.[3] On December 8, 2009, C2 filed Amendment No. 1 to its Form 1.[4]

II. Statutory Standards

Under Sections 6(b) and 19(a) of the Act,[5] the Commission shall by order grant an application for registration as a national securities exchange if it finds that the proposed exchange is so organized and has the capacity to carry out the purposes of the Act and can comply, and can enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

As discussed in greater detail below, the Commission finds that C2's application for exchange registration meets the requirements of the Act and the rules and regulations thereunder. Further, the Commission finds that the proposed rules of C2 are consistent with Section 6 of the Act in that, among other things, they are designed to: (1) Assure fair representation of the Exchange's members in the selection of its directors and administration of its affairs and provide that, among other things, one or more directors shall be representative of investors and not be associated with the exchange, or with a broker or dealer;[6] (2) prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system;[7] (3) not permit unfair discrimination between customers, issuers, or dealers;[8] and (4) protect investors and the public interest.[9] Finally, the Commission finds that the proposed rules of C2 do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[10]

Overall, the Commission believes that approving C2's application for exchange registration could confer important benefits on the public and market participants. In particular, C2 will provide market participants with an additional venue for executing orders in standardized options and should increase competition between the options exchanges. Consequently, investors should benefit as markets compete on service, price, and execution.

III. Discussion and Commission Findings

A. Background

CBOE, a national securities exchange registered under Section 6 of the Act, has proposed the formation of C2 as a stand-alone options exchange that will operate under a separate exchange license and have separate access rules, separate governance, and a separate fee schedule from that of CBOE. Unlike CBOE, which uses a hybrid model market structure, C2 will be an all-electronic marketplace and will not maintain a physical options trading floor. CBOE filed its C2 proposal during a time of increasing consolidation among U.S. registered exchanges in which exchange holding companies have sought to control multiple, separate exchange licenses in order to offer multiple and varied trading venues to appeal to a broad array of market participants.[11] The primary features of the C2 proposal, discussed in more detail in C2's Form 1, are discussed below.

B. Corporate Structure of C2

1. Ownership

C2 will be a wholly-owned subsidiary of its parent company, CBOE. The C2 governing documents explicitly state that CBOE owns 100% of the common stock of C2 and that any sale, transfer, or assignment by CBOE of its ownership stake in C2 will not be permitted without Commission approval pursuant to the rule filing procedures under Section 19 of the Act.[12] CBOE, itself a self-regulatory organization (''SRO''), will therefore own C2, which will be a separate SRO.[13]

While recent consolidation among U.S. exchanges has involved ownership of multiple exchanges under a single holding company structure, that structure is unavailable to CBOE, which presently is structured as a mutually-held member-owned organization. CBOE has, however, proposed to demutualize, though its C2 proposal

[1] 15 U.S.C. 78f.

[2] *See* Securities Exchange Act Release No. 59441 (February 24, 2009), 74 FR 9322 (''Notice'').

[3] *See* E-mails from Bryan Rule, dated July 8, 2009 and November 9, 2009. While the July correspondence does not contain any substantive comments on the Form 1 application, the November correspondence asks the Commission not to approve C2's application for registration until CBOE ''adequately disciplines its members for their large number of SEC Firm Quote violations * * *.'' Mr. Rule asserted that ''the new C2 Rules seek to diminish the public's priority in option trading.'' As discussed further below, the Commission believes that C2's proposed rules, including provisions relating to order execution and priority, are consistent with the Act. In addition, as a self-regulatory organization, C2—as well as CBOE—is required to comply with the provisions of the Act and the rules and regulations thereunder and enforce compliance with such provisions by its members. *See* 15 U.S.C. 78s(g).

[4] In Amendment No. 1, CBOE modified its application by: Revising Exhibits C and D to reflect the removal of entities that do not qualify as affiliates and to provide more current financial information; revising its proposed Bylaws to clarify an inconsistency in Section 3.1; revising Exhibit J to reflect current information; and revising and clarifying the operation of certain proposed rules. The changes proposed in Amendment No. 1 either are not material or are otherwise responsive to the concerns of the Commission.

[5] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(a), respectively.

[6] *See* 15 U.S.C. 78f(b)(3).

[7] *See* 15 U.S.C. 78f(b)(5).

[8] *See id.*

[9] *See id.*

[10] *See* 15 U.S.C. 78f(b)(8).

[11] *See, e.g.,* Securities Exchange Act Release Nos. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (File No. SR–Phlx–2008–31) (approval order concerning changes to the governing documents of the Philadelphia Stock Exchange, Inc. in connection with its acquisition by The NASDAQ OMX Group, Inc.); and 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (File Nos. SR–Amex–2008–62 and SR–NYSE–2008–60) (approval order concerning the acquisition of the American Stock Exchange LLC by NYSE Euronext).

[12] *See* Article Fourth of the Certificate of Incorporation of C2 (''C2 Certificate of Incorporation''). *See also* 15 U.S.C. 78s.

[13] The acquisition of the American Stock Exchange LLC (''Amex'') by the National Association of Securities Dealers, Inc. (''NASD'') in 1998 involved a similar corporate structure. *See* Securities Exchange Act Release No. 40622 (October 30, 1998), 63 FR 59819 (November 5, 1998) (File Nos. SR–Amex–98–32; SR–NASD–98–56; and SR–NASD–98–67) (approval order).

precedes its efforts to effectuate its planned demutualization.[14]

The Commission notes that, while C2 will be responsible for complying with the legal obligations that govern an exchange, CBOE, in its capacity as the parent company with a controlling interest in C2, also will be responsible for ensuring that C2 meets its obligations as an SRO. In this respect, CBOE has adopted a rule to reflect and codify CBOE's ultimate responsibility to ensure that C2 meets its statutory obligations as an SRO.[15] Among other things, CBOE's policy with respect to C2 represents that CBOE will ensure that necessary and appropriate resources are available to C2 so that it can meet the evolving demands of operating a regulatory and supervisory compliance program. Further, in discharging this responsibility, CBOE's policy states it will exercise its powers and its managerial influence to ensure that C2 fulfills its self-regulatory obligations by directing C2 to take action necessary to effectuate its purposes and functions as a national securities exchange operating pursuant to the Act, and ensuring that C2 has and appropriately allocates such financial, technological, technical, and personnel resources as may be necessary or appropriate to meet its obligations under the Act. Finally, CBOE has committed to refrain from taking any action with respect to C2 that, to the best of its knowledge, would impede, delay, obstruct, or conflict with efforts by C2 to carry out its SRO obligations under the Act, and the rules and regulations thereunder. The Commission believes that CBOE's policy statement specifies the role and responsibility of CBOE in the operation of C2.

The Commission believes that the proposed corporate structure of C2 is consistent with the Act and that C2 will be so organized and have the capacity to be able to carry out the purposes of the Act and to comply and enforce compliance by its members and persons associated with its members with all applicable rules and regulations. C2's proposed ownership by CBOE, coupled with the explicit restriction on any indirect or direct transfer of such control by CBOE, should minimize the potential that any person could interfere with or restrict the ability of C2, CBOE, or the Commission to effectively carry out their respective regulatory oversight responsibilities. Further, the Commission notes that CBOE has undertaken to ensure and maintain the regulatory independence of C2 to enable C2 to operate in a manner that complies with the Federal securities laws, including the objectives of Sections 6(b) and 19(g) of the Act.[16]

2. Governance

As part of its Form 1 application, C2 submitted a proposed Certificate of Incorporation and Bylaws. In these documents, among other things, C2 establishes the composition of the Exchange's board of directors and the Exchange's governance committees.[17]

a. The C2 Board of Directors

C2's Board of Directors (''Board'') will be the governing body of C2 and will possess all of the powers necessary for the management of the business and affairs of the Exchange and the execution of its responsibilities as an SRO, including regulating the business conduct of Trading Permit Holders (''TPHs''), imposing fees, and adopting and amending rules.[18] C2 has proposed the following Board composition requirements, which are comparable to those the Commission has approved for other SROs:[19]

- The Board will be composed of between 11 and 23 directors (the exact number to be fixed from time to time by the Board);[20]
- One director position will be held by the Chief Executive Officer of C2 (''CEO'');
- The number of Non-Industry Directors[21] will equal or exceed the sum of the number of Industry Directors[22] (excluding the CEO from the calculation of Industry Directors for such purpose);
- At all times, at least one Non-Industry Director will qualify as a Non-Industry Director other than by operation of the limited exceptions provided for ''outside directors'' under the definition of ''Industry Director'' and will have no material business relationship with a broker or dealer, an entity that is affiliated with a broker-dealer, or the Exchange or any of its affiliates;[23]
- The number of Industry Directors will equal or exceed 30% of the Board;[24] and
- At least 20% of the directors on the Board will be nominated (or otherwise selected by a petition of C2 members) by the Industry-Director Subcommittee of

[14] CBOE's planned demutualization has been noticed for comment but has not yet received member approval. *See* Securities Exchange Act Release No. 58425 (August 26, 2008), 73 FR 51652 (September 4, 2008) (File No. SR–CBOE–2008–88) (''CBOE Demutualization Notice'').

[15] *See* Securities Exchange Act Release Nos. 61140 (December 10, 2009) (File No. SR–CBOE–2009–048) (approval order); and 60307 (July 15, 2009), 74 FR 36289 (July 22, 2009) (File No. SR–CBOE–2009–048) (notice of filing). The policy adopted by CBOE is consistent with the resolution of similar questions in the context of the NASD–Amex combination referenced above. *See* Securities Exchange Act Release Nos. 40622 (October 30, 1998), 63 FR 59819 (November 5, 1998) (File Nos. SR–Amex–98–32; SR–NASD–98–56; and SR–NASD–98–67) (approval order); and 40443 (September 16, 1998), 63 FR 51108 (September 24, 1998) (File No. SR–NASD–98–67) (notice of filing of NASD's policy with respect to its authority over the Amex).

[16] 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g), respectively.

[17] The governance structure of C2 is based primarily upon the governance structure that CBOE has proposed in connection with its demutualization. *See* CBOE Demutualization Notice, *supra* note 14, at 73 FR 51654.

[18] *See* C2 Bylaws Article III, Section 3.3.

[19] *See, e.g.,* Section 9 of the Limited Liability Company Agreement of The NASDAQ Stock Market LLC (''Nasdaq'') and Article III of Nasdaq's By-Laws.

[20] *See* C2 Bylaws Article III, Section 3.1.

[21] ''Non-Industry Director'' is defined as a person who is not an ''Industry Director.'' *See id.*

[22] C2's Bylaws define ''Industry Director'' as a director that: (i) Is a holder of a Trading Permit or otherwise subject to regulation by the Exchange; (ii) is a broker-dealer or an officer, director or employee of a broker-dealer or has been in any such capacity within the prior three years; (iii) is, or was within the prior three years, associated with an entity that is affiliated with a broker-dealer whose revenues account for a material portion of the consolidated revenues of the entities with which the broker-dealer is affiliated; (iv) has a material ownership interest in a broker-dealer and has investments in broker-dealers that account for a material portion of the director's net worth; (v) has a consulting or employment relationship with or has provided professional services to the Exchange or any of its affiliates or has had such a relationship or has provided such services within the prior three years; or (vi) provides, or has provided within the prior three years, professional or consulting services to a broker-dealer, or to an entity with a 50% or greater ownership interest in a broker-dealer whose revenues account for a material portion of the consolidated revenues of the entities with which the broker-dealer is affiliated, and the revenue from all such professional or consulting services accounts for a material portion of either the revenues received by the director or the revenues received by the director's firm or partnership. *See id.*

[23] C2's Bylaws provide a limited exception such that a director would not be deemed to be an ''Industry Director'' solely because either (A) the person is or was within the prior three years an outside director of a broker-dealer or an outside director of an entity that is affiliated with a broker-dealer, provided that the broker-dealer is not a holder of a Trading Permit or otherwise subject to regulation by the Exchange, or (B) the person is or was within the prior three years associated with an entity that is affiliated with a broker-dealer whose revenues do not account for a material portion of the consolidated revenues of the entities with which the broker-dealer is affiliated, provided that the broker-dealer is not a holder of a Trading Permit or otherwise subject to regulation by the Exchange. At all times, however, at least one Non-Industry Director must qualify as a Non-Industry Director exclusive of the exceptions provided for in the immediately preceding sentence and shall have no material business relationship with a broker or dealer or the Exchange or any of its affiliates. C2's Bylaws specify that the term ''outside director'' means a director of an entity who is not an employee or officer (or any person occupying a similar status or performing similar functions) of such entity. *See id.*

[24] *See id.*

the Nominating and Governance Committee (such directors are referred to collectively as the ''Representative Directors'').[25]

The initial Board will be divided into two classes. The initial term of the Class I and II directors will end with the annual stockholders meeting to be held by the Exchange in 2009 and 2010, respectively. Thereafter, directors will serve two-year terms ending on the second annual meeting following the meeting at which such directors were elected. Class I directors will initially consist of the Chief Executive Officer, five Non-Industry Directors, and five Industry Directors (two of whom will be Representative Directors). Class II directors will initially consist of seven Non-Industry Directors and five Industry Directors (three of whom will be Representative Directors).[26] All directors will continue in office until their successors are elected or appointed and qualified, except in the event of their earlier death, resignation, or removal.[27]

In addition, within 45 days from the date on which trading commences on C2, the Industry-Director Subcommittee will issue a circular to TPHs identifying a slate of Representative Director nominees.[28] TPHs will thereafter be able to file petitions for the nomination of alternate Representative Directors. In the event of a contested election, a run-off election will be held prior to the initial Board election. The Commission notes that because CBOE intends to seed the initial C2 Board with members of CBOE's current board of directors, the Representative Directors on C2's initial Board will have been subject to CBOE member input. As C2's initial permit holders will likely consist substantially of CBOE members,[29] the Commission believes C2's initial Board will provide member representation sufficient to allow the Exchange to commence operations. However, to assure a fair representation of C2 members in the selection of C2's directors and administration of its affairs, C2 has committed to provide C2 members with the prompt opportunity to participate in the selection of Representative Directors, thereby satisfying the compositional requirements for the Board contained in the C2 Bylaws.[30]

The Nominating and Governance Committee will nominate individuals for election as directors of the Board subsequent to the initial Board election process set forth above.[31] The Board will appoint the initial Nominating and Governance Committee and thereafter the Nominating and Governance Committee members will recommend their successors for approval by the Board.

The Industry-Director Subcommittee [32] of the Nominating and Governance Committee will recommend candidates to the Nominating and Governance Committee for each new or vacant Representative Director position on the Board.[33] Alternate candidates for Representative Director positions may be nominated by TPHs pursuant to a petition process.[34] If no candidates are nominated pursuant to a petition process, then the Nominating and Governance Committee is bound to accept and nominate the Representative Director nominees recommended by the Industry-Director Subcommittee. If a petition process produces additional candidates, then the candidates nominated pursuant to a petition process, together with those nominated by the Industry-Director Subcommittee, will be presented to TPHs in a contested election to determine the final slate of nominees for Representative Director.[35] Candidates who receive the most votes will be nominated as Representative Directors by the Nominating and Governance Committee.[36] CBOE, as the sole shareholder of C2, has committed to elect the candidates nominated by the Nominating and Governance Committee as Representative Directors.[37]

The Commission believes that the requirement in the C2 Bylaws that 20% of directors be Representative Directors, together with the process by which such directors are to be nominated and elected, provides for the fair representation of members in the selection of directors and the administration of C2 in a manner consistent with the requirement in Section 6(b)(3) of the Act.[38] As the Commission has previously noted in the context of other exchange governance proposals, this requirement helps to ensure that an exchange's members have a voice in the governing body of the exchange and the corresponding exercise by the exchange of its self-regulatory authority, and that the exchange is administered in a way that is equitable to all who trade on its market or through its facilities.[39]

In addition, the requirement that the number of Non-Industry Directors equal or exceed the number of Industry Directors on the Board is designed to assure the inclusion of a significant non-industry presence in the governance of the Exchange, which the Commission believes is a critical element in an exchange's ability to protect the public interest.[40] Further, the Commission notes that at all times at least one Non-Industry Director will qualify as not an ''Industry Director'' without using the limited exceptions provided for ''outside directors'' under the definition of ''Industry Director'' and will have no

[25] Only persons who are nominated by the Nominating and Governance Committee as Representative Directors will be eligible for election as Representative Directors and the Nominating and Governance Committee is bound to accept and nominate the Representative Director nominees recommended by the Industry-Director Subcommittee, provided that the Representative Director nominees are not opposed by a petition candidate. If such Representative Director nominees are opposed by a petition candidate then the Nominating and Governance Committee is bound to accept and nominate the Representative Director nominees who receive the most votes pursuant to a run-off election. *See* C2 Bylaws Article III, Section 3.2.

[26] *See* C2 Bylaws Article III, Section 3.1. and Amendment No. 1.

[27] *See* C2 Bylaws Article III, Section 3.1.

[28] *See* C2 Bylaws Article III, Section 3.2.

[29] *See infra* Section III.C.1.a (TPH Access).

[30] *See* C2 Bylaws Article III, Section 3.2.

[31] *See* C2 Bylaws Article III, Section 4.5. The Nominating and Governance Committee will be comprised of at least seven directors and will at all times have a majority of directors that are Non-Industry Directors. *See id.*

[32] The Industry-Director Subcommittee will consist of all of the Industry Directors then serving on the Nominating and Governance Committee. *See* C2 Bylaws Article III, Section 3.2.

[33] The Industry-Director Subcommittee will provide a mechanism for TPHs to provide input to the Industry-Director Subcommittee with respect to open Representative Director positions. Once selected, the Industry-Director Subcommittee will issue a circular to TPHs identifying the Representative Director nominees selected by the committee. *See* C2 Bylaws Article III, Section 3.2.

[34] *See* C2 Bylaws Article III, Section 3.2. TPHs may nominate alternative candidates for election to the Representative Director positions to be elected in a given year by submitting a petition signed by individuals representing not less than 10% of the total outstanding Trading Permits at that time. *See id.*

[35] *See* C2 Bylaws Article III, Section 3.2. Each TPH will have one vote with respect to each Trading Permit held for each Representative Director position to be filled that year; provided, however, that no holder of Trading Permits, either alone or together with its affiliates, may account for more than 20% of the votes cast for a candidate, and any votes cast by a holder of Trading Permits, either alone or together with its affiliates, in excess of this 20% limitation will be disregarded. *See id.*

[36] *See id.*

[37] CBOE, as sole shareholder of C2, has entered into a voting agreement with C2 with respect to the election by CBOE of the Representative Directors whereby CBOE has agreed to vote in favor of those individuals nominated by C2's Nominating and Governance Committee for election as Representative Directors of C2.

[38] 15 U.S.C. 78f(b)(3).

[39] *See, e.g.,* Securities Exchange Act Release Nos. 53128 (January 13, 2006), 71 FR 3550, 3553 (January 23, 2006) (File No. 10–131) (''Nasdaq Exchange Registration Order''); 53382 (February 27, 2006), 71 FR 11251, 11259 (March 6, 2006) (File No. SR–NYSE–2005–77) (''NYSE/Archipelago Merger Approval Order''); and 58375 (August 18, 2008), 73 FR 49498, 49501 (August 21, 2008) (File No. 10–182) (''BATS Exchange Registration Order'').

[40] *See, e.g.,* Nasdaq Exchange Registration Order, *supra* note 39, at 71 FR 3553.

material business relationship with a broker or dealer, an entity that is affiliated with a broker-dealer, or the Exchange or any of its affiliates.[41] In other words, at least one of C2's directors will not have any association with C2, a member of C2, or a broker or dealer, consistent with Section 6(b)(3) of the Act.[42]

The Commission believes that non-industry directors help ensure that no single group of market participants has the ability to unfairly disadvantage other market participants through the exchange governance process. Non-industry directors can provide unique and unbiased perspectives, which should enhance the ability of the Board to address issues in a non-discriminatory fashion and consequently support the integrity of C2's governance.[43] Accordingly, the Commission finds that C2's proposed Board satisfies the requirements in Section 6(b)(3) of the Act,[44] which requires that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer.

b. C2 Exchange Committees

C2 has proposed to establish the following standing committees of the Board: Executive Committee;[45] Audit Committee;[46] Compensation Committee;[47] Regulatory Oversight Committee;[48] and Nominating and Governance Committee.[49] The Board will appoint the initial members of the Nominating and Governance Committee, and thereafter the Nominating and Governance Committee will promptly act to recommend candidates for the other committees of the Board. Members of the standing committees will not be subject to removal except by the Board.[50] The Commission believes that C2's proposed committees, which are similar to the committees maintained by other exchanges,[51] are designed to enable C2 to carry out its responsibilities under the Act and are consistent with the Act.

C. Regulation of C2

As a prerequisite for the Commission's approval of an exchange's application for registration, an exchange must be organized and have the capacity to carry out the purposes of the Act.[52] Specifically, an exchange must be able to enforce compliance by its members, and persons associated with its members, with the Federal securities laws and the rules of the exchange.[53]

C2 has not proposed to be a party to any regulatory services agreements or bilateral plans for the allocation of regulatory responsibilities pursuant to Rule 17d–2 of the Act, though it will become a party to the existing multiparty options 17d–2 plans concerning sales practice regulation and market surveillance.[54]

C2 proposes to use ''dual hat'' employees to staff its regulatory program. In other words, current CBOE employees will also serve in a similar capacity for C2. Similar to other exchanges, C2 has proposed a requirement that confidential information (*e.g.,* disciplinary matters, trading data, trading practices, and audit information) pertaining to the self-regulatory function of C2 will be retained in confidence by C2 and its officers, directors, employees, and agents.[55]

As discussed further below, the Commission believes that C2's application for registration describes a market structure that is designed to provide for sufficient regulatory oversight of C2 members and the operation of C2 as an SRO, as required by the Act. The Commission notes that C2 will have the statutory authority and responsibility to, among other things, discipline its members, amend its Bylaws and rules, list and delist securities, and grant or deny membership in C2. Further, the Commission believes that the use of ''dual hat'' employees by C2 is appropriate, as the operations, rules, and management of CBOE and C2 will overlap to a considerable degree such that C2 should benefit by leveraging the experience of current CBOE staff. However, the Commission expects both CBOE and C2 to monitor the workload of their dual hat employees and supplement their staffs if necessary so that C2 maintains sufficient personnel to allow it to carry out the purposes of the Act and enforce compliance with the rules of C2 and the Federal securities laws.

[41] *See* C2 Bylaws Article III, Section 3.1.

[42] 15 U.S.C. 78f(b)(3).

[43] *See, e.g.,* Nasdaq Exchange Registration Order, *supra* note 39, at 71 FR 3553; and NYSE/Archipelago Merger Approval Order, *supra* note 39, at 71 FR 11261.

[44] 15 U.S.C. 78f(b)(3).

[45] *See* C2 Bylaws, Article IV, Section 4.2. The Executive Committee will include the Chairman of the Board, the Chief Executive Officer (if a director), the Vice Chairman of the Board, the Lead Director, if any, at least one Representative Director and such other number of directors that the Board deems appropriate, provided that in no event will the number of Non-Industry Directors constitute less than the number of Industry Directors serving on the Executive Committee (excluding the Chief Executive Officer from the calculation of Industry Directors for such purpose). Members of the Executive Committee (other than those specified in the immediately preceding sentence) will be recommended by the Nominating and Governance Committee for approval by the Board.

[46] *See* C2 Bylaws, Article IV, Section 4.3. The Audit Committee will consist of at least three directors, all of whom will be Non-Industry Directors and all of whom will be recommended by the Nominating and Governance Committee for approval by the Board. The exact number of Audit Committee members will be determined from time to time by the Board. The Chairman of the Audit Committee will be recommended by the Nominating and Governance Committee for approval by the Board.

[47] *See* C2 Bylaws, Article IV, Section 4.4. The Compensation Committee will consist of at least three directors, all of whom will be Non-Industry Directors and all of whom will be recommended by the Nominating and Governance Committee for approval by the Board. The exact number of Compensation Committee members will be determined from time to time by the Board. The Chairman of the Compensation Committee will be recommended by the Nominating and Governance Committee for approval by the Board.

[48] *See* C2 Bylaws, Article IV, Section 4.6. The Regulatory Oversight Committee will consist of at least four directors, all of whom will be Non-Industry Directors and all of whom will be recommended by the Non-Industry Directors on the Nominating and Governance Committee for approval by the Board. The exact number of Regulatory Oversight Committee members will be determined from time to time by the Board. The Chairman of the Regulatory Oversight Committee will be recommended by the Non-Industry Directors of the Nominating and Governance Committee for approval by the Board.

[49] *See* C2 Bylaws, Article IV, Section 4.5. The Nominating and Governance Committee will consist of at least seven directors, including both Industry Directors and Non-Industry Directors, and will at all times have a majority of directors that are Non-Industry Directors. All members of the committee, except for the initial members of the committee (appointed to the committee in accordance with Section 4.1 of the Bylaws), will be recommended by the Nominating and Governance Committee for approval by the Board. The exact number of Nominating and Governance Committee members will be determined from time to time by the Board. The Chairman of the Nominating and Governance Committee will be recommended by the Nominating and Governance Committee for approval by the Board. Subject to Section 3.2 and Section 3.5 of the Bylaws, the Nominating and Governance Committee will have the authority to nominate individuals for election as directors of the Corporation.

[50] *See, e.g.,* C2 Bylaws, Article IV, Section 4.5.

[51] *See* BATS Exchange Registration Order, *supra* note 39, at 73 FR 49501; and Nasdaq Exchange Registration Order, *supra* note 39, at 71 FR 3554.

[52] *See* Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

[53] *See id. See also* Section 19(g) of the Act, 15 U.S.C. 78s(g).

[54] *See* Securities Exchange Act Release Nos. 57987 (June 18, 2008), 73 FR 36156 (June 25, 2008) (File No. S7–966) (notice of filing and order approving and declaring effective an amendment to the multiparty 17d–2 plan concerning options-related sales practice matters); and 58765 (October 9, 2008), 73 FR 62344 (October 20, 2008) (File No. 4–551) (notice of filing and order approving and declaring effective an amendment to the multiparty 17d–2 plan concerning options-related market surveillance). *See also infra* Section III.C.3 (Multiparty 17d–2 Agreements); and 17 CFR 240.17d–2.

[55] *See* Article Eleventh of the C2 Certificate of Incorporation. *See also, e.g.,* Article VII of the Second Amended and Restated Operating Agreement of the New York Stock Exchange LLC (containing a similar provision).

1. Membership and Access

a. TPH Access

Membership on C2 will be available to any registered broker or dealer that meets the standards for membership set forth in Chapter 3 of C2's proposed rules.[56] Members will access C2 through trading permits, which will not convey any ownership interest in the Exchange but will confer the ability to transact on the Exchange. There is no limit on the number of permits that C2 is authorized to issue.[57] Permits will not be transferable except in the event of a change in control of a TPH, subject to meeting certain criteria.[58] There will be two types of TPHs: (1) Market makers with certain affirmative and negative obligations and (2) regular TPHs.[59]

Each CBOE member in good standing will be eligible to obtain one trading permit on C2 regardless of the number of seats owned by that CBOE member.[60] CBOE member applicants will not be required to submit a full application for membership on C2, but rather will only need to complete selected forms concerning their election to trade on C2, consent to C2's jurisdiction, and other operational matters.[61] This waive-in process is similar to arrangements in place at other SROs.[62]

Non-CBOE members could apply for a C2 trading permit by submitting a full application to the Exchange in a manner similar to the current process for firms applying to membership on CBOE.[63] C2 will establish, and will distribute via regulatory circular, procedures that outline submission deadlines and payment of any applicable application fees.[64] Pursuant to C2's rules, every applicant must have and maintain membership in another options exchange that is registered under the Act and that is not registered solely under Section 6(g) of the Act.[65]

The Exchange will receive and review all trading permit applications, and will provide to the applicant written notice of the Exchange's determination, specifying in the case of disapproval of an application the grounds thereof.[66] The Exchange also will register and qualify associated persons of permit holders.[67] Once an applicant becomes a TPH or a person associated with a TPH, it must continue to satisfy all of the qualifications set forth in the C2 rules.[68] When the Exchange has reason to believe that a member or associated person or a member fails to meet such qualifications, the Exchange may suspend or revoke such person's membership or association.[69] Appeals from any denial, suspension, or conditional approval will be heard pursuant to the appeals process specified in Chapter 19.[70]

The Commission finds that C2's membership rules are consistent with Section 6 of the Act,[71] including Section 6(b)(2) of the Act[72] in particular, which requires that a national securities exchange have rules that provide that any registered broker or dealer or natural person associated with such broker or dealer may become a member and any person may become associated with an exchange member. The Commission notes that pursuant to Section 6(c) of the Act,[73] an exchange must deny membership to any person, other than a natural person, that is not a registered broker or dealer, any natural person that is not, or is not associated with, a registered broker or dealer, and registered broker-dealers that do not satisfy certain standards, such as financial responsibility or operational capacity. As a registered exchange, C2 must independently determine if an applicant satisfies the standards set forth in the Act, regardless of whether an applicant is a member of another SRO (*e.g.,* CBOE).[74]

b. Non-TPH Access

C2 proposes to permit access to non-TPH ''Sponsored Users'' whose access is authorized in advance by a TPH (''Sponsoring Participant'').[75] C2's proposed ''Sponsored Users'' rule is similar to rules of other SROs that provide for sponsored access.[76] Specifically, the Sponsoring Participant must agree to be responsible for all orders entered into on C2 by the Sponsored User. In addition, Sponsored Users must agree to comply with all applicable rules of C2 governing the entry, execution, reporting, clearing, and settling of orders in securities eligible for trading on C2 and the Sponsored User must agree that it will be bound by and comply with the Exchange's rules as if the Sponsored User were a Permit Holder.[77] Sponsored Participants will also be required by C2 rules to enter into a ''Sponsored User Agreement'' with their Sponsoring Permit Holder setting forth the obligations of both parties.

c. Linkage

C2 intends to become a participant in the Plan Relating to Options Order Protection and Locked/Crossed Markets or any successor plan (''Linkage Plan'').[78] If admitted as a participant to the Linkage Plan, other plan participants (including CBOE) would be able to send orders to C2 in accordance with the terms of the Linkage Plan.

C2 will incorporate by reference the Intermarket Linkage rules contained in Section E of Chapter VI of CBOE's rulebook, as such rules may be in effect from time to time. Accordingly, C2's proposed Linkage rules will include relevant definitions, establish the conditions pursuant to which members may enter Linkage orders, impose obligations on the Exchange regarding how it must process incoming Linkage

[56] *See* C2 Rule 3.1(b). If a TPH intends to transact business with the public, it will be required to obtain approval pursuant to C2 Rule 9.1 or must have been previously approved to transact business with the public by another national securities exchange. *See id.*

[57] While C2 does not anticipate reaching any capacity limits, it has proposed a rule that will allow C2, in the event of a capacity restriction, to limit access to new market makers pursuant to a filing with the Commission. *See* C2 Rule 8.1(c). This proposed rule is similar to a rule of Nasdaq. *See* Nasdaq Rule Chapter VII, Section 2(c).

[58] *See* C2 Rule 3.1(d).

[59] *See* C2 Rules 3.1 and 8.1. *See also* Exhibit E to C2's Form 1 (describing the operation of the proposed Exchange).

[60] *See* C2 Rule 3.1(c)(1).

[61] *See id.*

[62] *See, e.g.,* Nasdaq Rule 1013(a)(5)(C) (containing a similar expedited waive-in membership process for members of the Financial Industry Regulatory Authority, Inc. (''FINRA'')).

[63] *See* C2 Rule 3.1(c)(2).

[64] *See id.* The Commission notes that C2 will be required to file any such proposed fees pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder, 15 U.S.C. 78s(b) and 17 CFR 240.19b–4, respectively.

[65] *See* C2 Rule 3.1(c)(2)(G).

[66] *See* C2 Rule 3.1(c)(2)(E) and (F). The Exchange also could condition an applicant's approval for the reasons specified in C2 Rule 3.2.

[67] *See* C2 Rules 3.3 and 3.4. *See also* Amendment No. 1.

[68] *See* C2 Rule 3.2(c)(1).

[69] *See, e.g.,* C2 Rule 3.2 (Denial of and Conditions to Being a Permit Holder or an Associated Person); 3.4 (Qualification and Registration); and 3.5 (Permit Holders and Persons Associated with a Permit Holder Who Are or Become Subject to a Statutory Disqualification). *See also* Amendment No. 1.

[70] *See infra* note 117 (regarding Chapter 19). C2's Chapter 19 rules (Hearings and Review) incorporate by reference CBOE's Chapter 19 rules and C2 participants will be required to comply with CBOE Chapter 19 rules, as such rules may be in effect from time to time, as if such rules were part of the C2 rules.

[71] 15 U.S.C. 78f.

[72] 15 U.S.C. 78f(b)(2).

[73] 15 U.S.C. 78f(c).

[74] *See, e.g.,* BATS Exchange Registration Order, *supra* note 39, at 73 FR 49502; and Nasdaq Exchange Registration Order, *supra* note 39, at 71 FR 3555.

[75] *See* C2 Rule 3.15.

[76] *See, e.g.,* CBOE Rule 6.20A (Sponsored Users).

[77] *See* C2 Rule 3.15(b)(1)(B)(iii).

[78] *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4–546) (order approving the national market system Plan Relating to Options Order Protection and Locked/Crossed Markets Submitted by the Chicago Board Options Exchange, Incorporated, International Securities Exchange, LLC, The NASDAQ Stock Market LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., NYSE Amex LLC, and NYSE Arca, Inc.) (''Linkage Plan'').

orders, establish a general standard that members and the Exchange should avoid trade-throughs, establish potential regulatory liability for members that engage in a pattern or practice of trading through other exchanges, and establish obligations with respect to locked and crossed markets.

The Commission believes that C2 has proposed rules that are designed to comply with the requirements of the Linkage Plan.[79] Further, before C2 can commence operations as an exchange, C2 must become a participant in the Linkage Plan.

d. Market Makers

i. Registration of Market Makers

A TPH may register with C2 as a market maker by filing a written application with C2, which will consider an applicant's market making ability and other factors it deems appropriate in determining whether to approve an applicant's registration.[80] All market makers will be designated as specialists on C2 for all purposes under the Act and rules thereunder.[81] C2 will not limit the number of qualifying entities that may become market makers.[82] The good standing of a market maker may be suspended, terminated, or withdrawn if the conditions for approval cease to be maintained or if the market maker violates any of its agreements with C2 or any provisions of the C2 rules.[83]

The Commission finds that C2's proposed market maker qualifications requirements are consistent with the Act. In particular, C2's rules provide an objective process by which a TPH could become a market maker on C2 and provide for appropriate continued oversight by the Exchange to monitor for continued compliance by market makers with the terms of their application for such status. The Commission notes that C2's proposed market maker registration requirements are similar to those of other options exchanges.[84]

ii. Market Maker Obligations

Pursuant to C2 rules, the transactions of a market maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.[85] Among other things, a market maker must: (1) Maintain a two-sided market on a continuous basis (defined as 99% of the time) in 60% of the series of each registered class that have a time to expiration of less than nine months; [86] (2) engage in dealings for their own accounts when there is a lack of price continuity, a temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationships between options contracts of the same class; (3) compete with other market makers; (4) update quotations in response to changed market conditions; (5) maintain active markets; and (6) make markets that will be honored for the number of contacts entered.[87] C2 will impose an upper limit on the aggregate number of market makers that may quote in each product (''Class Quoting Limit'' or ''CQL''). The CQL will be set at 50 market makers, and could be increased or decreased for an existing or new product.[88] If C2 finds any substantial or continued failure by a market maker to engage in a course of dealings as specified in Rule 8.5(a), then such market maker will be subject to disciplinary action, suspension, or revocation of registration in one or more of the securities in which the market maker is registered.[89] In addition, market makers must maintain minimum net capital in accordance with Commission and C2 rules.[90] Market makers must also maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information.[91]

The Commission notes that market makers receive certain benefits for carrying out their responsibilities.[92] For example, a lender may extend credit to a broker-dealer without regard to the restrictions in Regulation T of the Board of Governors of the Federal Reserve System if the credit is used to finance the broker-dealer's activities as a specialist or market maker on a national securities exchange.[93] In addition, market makers are excepted from the prohibition in Section 11(a) of the Act.[94] The Commission believes that a market maker must have sufficient affirmative obligations, including the obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis, to justify this favorable treatment.[95] The Commission further believes that the rules of all U.S. options markets need not provide the same standards for market maker participation, so long as they impose affirmative obligations that are consistent with the Act.[96] The Commission believes that C2's market maker participation requirements impose sufficient affirmative obligations on C2 market makers and, accordingly, that C2's requirements are consistent with the Act. In particular, the Commission notes that the Act does not mandate a particular market model for exchanges, and while market makers may become an important source of liquidity on C2, they will likely not be the only source as C2 is designed to match buying and selling interest of all participants on C2.[97] The Commission therefore believes that C2's proposed structure is consistent with the Act.

2. Regulatory Independence

C2 has proposed several measures to help ensure the independence of its

[79] The Commission notes that it has approved CBOE rules to accommodate the Linkage Plan. *See* Securities Exchange Act Release No. 60551 (August 20, 2009), 74 FR 43196 (August 26, 2009) (File No. SR–CBOE–2009–040). These amended rules will be incorporated by reference into C2's rulebook. *See* C2 Rules Chapter 6, Section E (Intermarket Linkage). *See also infra* Section IV (discussing the Section 36 exemption).

[80] *See* C2 Rule 8.1(a). In considering a TPH's application for registration as a market maker on C2, the provision permitting the Exchange to consider ''such other factors as the Exchange deems appropriate'' must be applied consistent with the Act, including that the Exchange's rules must not be unfairly discriminatory.

[81] *See* C2 Rule 8.1.

[82] *See* C2 Rule 8.1(c). However, C2 may limit access to the C2 system based on system constraints, capacity restrictions, or other factors relevant to protecting the integrity of the system, pending action required to address the issue of concern. To the extent that C2 places limitations on access to the system on any TPH, such limits will be objectively determined and submitted to the Commission via a proposed rule change filed under Section 19(b) of the Act. *See id.*

[83] *See* C2 Rule 8.4(b).

[84] *See, e.g.,* Nasdaq Rules, Chapter VII, Sections 2 and 4; Boston Options Exchange Rules, Chapter VI, Section 2; and International Securities Exchange Rule 804.

[85] *See* C2 Rule 8.5(a).

[86] While not specified in the rule text, the Commission notes that a market maker's quote would need to be represented by a size of at least 1 contract.

[87] *See* C2 Rule 8.5(a) and Amendment No. 1.

[88] *See* C2 Rule 8.11. Any such changes to the CQL would be announced by C2 in an Information Circular, and would be filed with the Commission pursuant to Section 19(b)(1) of the Act (15 U.S.C. 78s(b)). *See* C2 Rule 8.11(b) and (c).

[89] *See* C2 Rule 8.5(c).

[90] *See* C2 Rule 8.4(a)(1).

[91] *See* C2 Rule 8.9. The Commission notes that, as with any rule of an exchange, C2 will be responsible, pursuant to Sections 6 and 19 of the Act (15 U.S.C. 78f and 15 U.S.C. 78s, respectively), for enforcing compliance with Rule 8.9, which will require C2 to conduct periodic examinations of its market maker members with this rule.

[92] *See, e.g.,* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521, 14526 (March 18, 2008) (File No. SR–NASDAQ–2007–004) (approval order concerning the establishment of the NASDAQ Options Market LLC (''NOM'')) (''NOM Approval Order'') (discussing the benefits and obligations of market makers).

[93] 12 CFR 221.5(c)(6).

[94] 15 U.S.C. 78k(a).

[95] *See* NOM Approval Order, *supra* note 92, at 73 FR 14526.

[96] *See id.*

[97] *See, e.g.,* NOM Approval Order, *supra* note 92, at 73 FR 14527 (discussing NOM's single market maker requirement).

regulatory function from its market operations and other commercial interests. The regulatory operations of C2 will be monitored by the Regulatory Oversight Committee (''ROC''). The ROC will consist of at least four directors, all of whom will be Non-Industry Directors and all of whom will be recommended by the Non-Industry Directors on the Nominating and Governance Committee for approval by the Board. The ROC generally will be responsible for monitoring the adequacy and effectiveness of the Exchange's regulatory program, assessing the Exchange's regulatory performance, and assisting the Board in reviewing the Exchange's regulatory plan and the overall effectiveness of the Exchange's regulatory functions.[98] Further, a Chief Regulatory Officer of the Exchange will have general supervision over the Exchange's regulatory operations.[99] In addition, any revenues received by the Exchange from fees derived from its regulatory function or regulatory penalties will not be used for non-regulatory purposes.[100]

The Commission continues to be concerned about the potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interests that could exist if an exchange were to otherwise become affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.[101] To this end, C2 Rule 3.2(f) provides that without the prior approval of the Commission, C2 or any entity with which it is affiliated will not directly acquire or maintain an ownership interest in a C2 member, and a C2 member will not be or become an affiliate of C2 or an affiliate of C2.[102]

The Commission believes that the Exchange's proposed provisions relating to the regulatory independence of the Exchange are consistent with the Act, particularly with Section 6(b)(1), which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act.[103]

3. Multiparty 17d–2 Agreements

Section 19(g)(1) of the Act[104] requires every SRO to examine its members and persons associated with its members and to enforce compliance with the Federal securities laws and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) of the Act.[105] Section 17(d) was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication with respect to members of more than one SRO (''common members'').[106] Rule 17d–2 of the Act permits SROs to propose joint plans allocating regulatory responsibilities concerning common members.[107] These agreements, which must be filed with and approved by the Commission, generally cover such regulatory functions as personnel registration and sales practices. Commission approval of a 17d–2 plan relieves the specified SRO of those regulatory responsibilities allocated by the plan to another SRO.[108] Many SROs have entered into 17d–2 agreements.[109] C2 currently does not intend to enter into any bilateral 17d–2 agreements, but rather will retain direct responsibility for all aspects of its operations as an SRO through the use of CBOE ''dual hat'' employees.[110] C2 does, however, plan to join the existing multiparty agreements concerning intermarket options surveillance.[111] Under these agreements, the examining SROs will examine firms that are common members of C2 and the particular examining SRO for compliance with certain provisions of the Act, certain rules and regulations adopted thereunder, and certain C2 rules.

4. Discipline and Oversight of Members

As noted above, one prerequisite for Commission approval of an exchange's application for registration is that a proposed exchange must be organized and have the capacity to carry out the purposes of the Act. Specifically, an exchange must be able to enforce compliance by its members and persons associated with its members with Federal securities laws and the rules of the exchange.[112]

C2 proposed to incorporate by reference[113] Chapter 17 of the CBOE rulebook relating to member discipline. As such, C2 members will be required to comply with Chapter 17 of the CBOE rulebook as such rules may be in effect from time to time, as if such rules were part of the C2 rulebook. In addition, C2 proposes to use ''dual hat'' employees, *i.e.,* current CBOE employees who will also serve in a similar capacity for C2, to administer its disciplinary and oversight functions. These C2 employees will, among other things, investigate potential securities laws violations, issue complaints, conduct hearings, and issue disciplinary decisions pursuant to C2 rules.[114]

Upon petition, appeals from disciplinary decisions rendered by C2 will be heard by the Board (or a committee of the Board composed of at least three directors whose decision will need to be ratified by the Board) and the Board's decision will be final.[115] In addition, the Board may on its own initiative order review of a disciplinary decision.[116]

Appeal of a denial, suspension, or termination of a trading permit will be heard by the Exchange's Appeals Committee.[117] Decisions of the Appeals

[98] *See* C2 Bylaws Article IV, Section 4.6.

[99] *See* Cover letter accompanying Amendment No. 1 (representing that, while not specified as an officer in the proposed Bylaws, C2 will have a Chief Regulatory Officer).

[100] *See* C2 Rule 2.3 and Amendment No. 1.

[101] *See, e.g.,* NYSE/Archipelago Merger Approval Order, *supra* note 39, at 71 FR 11263.

[102] *See* C2 Rule 3.2(f). The rule would not prohibit a TPH from acquiring an equity interest in CBSX LLC and would not prohibit a TPH from being affiliated with One Chicago, LLC under limited conditions. *See id.*

[103] 15 U.S.C. 78f(b)(1).

[104] 15 U.S.C. 78s(g)(1).

[105] 15 U.S.C. 78q(d).

[106] *See* Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976) (''Rule 17d–2 Adopting Release'').

[107] 17 CFR 240.17d–2.

[108] *See* Rule 17d–2 Adopting Release, *supra* note 106.

[109] *See, e.g.,* Securities Exchange Act Release Nos. 59218 (January 8, 2009), 74 FR 2143 (January 14, 2009) (File No. 4–575) (FINRA/Boston Stock Exchange, Inc.); 58818 (October 20, 2008), 73 FR 63752 (October 27, 2008) (File No. 4–569) (FINRA/BATS Exchange, Inc.); 55755 (May 14, 2007), 72 FR 28057 (May 18, 2007) (File No. 4–536) (National Association of Securities Dealers, Inc. (''NASD'') n/k/a FINRA and CBOE concerning the CBOE Stock Exchange); 55367 (February 27, 2007), 72 FR 9983 (March 6, 2007) (File No. 4–529) (NASD/International Securities Exchange, LLC); and 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (File No. 4–517) (NASD/Nasdaq).

[110] *See supra* text accompanying note 55 (regarding dual hat employees).

[111] *See* Securities Exchange Act Release Nos. 57987 (June 18, 2008), 73 FR 36156 (June 25, 2008) (File No. S7–966) (notice of filing and order approving and declaring effective an amendment to the multiparty 17d–2 plan concerning options-related sales practice matters) and 58765 (October 9, 2008), 73 FR 62344 (October 20, 2008) (File No. 4–551) (notice of filing and order approving and declaring effective an amendment to the multiparty 17d–2 plan concerning options-related market surveillance). *See also* Cover letter accompanying Amendment No. 1 (representing that C2 intends to join the options multiparty agreements).

[112] *See* 15 U.S.C. 78f(b)(1).

[113] *See infra* Section IV (discussing an exemption from Section 19(b) of the Act for CBOE rules incorporated by reference by C2). Citations to incorporated CBOE rules herein are referred to as ''C2'' rules.

[114] *See* C2 Rules 17.2—17.9.

[115] *See* C2 Rule 17.10(b).

[116] *See* C2 Rule 17.10(c).

[117] *See* C2 Rule 19.4. The Commission notes that C2's Chapter 19 rules (Hearings and Review) incorporate by reference CBOE's Chapter 19 rules and C2 participants will be required to comply with CBOE Chapter 19 rules, as such rules may be in effect from time to time, as if such rules were part of the C2 rules. Further, the Commission notes that C2 will establish its own Appeals Committee that includes C2 participants. *See* Cover letter accompanying Amendment No. 1 (representing that C2 will establish its own Appeals Committee).

Committee will be made in writing and will be sent to the parties to the proceeding.[118] The decisions of the Appeals Committee will be subject to review by the Board, on its own motion, or upon written request by the aggrieved party, the President of C2, or by the Chairman of the committee whose action was subject to the prior review of the Appeals Committee.[119] The Board, or a committee of the Board, will have sole discretion to grant or deny the request.[120] The Board, or a committee of the Board, will conduct the review of the Appeals Committee's decision and the Board may affirm, reverse, or modify the Appeals Committee's decision.[121]

C2 rules codify the Exchange's disciplinary jurisdiction over its members, thereby facilitating its ability to enforce its members' compliance with its rules and the Federal securities laws.[122] The Exchange's rules also permit it to sanction members for violations of its rules and violations of the Federal securities laws by, among other things, expelling or suspending members; limiting members' activities, functions, or operations; fining or censuring members; suspending or barring a person from being associated with a member; or any other appropriate sanction.[123]

The Commission finds that C2's proposed disciplinary and oversight rules and structure are consistent with the requirements of Sections 6(b)(6) and 6(b)(7) of the Act [124] in that they provide fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the proposed C2 rules are designed to provide the Exchange with the ability to comply, and with the authority to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of C2.[125]

D. The C2 Trading System

1. Order Display, Execution, and Priority

C2 will operate a fully-automated electronic platform for trading standardized options with a continuous, automated matching function. Liquidity will be derived from market maker quotes as well as orders to buy and sell submitted to C2 electronically by users (collectively, ''Participants''). There will be no physical trading floor.

All orders/quotes submitted to C2 will be displayed unless designated otherwise by the Participant submitting the order (*e.g.,* the non-displayed portion of a Reserve Order). The Exchange has represented that any top-of-book feed (or comparable market data feed) that it makes available to C2 members will also be made available to other market participants.[126]

Non-displayed orders will not be displayed to any Participants and will not have time priority over displayed orders.[127] While orders will generally be submitted on an anonymous basis, C2 will allow Participants on a voluntary basis to submit Attributable Orders, which will display the firm's identity along with the order to all market participants simultaneously.[128] In addition, Participants will be able to submit the following types of orders to C2: Day; Good 'til Canceled; Contingency (including All-Or-None, Immediate Or Cancel, Market On Close, Fill Or Kill, Stop, and Reserve); and Complex Orders (including Spreads, Combination, Straddle, Strangle, Ratio, Butterfly, Box/Roll, Collar and Risk Reversal).[129] The Commission notes that these order types are substantially similar to the order types offered by CBOE.[130]

The Commission believes that C2's proposed order types are consistent with the Act. Among other things, the Commission believes that C2's proposed order types appropriately provide priority to displayed orders and portions of orders over non-displayed orders and portions of orders, thereby encouraging the posting of displayed orders, which contribute visible depth to the displayed market.[131]

After the open, trades on C2 will execute when a buy order/quote and a sell order/quote match on C2's order book. All orders will be matched according to one of two priority structures, as determined by C2 on a class-by-class basis: (1) Price-time priority or (2) pro-rata priority.[132] In addition, public customer and/or market turner priority [133] overlays will also be available at C2's discretion on a series-by-series basis.[134] In the event that less than the full size of an order is executed, the unexecuted portion of the order will continue to reside on C2's order book. The non-reserve portion of any partially-executed order will retain priority at the same price. Regardless of the priority structure, Contingency Orders will be last in priority because they are not displayed.

C2 will limit a Participant's ability to trade as principal with an order it represents as agent, unless the agency order is first given the opportunity to interact with other trading interest on the Exchange. Specifically, in order to trade as principal with an agency order a Participant represents, either: (1) The agency order is first exposed on C2 for at least 1 second; [135] (2) the Participant has been bidding or offering for at least 1 second prior to receiving an agency order that is executable against its bid or offer; or (3) the Participant uses the Automated Improvement Mechanism or Solicitation Auction Mechanism.[136]

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[118] *See* C2 Rule 19.4(e).

[119] *See* C2 Rule 19.5(a).

[120] *See id.*

[121] *See* C2 Rule 19.5(b). Decisions concerning denial of membership in an exchange are subject to review by the Commission.

[122] *See generally* C2 Rule 17.1.

[123] *See* C2 Rule 17.11.

[124] 15 U.S.C. 78f(b)(6) and (b)(7), respectively.

[125] *See* Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

[126] *See* Cover letter accompanying Amendment No. 1 (representing that the Exchange will offer the data feed to all market participants). The Exchange noted that it may adopt fees for non-member access to a C2 data feed. *See id.* The Commission notes that C2 would be required to file any such proposed fees pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder, 15 U.S.C. 78s(b) and 17 CFR 240.19b–4, respectively.

[127] *See* C2 Rule 6.12(a).

[128] NOM offers a similar attributable order type. *See* NOM Approval Order, *supra* note 92, at 73 FR 14528 (discussing NOM's attributable order type).

[129] *See* C2 Rule 6.10 (Order Types Defined) for additional information on each order type. *See also* Amendment No. 1 (revising the definition of Ratio Order).

[130] *See* CBOE Rules 6.53 and 6.53C.

[131] *See, e.g.,* Securities Exchange Act Release Nos. 37619A (September 6, 1996), 61 FR 48290, 48294 (September 12, 2006) (File No. S7–30–95) (adopting Rule 11Ac1–4) (''The Commission believes that limit orders are a valuable component of price discovery. The uniform display of such orders will encourage tighter, deeper, and more efficient markets.''); and 57441 (March 6, 2008), 73 FR 13267 (March 12, 2008) (File No. SR–ISE–2007–95) (noting the incentive for market participants to display their trading interest in the context of reserve orders).

[132] Under pro rata priority, orders will be prioritized according to price. If there are two or more orders at the best price then trades will be allocated proportionally according to size. *See* C2 Rule 6.12(a)(2).

[133] C2 defines a ''market turner'' as a party that was the first to enter an order or quote at a better price than the previous best disseminated Exchange price and the order/quote is continuously in the market until it trades. The market turner priority at a given price could only be established after the opening rotation and would remain with the order once it is earned and last until the conclusion of the trading session. *See* C2 Rule 6.12(b)(2).

[134] C2 will issue a Regulatory Circular periodically that will specify which series are subject to these additional priorities, and will update the Regulatory Circular any time it makes a change to any of the designated priorities. *See* C2 Rule 6.12(b).

[135] All-or-none contingency orders on C2 will not be deemed ''exposed'' for purposes of Rule 6.50. *See* C2 Rule 6.50(c) and Amendment No. 1.

[136] *See* C2 Rule 6.50. *See also* proposed C2 Rule 1.1 (defining NBBO as the national best bid or offer). For purposes of the order exposure requirements contained in C2 Rule 6.50, all-or-none orders are not deemed exposed. *See* C2 Rule 6.50(c). The 1 second exposure period is consistent with the operation of the CBOE Hybrid System. *See* CBOE Rule 6.45A Interpretations and Policies .01 and .02

C2 may offer a Simple Auction Liaison (''SAL'') system to auction eligible agency orders and provide the opportunity for price improvement better than the NBBO.[137] C2 would designate the eligible order size, order type, and origin code (*i.e.,* public customer, non-market maker broker-dealer, or market maker order), and classes in which SAL may be activated. For classes in which SAL is activated, SAL will automatically initiate an auction process for a non-contingency order that is marketable against C2's NBBO quote, except when C2's disseminated quote on the opposite side does not contain sufficient market-maker quotation size to satisfy the entire order. Prior to commencing an auction, SAL would stop the order at the NBBO against the market maker quotes displayed at the NBBO on the opposite side. SAL auctions will last for a period of time not to exceed 2 seconds. Auction responses could be submitted by any Participant.[138] At the end of the auction, the agency order will first be allocated against public customer interest at the best price. Any remaining balance of the agency order will then be allocated pursuant to the matching algorithm in effect for the class.[139]

The Automated Improvement Mechanism (''AIM'') will allow Participants to cross an agency order they hold against principal interest or a solicited order provided that they first expose the agency order to a 1-second auction.[140] To be eligible for an AIM auction, at least three market makers must be quoting in the applicable series.[141] If the agency order is greater than 50 contracts, the Participant must stop the agency order at the NBBO (or the order's limit price if better), and if it is less than 50 contracts, the Participant must stop the agency order at the NBBO improved by one minimum increment (or the order's limit price if better).[142] When initiating an auction, a Participant submitting an agency orders to AIM must either indicate a single-price at which it seeks to cross the order or must indicate that it will match as principal the price and size of all auction responses.[143] Request for responses will then be sent to any Participant that has elected to receive such requests, and the exposure period will last for 1 second.[144] If the auction attracts responses (which may be submitted by Participants),[145] the agency order will be allocated at the best price(s), and public customer orders in the book will have priority.[146] If the best price equals the initiating Participant's single-price submission, then the initiating Participant will be allocated 40% of the order (or 50% in the case of a single price submission where only one other market maker matches the price).[147] C2's proposed AIM is based on CBOE's AIM rule.[148]

C2's Solicitation Auction Mechanism (''SAM'') is based on CBOE's SAM.[149] The SAM will allow Participants to execute agency orders of 500 or more contracts against solicited orders after a 1-second auction exposure. The orders must be designated as all-or-none, and the initiating Participant must signify a single price at which it seeks to cross the order. At the conclusion of the auction, the agency order will trade with the solicited order provided that the trade price of the agency order is equal to or better than C2's best bid or offer.[150] Further, if there are any public customer orders resting in the book on the opposite side at the execution price with sufficient size to fill the agency order, then the agency order will be executed against the public customer interest and the solicited order will be cancelled. If the public customer order lacks sufficient size, then the agency order and solicited order will be cancelled. Likewise, if the auction generates a response at an improved price that contains sufficient size to fill the agency order, then the agency order will execute against the improved price and the solicited order will be cancelled.[151]

C2 also will make available certain additional order processing and matching features. For example, C2 will maintain a complex order book (''COB'') that permits any C2 market participant to enter complex orders into the COB to automatically execute against marketable orders and quotes resting in the book or against other complex orders in the COB.[152] In addition, C2 will offer an optional complex order auction that will allow orders, prior to routing to the COB, to be auctioned for price improvement through an automated request for response auction process, subject to certain conditions.[153] C2's complex order execution rule is based on CBOE's rule.[154]

Finally, C2 has proposed a rule prohibiting trading on knowledge of imminent undisclosed solicited transactions, otherwise known as the ''anticipatory hedge'' rule.[155] Pursuant to this rule, it will be considered conduct inconsistent with just and equitable principles of trade and a violation of Rule 4.1 for any Participant or person associated with a Participant, who has knowledge of all material terms and conditions of an original order and a solicited order, including a facilitation order, that matches the original order's limit, the execution of which are imminent, to enter, based on such knowledge, an order to buy or sell an option of the same class as an option that is the subject of the original order, or an order to buy or sell the security underlying such class, or an order to buy or sell any related instrument until either (i) all the terms and conditions of the original order and any changes in the terms and conditions of the original order of which that member or associated person has knowledge are disclosed to the trading crowd or (ii) the solicited trade can no longer reasonably be considered imminent in view of the passage of time since the solicitation.

For the reasons discussed above, the Commission believes that C2's proposed display, execution, and priority rules

(regarding the 1 second exposure on the CBOE Hybrid System).

[137] *See* C2 Rule 6.14. C2's SAL is based on CBOE's SAL rule. *See* CBOE Rule 6.13A.

[138] *See* C2 Rule 6.14(b) and Amendment No. 1.

[139] *See* C2 Rule 6.14. *See also* CBOE Rule 6.13A.

[140] *See* C2 Rule 6.51.

[141] *See* C2 Rule 6.51(a)(4).

[142] *See* C2 Rule 6.51(a)(2) and (3).

[143] *See* C2 Rule 6.51(b)(1).

[144] *See id.*

[145] *See* C2 Rule 6.51(b)(1)(D) and Amendment No. 1.

[146] *See* C2 Rule 6.51(b)(3) and Amendment No. 1.

[147] *See id.*

[148] *See* C2 Rule 6.51. *See also* CBOE Rule 6.74A.

[149] *See* C2 Rule 6.52. *See also* CBOE Rule 6.74B.

[150] *See* C2 Rule 6.52(b)(2)(A)(i). If the trade would take place at a price outside of the C2 best bid or offer, then the agency order and solicited order would cancel. *See id.*

[151] *See* C2 Rule 6.52(b)(2)(A)(ii)–(iii). If the response does not contain sufficient size, then the agency order will trade with the solicited order. *See id.*

[152] *See* C2 Rule 6.13(b). *See also* C2 Rule 6.12(g) and Amendment No. 1 (regarding complex order priority). Orders entered by any C2 market participant also may rest in the COB.

[153] *See* C2 Rule 6.13(c). *See also* C2 Rule 6.12(g) and Amendment No. 1 (a complex order may be executed at a net debit or credit price without giving priority to equivalent bids (offers) in the individual series legs that are represented in the System provided at least one leg of the order betters the best corresponding public customer bid (offer) in the system by at least one minimum trading increment or, if COB or COA are activated for all market participants in the subject option class, a $0.01 increment to be determined by C2 on a class-by-class basis); and C2 Rule 4.18 (prohibiting the misuse of material, nonpublic information as such would be applicable in the context of preventing the disclosure of nonpublic information about a complex order auction).

[154] *See* CBOE Rule 6.53C. As on CBOE, on C2, a member seeking to trade with its customer's complex order would be required to comply with C2 Rule 6.50(a), and a member seeking to cross its customer's complex order with solicited orders would be required to comply with C2 Rule 6.50(b). In addition, the complex order priority provision in C2 Rule 6.12(g) will apply to complex orders.

[155] *See* C2 Rule 6.55. *See also* Amendment No. 1 (containing the proposed rule).

are consistent with the Act. In particular, the Commission finds that the proposed rules are consistent with Section 6(b)(5) of the Act,[156] which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and to not permit unfair discrimination between customers, issuers, or dealers. The Commission also finds that the proposed rules are consistent with Section 6(b)(8) of the Act,[157] which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, the Commission believes that the proposed matching mechanisms should facilitate the prompt execution of orders, while providing Participants with an opportunity to compete for exposed bids and offers.[158]

2. Opening

C2 will employ an opening process that is designed to match the greatest number of pending buy and sell orders.[159] Prior to opening a series, C2 will make available to all Participants the expected opening price and size, which should help attract additional orders that, in turn, could offset any imbalances at the open.[160] After the start of trading in the underlying security, the Exchange will open each series at a price that executes the greatest amount of pre-opening interest and that does not trade-through the NBBO (if one exists).[161] The Commission believes that C2's opening rules are designed to conduct the opening on C2 in a fair and orderly fashion and are consistent with the Act.

3. Obvious and Catastrophic Errors

C2 proposed an obvious and catastrophic error rule based on the corresponding rule of the International Securities Exchange, LLC.[162] The Commission believes that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates an ''obvious'' or ''catastrophic'' error may exist, suggesting that it is unlikely that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether an error has occurred should be based on specific and objective criteria and subject to specific and objective procedures.[163] The Commission believes that C2's proposed obvious error rule provides clear and objective standards and procedures for determining whether an obvious error has occurred, is consistent with the Act, and is substantively the same as obvious error rules previously approved by the Commission for other exchanges.[164]

4. Section 11(a) of the Act

Section 11(a)(1) of the Act[165] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, ''covered accounts'') unless an exception applies. Rule 11a2–2(T) under the Act,[166] known as the ''effect versus execute'' rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2–2(T)(a)(2)'s conditions, a member: (i) May not be affiliated with the executing member; (ii) must transmit the order from off the exchange floor; (iii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution;[167] and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission, C2 requests that the Commission concur with C2's conclusion that Participants that enter orders into C2 satisfy the requirements of Rule 11a2–2(T).[168] For the reasons set forth below, the Commission believes that Participants entering orders into C2 would satisfy the conditions of the Rule.

The Rule's first condition is that the order be executed by an exchange member who is unaffiliated with the member initiating the order.[169] The Commission has stated that this requirement is satisfied when automated exchange facilities, such as the C2 system, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.[170] C2 has represented that the design of the C2 system ensures that no member has any special or unique trading advantage in the handling of its orders after transmitting its orders to C2.[171] Based on C2's representation, the Commission believes that the C2 system satisfies this requirement.

Second, the Rule requires that orders for covered accounts be transmitted from off the exchange floor.[172] The C2 system receives orders electronically through remote terminals or computer-

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[156] 15 U.S.C. 78f(b)(5).

[157] 15 U.S.C. 78f(b)(8).

[158] *See, e.g.,* Securities Exchange Act Release No. 58088 (July 2, 2008), 73 FR 39747 (July 10, 2008) (File No. CBOE–2008–16) (order approving a proposal to reduce certain order exposure times).

[159] C2 will accept pre-opening orders. *See* C2 Rule 6.11(a).

[160] *See* C2 Rule 6.11(a) and Amendment No. 1.

[161] *See* C2 Rule 6.11.

[162] *See* C2 Rule 6.15 and Amendment No. 1. *See also* International Stock Exchange Rule 720. With respect to no bid series, C2's rule provides that transactions in series quoted no bid and $0.05 or less offer can be nullified provided, among other things, that at least one strike price below (for calls) or above (for puts) in the same options class was quoted zero bid and $0.05 or less offer at the time of execution. ISE Rule 720 requires two such strikes below (for calls) or above (for puts). *See* Securities Exchange Act Release No. 59548 (March 10, 2009), 74 FR 11147 (March 16, 2009) (File No. SR–ISE–2009–10) (notice of filing and immediate effectiveness of proposed rule change to amend ISE's obvious error rule). C2's rule is similar to NYSE Arca Rule 6.87 (Obvious Errors and Catastrophic Errors) in that it only provides for one strike. *See also* CBOE Rule 6.25 (Nullification and Adjustment of Equity Options Transactions).

[163] *See* NOM Approval Order, *supra* note 92, at 73 FR 14532.

[164] *See, e.g.,* Securities Exchange Act Release No. 57398 (February 28, 2008), 73 FR 12240 (March 6, 2008) (File No. SR–ISE–2007–112) (order approving amendments to ISE Rule 720).

[165] 15 U.S.C. 78k(a)(1).

[166] 17 CFR 240.11a2–2(T).

[167] The member may, however, participate in clearing and settling the transaction. *See* 1978 Release, *infra* note 173.

[168] *See* Letter from Angelo Evangelou, Assistant General Counsel, CBOE, to Elizabeth King, Associate Director, Division of Trading and Markets, Commission, dated October 16, 2009 (''C2 11(a) Letter'').

[169] 17 CFR 240.11a2–2(T)(a)(2)(i).

[170] *See, e.g.,* NOM Approval Order, *supra* note 92, at note 269 (citing to the 1979 Release). In considering the operation of automated execution systems operated by an exchange, the Commission noted that while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* 1979 Release, *infra* note 173.

[171] *See* C2 11(a) Letter, *supra* note 168.

[172] 17 CFR 240.11a2–2(T)(a)(2)(ii).

to-computer interfaces. In the context of other automated trading systems, the Commission has found that the off-floor transmission requirement is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.[173] Because the C2 system receives orders electronically through remote terminals or computer-to-computer interfaces, the Commission believes that the C2 system satisfies the off-floor transmission requirement.[174]

Third, the Rule requires that the member not participate in the execution of its order.[175] C2 represented that at no time following the submission of an order is a Participant able to acquire control or influence over the result or timing of an order's execution. According to C2, the execution of a member's order is determined solely by what other orders, bids, or offers are present in the C2 system at the time the Participant submits the order and on the priority of those orders, bids, and offers.[176] Based on these representations, the Commission believes that a Participant does not participate in the execution of an order submitted to the C2 system.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract referring to Section 11(a) of the Act and Rule 11a2–2(T).[177] Participants trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.[178]

E. Listing Procedures

C2 will incorporate by reference CBOE's listing rules for options.[179] As such, the Commission finds that C2's proposed initial and continued listing rules, which are based on CBOE rules previously approved by the Commission, are consistent with the Act, including Section 6(b)(5), in that they are designed to protect investors and the public interest and to promote just and equitable principles of trade. The Commission notes that, before beginning operation, C2 will need to become a participant in the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options Submitted Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (''OLPP''). In addition, before beginning operation, C2 will need to become a participant in the Options Clearing Corporation.

IV. Exemption From Section 19(b) of the Act With Regard to CBOE Rules Incorporated by Reference

C2 proposes to incorporate by reference certain CBOE rules as C2 rules, including Chapters 4 (Business Conduct), 5 (Securities Dealt In), 6 Section E (Intermarket Linkage), 9 (Doing Business with the Public), 10 (Closing Transactions), 11 (Exercises and Deliveries), 12 (Margins), 13 (Net Capital Requirements), 15 (Records, Reports and Audits), 16 (Summary Suspension by Chairman of the Board or Vice Chairman of the Board), 17 (Discipline), 18 (Arbitration), 19 (Hearings and Review), and 24 (Index Options). In each Chapter including incorporated rules, C2 states that these such rules ''as such rules may be in effect from time to time, shall apply to C2 and are hereby incorporated into this Chapter'' and that C2 members shall comply with a C2 rule by complying with the CBOE rules incorporated by reference ''as if such rules were part of the C2 Rules.'' [180] In connection with its proposal to incorporate certain CBOE rules by reference, C2 requested, pursuant to Rule 0–12,[181] an exemption under Section 36 of the Act [182] from the rule filing requirements of Section 19(b) of the Act for changes to those C2 rules that are affected solely by virtue of a change to a cross-referenced CBOE rule. C2 proposes to incorporate by reference categories of rules (rather than individual rules within a category) that are not trading rules. C2 also agrees to provide written notice to its members whenever CBOE proposes a rule change to a CBOE rule that C2 has incorporated by reference.[183]

Using its authority under Section 36 of the Act, the Commission previously exempted several other SROs from the requirement to file proposed rule changes under Section 19(b) of the Act.[184] Each such exempt SRO agreed to be governed by the incorporated rules, as amended from time to time, but is not required to file a separate proposed rule

[173] *See, e.g.,* NOM Approval Order, *supra* note 92, at 73 FR 14538; Nasdaq Exchange Registration Order, *supra* note 39, at 71 FR 3560; and Securities Exchange Act Release Nos. 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (File No. SR–BSE–2002–15) (order approving the rules of the Boston Options Exchange); 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (File No. SR–PCX–00–25) (order approving the Archipelago Exchange as an electronic trading facility of the Pacific Exchange (''PCX'')); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (File Nos. SR–NYSE–90–52 SR–NYSE–90–53) (regarding NYSE's Off-Hours Trading Facility); 15533 (January 29, 1979), 44 FR 6084 (January 31, 1979) (File No. S7–163) (regarding the American Stock Exchange Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX Communications and Execution System, and the Philadelphia Stock Exchange's Automated Communications and Execution System (''1979 Release'')); and 14563 (March 14, 1978) 43 FR 11542 (March 17, 1978) (File No. S7–163) (regarding the NYSE's Designated Order Turnaround System (''1978 Release'')).

[174] *See, e.g.,* NOM Approval Order, *supra* note 92, at 73 FR 14538–39.

[175] 17 CFR 240.11a2–2(T)(a)(iii).

[176] *See* C2 11(a) Letter, *supra* note 168. The Participant may cancel or modify the order, or modify the instruction for executing the order, but only from off the floor. The Commission has stated that the non-participation requirement is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. *See* 1978 Release, *supra* note 173 (stating that the ''non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor'').

[177] 17 CFR 240.11a2–2(T)(a)(2)(iv). In addition, Rule 11a2–2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member in connection with effecting transactions for the account during the period covered by the statement. *See* 17 CFR 240.11a2–2(T)(d). *See also* 1978 Release, *supra* note 173 (stating ''[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests.'').

[178] *See* C2 11(a) Letter, *supra* note 168.

[179] *See infra* Section IV (discussing an exemption from Section 19(b) of the Act for CBOE rules incorporated by reference by C2). *See also* C2 Rules Chapter 5.

[180] *See, e.g.,* C2 Rules Chapter 4 (Business Conduct).

[181] *See* 17 CFR 240.0–12.

[182] 15 U.S.C. 78mm.

[183] *See* Letter from Angelo Evangelou, Assistant General Counsel, CBOE, to Elizabeth M. Murphy, Secretary, Commission, dated October 16, 2009.

[184] *See, e.g.,* Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004) (order granting application for exemptions pursuant to Section 36(a) of the Act by the American Stock Exchange LLC, the International Securities Exchange, Inc., the Municipal Securities Rulemaking Board, the Pacific Exchange, Inc., the Philadelphia Stock Exchange, Inc., and the Boston Stock Exchange, Inc.); and Nasdaq Exchange Registration Order, *supra* note 39, at 71 FR 3565–66.

change with the Commission each time the SRO whose rules are incorporated by reference seeks to modify its rules. In addition, each such exempt SRO incorporated by reference only regulatory rules (*i.e.,* margin, suitability, arbitration), not trading rules, and incorporated by reference whole categories of rules. Each such exempt SRO had reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO in order to provide its members with notice of a proposed rule change that affects their interests, so that they would have an opportunity to comment on it.

The Commission is granting C2's request for exemption, pursuant to Section 36 of the Act, from the rule filing requirements of Section 19(b) of the Act with respect to the rules that C2 proposes to incorporate by reference. This exemption is conditioned upon C2 providing written notice to its members whenever CBOE proposes to change a rule that C2 has incorporated by reference. The Commission believes that this exemption is appropriate in the public interest and consistent with the protection of investors because it will promote more efficient use of Commission and SRO resources by avoiding duplicative rule filings based on simultaneous changes to identical rules sought by more than one SRO. Consequently, the Commission grants C2's exemption request.

V. Conclusion

It is ordered that the application of C2 for registration as a national securities exchange be, and hereby is, granted.

It is further ordered that operation of C2 is conditioned on the satisfaction of the following requirements:

A. *Participation in National Market System Plans Relating to Options Trading.* C2 must join: (1) The Plan for the Reporting of Consolidated Options Last Sale Reports and Quotation Information (*i.e.,* the Options Price Reporting Authority); (2) the OLPP; (3) the Linkage Plan; [185] and (4) the Plan of the Options Regulatory Surveillance Authority.

B. *Participation in Multiparty 17d–2 Plans.* C2 must become a party to the multiparty 17d–2 agreements concerning sales practice regulation and market surveillance.[186]

C. *Participation in the Options Clearing Corporation.* C2 must join the Options Clearing Corporation.

D. *Participation in the Intermarket Surveillance Group.* C2 must join the Intermarket Surveillance Group.

E. *Examination by the Commission.* C2 must have, and represent in a letter to the staff in the Commission's Office of Compliance Inspections and Examinations that it has, adequate procedures and programs in place to effectively regulate C2.

It is further ordered, pursuant to Section 36 of the Act,[187] that C2 shall be exempt from the rule filing requirements of Section 19(b) of the Act [188] with respect to the CBOE rules C2 proposes to incorporate by reference into C2's rules, subject to the conditions specified in this Order.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–29877 Filed 12–15–09; 8:45 am]

BILLING CODE 8011–01–P

[185] *See* Linkage Plan, *supra* note 78.

[186] *See supra* note 111 (citing to the most recent versions of the two plans). *See also infra* Section III.C.3 (Multiparty 17d–2 Agreements); and 17 CFR 240.17d–2.

[187] 15 U.S.C 78mm.

[188] 15 U.S.C 78s(b).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–2959; File No. S7–29–09]

Approval of Investment Adviser Registration Depository Filing Fees

AGENCY: Securities and Exchange Commission.

ACTION: Order; request for comment.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is, for one year, reducing Investment Adviser Registration Depository annual and initial filing fees that will be charged beginning January 1, 2010 through December 31, 2010.

DATES: *Effective Date:* The order will become effective on January 1, 2010.

Comment Due Date: Comments should be received on or before February 1, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/other.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–29–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–29–09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/other.shtml).* Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Keith Kanyan, IARD System Manager, at 202–551–6737, or *Iarules@sec.gov,* Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: Section 204(b) of the Investment Advisers Act of 1940 (''Advisers Act'') authorizes the Commission to require investment advisers to file applications and other documents through an entity designated by the Commission, and to pay reasonable costs associated with such filings.[1] In 2000, the Commission designated the Financial Industry Regulatory Authority Regulation, Inc. (''FINRA'') as the operator of the Investment Adviser Registration Depository (''IARD'') system. At the same time, the Commission approved, as reasonable, filing fees.[2] The Commission later required advisers registered or registering with the SEC to file Form ADV through the IARD.[3] Over 11,000 advisers now use the IARD to register with the SEC and make state notice filings electronically through the Internet.

Commission staff, representatives of the North American Securities Administrators Association, Inc. (''NASAA''),[4] and representatives of

[1] 15 U.S.C. 80b–4(b).

[2] Designation of NASD Regulation, Inc., to Establish and Maintain the Investment Adviser Registration Depository; Approval of IARD Fees, Investment Advisers Act Release No. 1888 (July 28, 2000) [65 FR 47807 (Aug. 3, 2000)]. FINRA was formerly known as NASD.

[3] Electronic Filing by Investment Advisers; Amendments to Form ADV, Investment Advisers Act Release No. 1897 (Sept. 12, 2000) [65 FR 57438 (Sept. 22, 2000)].

[4] The IARD system is used by both advisers registering or registered with the SEC and advisers

FINRA periodically hold discussions on IARD system finances. In the early years of operations, SEC-associated IARD revenues exceeded projections while SEC-associated IARD expenses were lower than estimated, resulting in a surplus. In 2005, FINRA wrote a letter to SEC staff recommending a waiver of annual fees for a one-year period.[5] The Commission concluded that this was appropriate and waived annual fees.[6] In 2006, 2008, and 2009 FINRA wrote to the staff again, recommending a two-year, a nine-month, and a five-month waiver, respectively, of all fees to continue to reduce the surplus.[7] The Commission agreed and issued orders waiving all IARD fees.[8] As a result of these four waivers, which waived a total of $18 million in filing fees, the surplus was reduced from $9 million in 2005 to approximately $3 million today.

FINRA has again written to Commission staff, recommending reduced annual and initial IARD filing fees for a period of one year commencing on January 1, 2010. The recommended annual filing fees due beginning January 1, 2010 are $40 for advisers with assets under management under $25 million; $150 for advisers with assets under management from $25 million to $100 million; and $200 for advisers with assets under management over $100 million. The recommended initial IARD filing fees due beginning January 1, 2010 are $40 for advisers with assets under management under $25 million; $150 for advisers with assets under management from $25 million to $100 million; and $200 for advisers with assets under management over $100 million. Based on projections of expected revenues and expenses, the Commission believes these reduced fee levels would be reasonable for this year, as the Commission projects that they will provide adequate funding to cover IARD system expenditures.[9] This action is expected to reduce aggregate filing fees that SEC-registered advisers would incur by approximately $2 million annually compared to the filing fees that would be collected based on the fee levels established in 2000. The revised filing fees will apply to all annual updating amendments filed by SEC-registered advisers beginning January 1, 2010 and to all initial applications for registration filed by advisers applying for SEC registration beginning January 1, 2010. The Commission will reassess the fee levels prior to the end of the one-year period and welcomes any comments on the fee levels, including whether the reduced fee levels in this Order would be appropriate as permanent fee levels.

It is therefore ordered, pursuant to Sections 204(b) and 206(A) of the Investment Advisers Act of 1940, that:

For annual updating amendments to Form ADV filed from January 1, 2010 through December 31, 2010, the filing fee due from SEC-registered advisers is $40 for advisers with assets under management under $25 million; $150 for advisers with assets under management from $25 million to $100 million; and $200 for advisers with assets under management over $100 million.

For initial applications to register as an investment adviser with the SEC filed from January 1, 2010 through December 31, 2010, the filing fee due from SEC-registered advisers is $40 for advisers with assets under management under $25 million; $150 for advisers with assets under management from $25 million to $100 million; and $200 for advisers with assets under management over $100 million.

By the Commission.

Dated: December 10, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–29840 Filed 12–15–09; 8:45 am]

BILLING CODE 8011–01–P

registered or registering with one or more state securities authorities. NASAA represents the state securities administrators in setting IARD filing fees for state-registered advisers.

[5] NASD letter dated September 9, 2005, available at *http://www.sec.gov/rules/other/nasdlet090905.pdf.*

[6] Approval of Investment Adviser Registration Depository Filing Fees, Investment Advisers Act Release No. 2439 (Oct. 7, 2005) [70 FR 59789 (Oct. 13, 2005)].

[7] NASD letter dated October 13, 2006 and FINRA letters dated October 10, 2008 and July 8, 2009 available at *http://www.sec.gov/rules/other/2006/nasdletter101306-iardfee.pdf, http://www.sec.gov/rules/other/2008/finraletter101008-iardfees.pdf,* and *http://www.sec.gov/rules/other/2009/finraletter070809-iardfees.pdf,* respectively.

[8] Approval of Investment Adviser Registration Depository Filing Fees, Investment Advisers Act Release No. 2564 (Oct. 26, 2006), Investment Advisers Act Release No. 2806 (Oct. 30, 2008) [73 FR 65900 (Nov. 5. 2008)], and Investment Advisers Act Release No. 2909 (July 31, 2009) [74 FR 39352 (Aug. 6, 2009)].

[9] The previous initial filing fees were $150 for advisers with assets under management under $25 million; $800 for advisers with assets under management from $25 million to $100 million; and $1,100 for advisers with assets under management over $100 million. The previous annual filing fees were $100 for advisers with assets under management under $25 million; $400 for advisers with assets under management from $25 million to $100 million; and $550 for advisers with assets under management over $100 million.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61136; File No. SR–CBOE–2009–022]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade S&P 500 Dividend Index Options

December 10, 2009.

I. Introduction

On March 25, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade cash-settled options that overlie the S&P 500 Dividend Index. The proposed rule change was published for comment in the **Federal Register** on April 6, 2009.[3] On May 4, 2009, the Commission received one comment on the proposal.[4] On May 19, 2009, the Exchange responded to the comment letter[5] and filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, and simultaneously is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

CBOE proposes to list and trade cash-settled, European-style options that overlie the S&P 500 Dividend Index.

Index Design

The S&P 500 Dividend Index represents the accumulated ex-dividend amounts of all S&P 500 Index component securities over a specified accrual period. Each day Standard & Poor's calculates the aggregate daily dividend totals for the S&P 500 Index

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59667 (March 31, 2009), 74 FR 15528 (''Notice'').

[4] *See* e-mail from Julian E. Hammar, Assistant General Counsel, Commodity Futures Trading Commission (''CFTC''), to James Eastman, Chief Counsel and Associate Director, and Elizabeth King, Associate Director, Division of Trading and Markets, Commission, dated May 4, 2009 (''CFTC Comment Letter'').

[5] *See* letter from Jenny L. Klebes, Senior Attorney, CBOE, to Elizabeth M. Murphy, Secretary, Commission, dated May 19, 2009.

component securities, which are summed over any given calendar quarter and are the basis of the S&P 500 Dividend Index. On any given day, the index dividend is calculated as the total dividend value for all constituents of the S&P 500 Index divided by the S&P 500 Index divisor. The total dividend value is calculated as the sum of dividends per share multiplied by the shares outstanding for all constituents of the S&P 500 Index that are trading ''ex-dividend'' on that day.

The Exchange will set the accrual period for S&P 500 Dividend Index options at listing (e.g., quarterly, semi-annually, annually), which will be reset to zero at the end of the specified accrual period.[6] A One-Year S&P 500 Dividend Index will be expressed in S&P 500 Index points and will reset to zero at the end of each annual accrual period.[7]

The S&P 500 Dividend Index is currently calculated by Standard & Poor's and is disseminated by Standard and Poor's once per day.[8] The S&P 500 Dividend Index is reported in absolute numbers (*e.g.,* 3, 5, 7), and the Exchange proposes to trade option contracts on the S&P 500 Dividend Index level with an applied scaling factor of 10.[9] Once daily, CBOE will disseminate the underlying S&P 500 Dividend Index value with the applied scaling factor of 10 through the Options Price Reporting Authority (''OPRA'') and/or one or more major market data vendors.

Options Trading

The exercise-settlement value for S&P 500 Dividend Index options will be the S&P 500 Dividend Index that is calculated by Standard & Poor's with an applied scaling factor. The underlying S&P Dividend Index will be quoted in decimals and one point will be equal to $100.[10] The minimum tick size for options trading at or below 3.00 will be 0.05 point ($5.00) and for all other series, it will be 0.10 ($10.00).

The Exchange proposes to list series at 1 point ($1.00) or greater strike price intervals if the strike price is equal to or less than 200 scaled index points on S&P 500 Dividend Index options. When the strike price exceeds 200 scaled index points, strike price intervals will be no less than 2.5 points.

Initially, the Exchange will list in-, at- and out-of-the-money strike prices and may open for trading up to five series above and five series below the calculated forward value of the S&P 500 Dividend Index, which is the anticipated value of the S&P 500 Dividend Index at the end of the specified accrual period.[11] In addition, either in response to customer demand or as calculated forward value of the S&P 500 Dividend Index moves from the initial exercise prices of options and LEAPs series that have been opened for trading, the Exchange may open for trading up to an additional twenty series. The Exchange will not be permitted to open for trading series with 1 point ($1.00) intervals within 0.50 of an existing 2.5 point ($2.50) strike price with the same expiration month. The Exchange will not be permitted to list LEAPS on S&P 500 Dividend Index options at intervals less than 1 point.

The Exchange also proposes to add new Interpretation and Policy .13 to Rule 5.5, *Series of Option Contracts Open for Trading,* which will be an internal cross reference stating that the intervals between strike prices for S&P 500 Dividend Index option series will be determined in accordance with proposed new Interpretation and Policy .01(h) to Rule 24.9.

Exercise and Settlement

The proposed options will expire on the Saturday following the third Friday of the expiring month. Trading in the expiring contract month will normally cease at 3:15 p.m. Chicago time on the last day of trading (ordinarily the Thursday before expiration Saturday, unless there is an intervening holiday). When the last trading day is moved because of an Exchange holiday (such as when CBOE is closed on the Friday before expiration), the last trading day for expiring options will be Wednesday.

Exercise will result in delivery of cash on the business day following expiration. S&P 500 Dividend Index options will be A.M.-settled. The exercise-settlement amount will be equal to the difference between the exercise-settlement value and the exercise price of the option, multiplied by the contract multiplier ($100).

If the exercise settlement value is not available or the normal settlement procedure cannot be utilized due to a trading disruption or other unusual circumstance, the settlement value will be determined in accordance with the rules and bylaws of the OCC.

Surveillance

The Exchange states that it will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in S&P 500 Dividend Index options. The Exchange further represents that these surveillance procedures shall be adequate to monitor trading in options on these option products. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the securities the accumulated ex-dividend amounts of which are represented by the S&P 500 Dividend Index (*i.e.,* S&P 500 Index component securities).

Position Limits

The Exchange is not proposing to establish any position limits for S&P 500 Dividend Index options. Because the S&P 500 Dividend Index represents the accumulated ''ex-dividend'' amounts of all S&P 500 Index component securities, the Exchange believes that the position and exercise limits for these new products should be the same as those for broad-based index options, *e.g.,* SPX, for which there are no position limits. S&P 500 Dividend Index options will be subject to the same reporting and other requirements triggered for other options dealt in on the Exchange.[12]

Exchange Rules Applicable

Except as modified in this proposed rule change, the rules in Chapters I through XIX, XXIV, XXIVA, and XXIVB will equally apply to S&P 500 Dividend Index options.

S&P 500 Dividend Index options will be margined as ''broad-based index'' options, and under CBOE rules, especially, Rule 12.3(c)(5)(A), the margin requirement for a short put or call shall be 100% of the current market value of the contract plus up to 15% of the aggregate contract value. Additional

[6] *See* Amendment No. 1. In its original proposal, CBOE described that the S&P 500 Dividend Index represents the accumulated ex-dividend amounts of all S&P 500 Index (dividend paying) component securities over a specified quarterly accrual period and that the index is reset to zero at the end of each quarterly accrual period.

[7] Standard & Poor's has not committed to creating a One-Year S&P 500 Dividend Index. In the event that S&P does not calculate the index, the Exchange plans to calculate an annual index from published values of the quarterly S&P 500 Dividend Index.

[8] The daily values can be accessed on Bloomberg under the symbol: SPXDIV.

[9] For example, where the S&P 500 Dividend Index is 3, the underlying will have an index value of 30 (3×10).

[10] The contract multiplier will be $100.

[11] *See* Amendment No. 1. In its original proposal, CBOE proposed to use the related S&P 500 Dividend Index futures price as the level for setting strikes. Because no related futures contract is currently trading, CBOE now proposes to use the calculated forward value of the S&P 500 Dividend Index. The Exchange states that the calculated forward value of the S&P 500 Dividend Index is a market derived estimate based on things such as: (1) The historical dividend policy of the components stocks on the S&P 500 Index, (2) the anticipated date of dividend payment, and (3) the expected start or increase of a dividend payment or the expected elimination or decrease of a dividend payment.

[12] *See* Rule 4.13, *Reports Related to Position Limits.*

margin may be required pursuant to Exchange Rule 12.10.

The Exchange proposed to designate S&P 500 Dividend Index options as eligible for trading as Flexible Exchange Options as provided for in Chapters XXIVA (Flexible Exchange Options) and XXIVB (FLEX Hybrid Trading System).

Capacity

CBOE represents that it believes the Exchange and OPRA have the necessary systems capacity to handle the additional traffic associated with the listing of new series that will result from the introduction of S&P 500 Dividend Index options.

III. Summary of Comments

The CFTC Comment Letter raised several concerns the CFTC staff has regarding the proposed rule change. First, the CFTC staff questioned whether the S&P 500 Dividend Index is an index composed of securities. Specifically, the CFTC staff asserted that a securities index is traditionally based on a weighted average of constituent stock prices, while the S&P 500 Dividend Index represents accrued dividend amounts. As such, the CFTC staff suggested that the S&P 500 Dividend Index may be more akin to an event contract than to a securities index.

The Exchange disagrees with the CFTC staff's comment. The CBOE notes that the S&P 500 Dividend Index measures stock price changes of S&P 500 Index component securities on their respective ex-dividend dates. In addition, as described by the Exchange, the S&P 500 Dividend Index is calculated using the ex-dividend amount of the same set of component securities, same shares outstanding, same capitalization weighting methodology and the same index divisor that is used to calculate the S&P 500 Index. Based on these factors, the Exchange concluded that its proposed product is an option based on a security ''including any interest therein or based on the value thereof'' as defined under § 2(a)(1) of the Securities Act of 1933 and § 3(a)(10) of the Act.

Second, the CFTC staff noted that while CBOE's proposal provides that the Exchange will list strike prices based on the related S&P 500 Dividend Index futures contract, no such futures contract currently exists. In Amendment No. 1, the Exchange modified its methodology for setting strike prices. As discussed above, rather than basing strike prices on the S&P 500 Dividend Index futures contract, which does not exist, the Exchange proposes to use the calculated forward value of the S&P 500 Dividend Index at the end of the specified accrual period as the measure for setting strikes.

Finally, the CFTC Comment Letter expressed a concern regarding the Exchange's surveillance of the proposed product for manipulation. In particular, the CFTC staff questioned the Exchange's assertion that it will have access to information regarding trading in the underlying securities, stating that the S&P 500 Dividend Index represents accrued dividends, which are determined by the boards of directors of the constituent securities. In response, the Exchange represented that it has adequate tools in place, such as large options positions reports to surveil for market manipulation and will continue to use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in S&P 500 Dividend Index options. In addition, the CBOE noted that it shares its specific surveillance procedures with the Commission and that as a member of the Intermarket Surveillance Group (''ISG''), the Exchange is able to obtain information from the exchanges listing the issuers in the S&P 500 Dividend Index pertaining to specific issuers. The Exchange may also obtain from the exchanges and FINRA, the necessary information pertaining to trading in the stock comprising the index.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that CBOE's proposal gives options investors the ability to make an additional investment choice in a manner consistent with the requirements of Section 6(b)(5) of the Act.[15]

As a threshold matter, the Commission finds that the S&P 500 Dividend Index Options proposed by CBOE are securities. Section 3(a)(10) of the Act[16] defines security to include, in part, ''any put, call, straddle, option or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof).''[17] As the Commission has previously noted, ''[t]he concept of an 'interest in' a security plainly includes rights generating a pecuniary interest in a security, such as the right to a *dividend payout* or bond (coupon) payment.''[18] Accordingly, options on the value of dividends declared by the issuers of component securities of a group or index of securities are options on an interest in, or based on the value of an interest in, that group or index of securities.

The S&P 500 Dividend Index Option is a cash-settled option based on the value of the dividends of the S&P 500 securities.

If a dividend is declared by the issuer of a component security of the S&P 500 Index, the value of the S&P 500 Dividend Index increases. Upon expiration of an option, a buyer of a call option on the S&P 500 Dividend Index will receive (and the seller of the call option will pay) cash equal to the difference between the value of the index and the strike price of the option, if the index value exceeds the strike price of the option. If the value of the index exceeds the strike price of the option, the option seller makes a payment and the option buyer receives a payment. In other words, the S&P 500 Dividend Index Option payout is based on the dividends paid by issuers of the component securities of the S&P 500 Index.

The value of the dividends of the securities composing the S&P 500 Index is calculated based on price changes of such securities resulting solely from the distribution of ordinary cash dividends, multiplied by the number of float adjusted shares outstanding and divided by the S&P 500 Index divisor.

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78c(a)(10).

[17] In determining whether a derivative is a security, the Commission and the courts have looked to the economic reality of the product. *See Caiola* v. *Citibank, N.A., New York,* 295 F.3d 312, 325 (2d Cir. 2002), quoting *United Housing Foundation* v. *Foreman,* 421 U.S. 837, 848 (1975) (''In searching for the meaning and scope of the word 'security' * * * the emphasis should be on economic reality''). Construing the definition of a security in this manner permits the Commission and the courts ''sufficient flexibility to ensure that those who market investments are not able to escape the coverage of the Securities Acts by creating new instruments that would not be covered by a more determinate definition.'' *Reves* v. *Ernst & Young, 494* U.S. 56, 63 n.2 (1990).

[18] Exchange Act Release No. 55781 (June 6, 2007), 72 FR 32372, 32376 (June 12, 2007) (emphasis added).

The Commission understands that, prior to its ''ex-dividend'' date, the component security's price reflects the right to receive the dividend amount declared by the issuing company. As of the ex-dividend date, the component security trades without the right to receive that dividend payment. The component security's listing exchange makes internal price adjustments and notifies data vendors and other parties of the per share amount of the dividend for informational purposes, in order to ensure that the reported ''net change'' from the previous closing price excludes the drop in share value that results from the dividend payment.

The Commission understands that, as it pertains to the S&P 500 Dividend Index, such price adjustments will be equal to the amount of the component securities' ordinary cash dividends. Therefore, the S&P 500 Dividend Index Options are, in effect, options on the accumulated ex-dividend adjustments to the prices of the weighted index component securities.

For these reasons, the Commission finds that S&P 500 Dividend Index Options are options on interests in, or based on the value of interests in, a group or index of securities and, therefore, are securities under Section 3(a)(10) of the Act.[19]

Further, the Commission believes that the listing rules proposed by CBOE for S&P 500 Dividend Index options are reasonable and consistent with the Act. The S&P 500 Dividend Index Options will provide a mechanism for purchasers to hedge their exposure to changes in the dividend payment policies of issuers of securities that compose the S&P 500 Dividend Index.

The Commission believes that permitting $1.00 strike price intervals for S&P 500 Dividend Index options if the strike price is equal to or less than 200 scaled index points will provide investors with added flexibility in the trading of these options and further the public interest by allowing investors to establish positions that are better tailored to meet their investment objectives. As explained by CBOE, the S&P 500 Dividend Index will fluctuate around a limited index value range, and therefore the implementation of $1 strike price intervals is designed to better serve investors by providing greater flexibility. Because of this unique characteristic, the Commission believes that the implementation of $1 strike price intervals for S&P 500 Dividend Index options, within the parameters of the rule, is appropriate. The Commission also notes that CBOE's proposed use of the calculated forward value of the S&P 500 Dividend Index for purposes of adding strike price intervals is a methodology reasonably designed to reflect the unique properties of the index (in particular, that the current index level is reset to zero at the end of each accrual period).

The Commission also finds that the Exchange's proposal to set the accrual period for S&P 500 Dividend Index options at the time of listing is reasonable and consistent with the Act. The Commission believes that this will provide the Exchange flexibility in designing the product to meet the needs of market participants to hedge their exposure to changes in dividend payments of S&P 500 Index stocks.

The Commission notes that the S&P 500 Dividend Index is currently calculated and disseminated by Standard and Poor's once per day. Further, CBOE will disseminate the underlying S&P 500 Dividend Index value with the applied scaling factor of 10 through OPRA and/or one or more major market data vendors once daily.

The Exchange has proposed to establish no position or exercise limits for S&P 500 Dividend Index options and to require the same margin as for broad-based index options.[20] The Commission believes that CBOE's proposed rules relating to position limits, exercise limits, and margin requirements are appropriate.

The Commission also believes that the Exchange's proposal to allow S&P 500 Dividend Index options to be eligible for trading as FLEX options is consistent with the Act. The Commission previously approved rules relating to the listing and trading of FLEX Options on CBOE, which gives investors and other market participants the ability to individually tailor, within specified limits, certain terms of those options.[21] The current proposal incorporates S&P 500 Dividend Index options that trade as FLEX Options into these existing rules and regulatory framework.

The Commission notes that CBOE represented that it had an adequate surveillance program to monitor trading of S&P 500 Dividend Index options and intends to apply its existing surveillance program to support the trading of these options. As with other securities, there is a potential risk that a corporate insider may exploit his or her advance knowledge of changes to an issuer's dividend policy through the purchase or sale of an S&P 500 Dividend Index Option. In recent years, the Commission has taken a number of enforcement actions in cases where insiders executed securities transactions to exploit their knowledge of changes in issuers' dividend policies.[22] Accordingly, adequate surveillance is an important responsibility of the CBOE. The CFTC Comment Letter took issue with this representation, questioning CBOE's ability to adequately surveil for manipulation in S&P 500 Dividend Index options. In its response, the Exchange stated that its access to information provided by the ISG, coupled with its tools such as large options positions reports prove more than sufficient for surveillance of market manipulation, particularly given that the very broad composition of the S&P 500 Dividend Index would render manipulation of options on the index to be extremely difficult. The Commission agrees with CBOE that it should have the ability and resources to adequately surveil for manipulation in S&P 500 Dividend Index options.

In approving the proposed rule change, the Commission has also relied upon the Exchange's representation that it has the necessary systems capacity to support new options series that will result from this proposal.

The Commission finds good cause for approving this proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after publishing notice of Amendment No. 1 in the **Federal Register**. In Amendment No. 1, the Exchange: (i) Revised the methodology for setting strike prices so that strike prices will no longer be based on a futures product value but rather on the calculated forward value of the S&P 500 Dividend Index, and (ii) determined that the accrual period for the S&P 500 Dividend Index options will be set at listing and could be quarterly, semi-annually, annually, etc. to provide investors and other market participants with a more flexible product to hedge their exposure to changes in dividend payments (either up or down) of S&P

[19] 15 U.S.C. 78c(a)(10).

[20] The Exchange's decision to apply its broad-based index option position and exercise limits and margin requirements to these new products is unrelated to whether the S&P 500 Dividend Index is a narrow-based security index under Section 3(a)(55) of the Exchange Act.

[21] *See* Securities Exchange Act Release No. 31910 (February 23, 1993), 58 FR 12056 (March 2, 1993).

[22] *See, e.g., SEC* v. **DAVID L. JOHNSON,** Civil Action No. 05–CV–4789 (USDC E.D. Pa.) (Sept. 7, 2005) (consent to permanent injunction, disgorgement and civil penalty for a person who allegedly sold shares of an issuer based on inside information of a dividend cut, and tipped his son to do likewise); *SEC* v. *Barry Hertz,* Civil Action No. 05–2848 (USDC E.D.N.Y.) (Mar. 16, 2007) (consent to final judgment, including an injunction and two-year bar from serving as an officer or director of a public corporation, for a person alleged to have traded on inside information, including purchasing shares of an issuer while in possession of positive news of a first time dividend issuance).

500 Index stocks. Thus, the Commission believes that it is appropriate to allow CBOE to immediately list and trade options on the S&P 500 Dividend Index, providing investors with additional means to manage their risk exposure and carry out their investment objectives. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[23] to approve the proposal, as modified by Amendment No. 1, on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2009–022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–022. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–022 and should be submitted on or before January 6, 2010.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–CBOE–2009–022), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–29826 Filed 12–15–09; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(2).

[24] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61133; File No. SR–Phlx–2009–100]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Options Regulatory Fee

December 9, 2009.

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 December 7, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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 Exchange proposes to eliminate its Registered Representative/Member Exchange/Off-Floor Trader Registration Fee and establish an Options Regulatory Fee.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trades settling on or after January 1, 2010, at which point the Registered Representative/Member Exchange/Off-Floor Trader Registration Fee would be eliminated.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* on the Commission's Web site at *http://www.sec.gov,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

The Exchange proposes to eliminate its Registered Representative/Member Exchange/Off-Floor Registration Trader Fee of $55.00, the initial registration fee of $55.00, the transfer fee of $55.00 and the termination fee of $30.00 (''Registration Fees''). The Exchange proposes to establish an Options Regulatory Fee (''ORF'') of $.0035 per contract to each member for all options transactions executed or cleared by the member that are cleared by The Options Clearing Corporation (''OCC'') in the customer range, excluding Options Intermarket Linkage Plan (''Linkage'') P/A Orders.[3]

Registration Fees as well as other regulatory fees collected by the Exchange are intended to cover a portion of the cost of the Exchange's regulatory programs.[4] Today options exchanges, regardless of size, charge similar registered representative fees or an ORF similar to the proposal herein. Currently, Exchange rules require that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange understands that certain Exchanges continue to utilize Linkage to send P/A Orders. Linkage may be discontinued by the operative date.

[4] In addition to Registration Fees, the Exchange derives revenue associated with its regulatory programs from its Examinations Fee. This fee is applicable to member/participant organizations for which the Exchange is the Designated Examining Authority (''DEA''). The Fee is a tiered fee and certain organizations are exempted from the fee. *See* Exchange's Fee Schedule.

every qualified Registered Representative [5] of a member or participant organization must be registered with and approved by the Exchange.[6] The Member Exchange category refers to Exchange permit holders.[7]

The Exchange believes that Registration Fees are no longer the best manner to assess regulatory fees because more than 60% of the Exchange's Registration Fees are paid by five member organizations. Further to the point, today there are more Internet and discount brokerage firms with few registered persons that pay little in Registration Fees and fewer traditional brokerage firms with many registered persons. The regulatory effort the Exchange expends to review the transactions of each type of firm is not commensurate with the number of registered persons that each firm employs. In addition, due to the manner in which Registration Fees are charged, it is possible for a member firm to restructure its business to avoid paying these fees altogether. A firm can avoid Registration Fees by terminating its Exchange membership and sending its business to the Exchange through another member firm, even an affiliated firm that has significantly fewer registered persons. If member firms terminated their memberships to avoid Registration Fees, the Exchange would suffer the loss of a major source of funding for its regulatory programs.

The Exchange proposes to eliminate Registration Fees and replace them with a transaction-based ORF. The ORF would be $.0035 per contract and would be assessed by the Exchange to each member for all options transactions executed or cleared by the member that are cleared by The Options Clearing Corporation (''OCC'') in the customer range (i.e., that clear in the customer account of the member's clearing firm at OCC), excluding P/A Orders as defined in the Options Intermarket Linkage Plan (''Linkage'').[8] The ORF would be imposed upon all such transactions executed by a member, even if such transactions do not take place on the Exchange.[9] The ORF also includes options transactions that are not executed by an Exchange member but are ultimately cleared by an Exchange member. Thus the Exchange would charge a member $.0035 per contract for all options transactions executed or cleared by the member that are cleared by OCC in the customer range, excluding Linkage P/A Orders, regardless of the marketplace of execution. In the case where one member both executes a transaction and clears the transaction, the ORF would be assessed to the member only once on the execution. In the case where one member executes a transaction and a different member clears the transaction, the ORF would be assessed only to the member who executes the transaction and would not be assessed to the member who clears the transaction. In the case where a non-member executes a transaction and a member clears the transaction, the ORF would be assessed to the member who clears the transaction.

The ORF would not be charged for member options transactions because members incur the costs of owning memberships and through their memberships are charged transaction fees, dues and other fees that are not applicable to non-members.[10] The dues and fees paid by members go into the general funds of the Exchange, a portion of which is used to help pay the costs of regulation. Thus, the Exchange believes members are already paying their fair share of the costs of regulation.[11] Moreover, because the ORF would replace Registration Fees, which relate to a member's customer business, the Exchange believes it is appropriate to charge the ORF only to transactions that clear as customer at the OCC. The Exchange believes that its broad regulatory responsibilities with respect to its members' activities, supports applying the ORF to transactions cleared but not executed by a member. The Exchange's regulatory responsibilities are the same regardless of whether a member executes a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activity, including performing surveillance for position limit violations, manipulation, frontrunning contrary exercise advice violations and insider trading.[12]

The ORF is collected indirectly from members through their clearing firms by OCC on behalf of the Exchange. There is a minimum one-cent charge per trade. The Exchange expects that member firms will pass-through the ORF to their customers in the same manner that firms pass-through to their customers the fees charged by SROs to help the SROs meet their obligation under Section 31 of the Exchange Act.

The ORF is designed to recover a portion of the costs to the Exchange of the supervision and regulation of its members, including performing routine surveillances, investigations, examinations, financial monitoring, and policy, rulemaking, interpretive, and enforcement activities. The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees, will cover a material portion, but not all, of the Exchange's regulatory costs. The total amount of regulatory fees collected by the Exchange is less than the regulatory costs incurred by the Exchange on an annual basis. Registration Fees make up the largest part of the Exchange's total regulatory

[5] Registered Representative categories include registered options principals, general securities representatives, general securities sales supervisors and United Kingdom limited general securities registered representatives but do not include ''off-floor'' traders. *See* Exchange Rule 604(e). *See also* Exchange Rule 604(a) and (d).

[6] *See* Exchange Rule 604. Every person who is compensated directly or indirectly by a member or participant organization for which the Exchange is the DEA, or any other associated person of such member or participant organization, and who executes, makes trading decisions with respect to, or otherwise engages in proprietary or agency trading of securities, including, but not limited to, equities, preferred securities, convertible debt securities or options off the floor of the Exchange (''off-floor traders''), must successfully complete the Series 7 General Securities Registered Representative Examination.

[7] *See* Exchange Rule 600.

[8] *See* Securities Exchange Act Release Nos. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (National Market System Plan Relating to Options Order Protection and Locked/Crossed Markets).

[9] The ORF would apply to all ''C'' account origin code orders executed by a member on the Exchange. Exchange rules require each member to record the appropriate account origin code on all orders at the time of entry in order to allow the Exchange to properly prioritize and route orders and assess transaction fees pursuant to the rules of the Exchange and report resulting transactions to the OCC. *See* Exchange Rule 1063, Responsibilities of Floor Brokers, and Options Floor Procedure Advice F–4, Orders Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements. The Exchange represents that it has surveillances in place to verify that members mark orders with the correct account origin code.

[10] For example, non-broker-dealer customers generally are not charged transaction fees to trade equity options on the Exchange.

[11] If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to impose the ORF or a separate regulatory fee on members if the Exchange deems it advisable. In the event that the Exchange does decide to impose such a fee, that fee would be filed with the Commission pursuant to Section 19 of the Act.

[12] The Exchange also participates in The Options Regulatory Surveillance Authority (''ORSA'')[12] national market system plan and in doing so shares information and coordinates with other exchanges designed to detect the unlawful use of undisclosed material information in the trading of securities options. ORSA is a national market system comprised of several self-regulatory organizations whose functions and objectives include the joint development, administration, operation and maintenance of systems and facilities utilized in the regulation, surveillance, investigation and detection of the unlawful use of undisclosed material information in the trading of securities options. The Exchange compensates ORSA for the Exchange's portion of the cost to perform insider trading surveillance on behalf of the Exchange. The ORF will cover the costs associated with the Exchange's arrangement with ORSA.

fee revenue. The Exchange collects other regulatory revenues from DEA Fees.[13] The Exchange notes that its regulatory responsibilities with respect to member compliance with options sales practice rules have been allocated to FINRA under a 17d–2 agreement. The ORF is not designed to cover the cost of options sales practice regulation.

The ORF is designed to generate revenue that, when combined with all of the Exchange's other regulatory fees, will approximate the Exchange's regulatory costs. The Exchange would monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed regulatory costs. The Exchange expects to monitor regulatory costs and revenues at a minimum on an annual basis. If the Exchange determines regulatory revenues would exceed regulatory costs, the Exchange would adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies members of adjustments to the ORF via an Options Trader Alert (''OTA'').

The Exchange believes the proposed ORF is equitably allocated because it would be charged to all members on all their customer options business (as defined above). The Exchange believes the proposed ORF is reasonable because it will raise revenue related to the amount of customer options business conducted by members, and thus the amount of Exchange regulatory services those members will require, instead of how many registered persons a particular member firm employs.[14]

The Exchange believes it is reasonable and appropriate for the Exchange to charge the ORF for options transactions regardless of the exchange on which the transactions occur. The Exchange has a statutory obligation to enforce compliance by its members and their associated persons with the Act and the rules of the Exchange and to surveil for other manipulative conduct by market participants (including non-members) trading on the Exchange. The Exchange cannot effectively surveil for such conduct without looking at and evaluating activity across all options markets. Many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, frontrunning, contrary exercise advice violations and locked/crossed markets in connection with the Linkage.[15] The Exchange, along with other options exchanges are required to populate a consolidated options audit trail (''COATS'') system in order to surveil member activities across markets.[16]

In addition to its own surveillance programs, the Exchange works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in the Intermarket Surveillance Group (''ISG'') the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses.[17]

The Exchange believes that charging the ORF across markets will avoid having members direct their trades to other markets in order to avoid the fee and to thereby avoid paying for their fair share of regulation. If the ORF did not apply to activity across markets, then members would send their orders to the least cost, least regulated exchange. Other exchanges would, of course, be free to impose a similar fee on their member's activity, including the activity of Exchange members.

Finally, there is established precedent for an SRO charging a fee across markets, namely, FINRA's Trading Activity Fee[18] and the Chicago Board of Options Exchange, Inc.'s (''CBOE'') ORF.[19] While the Exchange does not have all of the same regulatory responsibilities as FINRA, the Exchange believes that like the CBOE, its broad regulatory responsibilities with respect to its members' activities, irrespective of where their transactions take place, supports a regulatory fee applicable to transactions on other markets. Unlike the TAF, the ORF would apply only to a member's customer options transactions.

Currently, the Exchange is in negotiations with FINRA to render regulatory services which are currently performed by the Exchange. The Exchange anticipates continuing to provide on-floor surveillance options review and data storage.[20]

The Exchange has designated this proposal to be operative for trades settling on or after January 1, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Section 6(b)(4) of the Act,[22] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the ORF is objectively allocated to Exchange members because it would be charged to all members on all of their transactions that clear as customer at the OCC. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those member firms that require more Exchange regulatory services based on the amount of customer options business they conduct.

The Exchange believes the initial level of the fee is reasonable because it relates to the recovery of the costs of supervising and regulating members and market activity. Accounting for recent trends in the industry, the fee is expected to approximate the Exchange's revenue from the Registration Fees. The Commission has addressed the funding of an SRO's regulatory operations in the Concept Release Concerning Self-Regulation[23] and the release on the Fair Administration and Governance of Self-

[13] The Exchange assesses the Examinations Fee to each firm for which the SEC has designated the Exchange to be the DEA pursuant to SEC Rule 17d–1. The Examinations Fee is intended to reimburse the Exchange for its costs associated with examining member firms and is generally the same throughout the SRO community. The Examination Fee is based on the number of off-floor traders in the same member organization.

[14] The Exchange expects that implementation of the proposed ORF will result generally in many traditional brokerage firms paying less regulatory fees while Internet and discount brokerage firms will pay more.

[15] The Exchange and other options SROs are parties to a 17d–2 agreement allocating among the SROs regulatory responsibilities relating to compliance by their common members with rules for expiring exercise declarations, position limits, OCC trade adjustments, and Large Option Position Report reviews. *See* Securities Exchange Act Release No. 56941 (December 11, 2007), 72 FR 71723 (December 18, 2007).

[16] COATS effectively enhances intermarket options surveillance by enabling the options exchanges to reconstruct markets promptly, effectively surveil them and enforce order handling, firm quote, trade reporting and other rules.

[17] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[18] *See* Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003) (SR–NASD–2002–148).

[19] *See* Securities Exchange Act Release Nos. 58817 (October 20, 2008), 73 FR 63744 (October 27, 2009) (SR–CBOE–2008–105).

[20] The costs that are currently identified by the Exchange as related to the regulatory program should approximate the costs that would in the future be paid to FINRA should a Regulatory Services Agreement be executed. The Exchange anticipates that it would pay a flat rate to FINRA for its services.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(4).

[23] *See* Securities Exchange Act Release No. 50700 (November 18, 2004), 69 FR 71256 (December 8, 2004) (''Concept Release'').

Regulatory Organizations.[24] In the Concept Release, the Commission states that: ''Given the inherent tension between an SRO's role as a business and as a regulator, there undoubtedly is a temptation for an SRO to fund the business side of its operations at the expense of regulation.'' [25] In order to address this potential conflict, the Commission proposed in the Governance Release rules that would require an SRO to direct monies collected from regulatory fees, fines, or penalties exclusively to fund the regulatory operations and other programs of the SRO related to its regulatory responsibilities.[26] The Exchange has designed the ORF to generate revenues that, when combined with all of the Exchange's other regulatory fees, will approximate the Exchange's regulatory costs, which is consistent with the Commission's view that regulatory fees be used for regulatory purposes and not to support the Exchange's business side.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [27] and paragraph (f)(2) of Rule 19b–4 [28] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2009–100 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–100. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2009–100 and should be submitted on or before January 6, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–29830 Filed 12–15–09; 8:45 am]

BILLING CODE 8011–01–P

[24] *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) (''Governance Release'').

[25] Concept Release at 71268.

[26] Governance Release at 71142.

[27] 15 U.S.C. 78s(b)(3)(A)(ii).

[28] 17 CFR 240.19b–4(f)(2).

[29] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination of Trade Surplus in Certain Sugar and Syrup Goods and Sugar Containing Products of Chile, Morocco, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and Peru

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: In accordance with relevant provisions of the Harmonized Tariff Schedule of the United States (HTS), the Office of the United States Trade Representative (USTR) is providing notice of its determination of the trade surplus in certain sugar and syrup goods and sugar-containing products of Chile, Morocco, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and Peru. As described below, the level of a country's trade surplus in these goods relates to the quantity of sugar and syrup goods and sugar-containing products for which the United States grants preferential tariff treatment under (i) The United States—Chile Free Trade Agreement (Chile FTA), in the case of Chile; (ii) the United States—Morocco Free Trade Agreement (Morocco FTA), in the case of Morocco; (iii) the Dominican Republic—Central America—United States Free Trade Agreement (CAFTA–DR), in the case of the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua; and (iv) the United States—Peru Trade Promotion Agreement (Peru TPA), in the case of Peru.

DATES: *Effective Date:* December 16, 2009.

ADDRESSES: Inquiries may be mailed or delivered to Leslie O'Connor, Director of Agricultural Affairs, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Leslie O'Connor, Office of Agricultural Affairs, telephone: 202–395–6127 or facsimile: 202–395–4579.

SUPPLEMENTARY INFORMATION:

Chile: Pursuant to section 201 of the United States—Chile Free Trade Agreement Implementation Act (Pub. L. 108–77; 19 U.S.C. 3805 note), Presidential Proclamation No. 7746 of December 30, 2003 (68 FR 75789) implemented the Chile FTA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Chile FTA.

U.S. Note 12(a) to subchapter XI of HTS chapter 99 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Chile's trade surplus, by volume, with all sources for goods in Harmonized System (HS) subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.20, 1702.30, 1702.40, 1702.60, 1702.90, 1806.10, 2101.12, 2101.20, and 2106.90, except that Chile's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the Chile FTA are not included in the calculation of Chile's trade surplus.

U.S. Note 12(b) to subchapter XI of HTS chapter 99 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of Chile entered under subheading 9911.17.05 in an amount equal to the lesser of Chile's trade surplus or the specific quantity set out in that note for that calendar year.

U.S. Note 12(c) to subchapter XI of HTS chapter 99 provides preferential tariff treatment for certain sugar and syrup goods and sugar-containing products of Chile entered under subheading 9911.17.10 through 9911.17.85 in an amount equal to the amount by which Chile's trade surplus exceeds the specific quantity set out in that note for that calendar year.

During calendar year (CY) 2008, the most recent year for which data is available, Chile's imports of sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 588,127 metric tons according to data published by its customs authority, the *Banco Central de Chile.* Based on this data, USTR determines that Chile's trade surplus is negative. Therefore, in accordance with U.S. Note 12(b) and U.S. Note 12(c) to subchapter XI of HTS chapter 99, goods of Chile are not eligible to enter the United States duty-free under subheading 9911.17.05 or at preferential tariff rates under subheading 9911.17.10 through 9911.17.85 in CY2010.

Morocco: Pursuant to section 201 of the United States—Morocco Free Trade Agreement Implementation Act (Pub. L. 108–302; 19 U.S.C. 3805 note), Presidential Proclamation No. 7971 of December 22, 2005 (70 FR 76651) implemented the Morocco FTA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Morocco FTA.

U.S. Note 12(a) to subchapter XII of HTS chapter 99 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Morocco's trade surplus, by volume, with all sources for goods in HS subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.40, and 1702.60, except that Morocco's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the Morocco FTA are not included in the calculation of Morocco's trade surplus.

U.S. Note 12(b) to subchapter XII of HTS chapter 99 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of Morocco entered under subheading 9912.17.05 in an amount equal to the lesser of Morocco's trade surplus or the specific quantity set out in that note for that calendar year.

U.S. Note 12(c) to subchapter XII of HTS chapter 99 provides preferential tariff treatment for certain sugar and syrup goods and sugar-containing products of Morocco entered under subheading 9912.17.10 through 9912.17.85 in an amount equal to the amount by which Morocco's trade surplus exceeds the specific quantity set out in that note for that calendar year.

During CY2008, the most recent year for which data is available, Morocco's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 751,207 metric tons according to data published by its customs authority, the *Office des Changes.* Based on this data, USTR determines that Morocco's trade surplus is negative. Therefore, in accordance with U.S. Note 12(b) and U.S. Note 12(c) to subchapter XII of HTS chapter 99, goods of Morocco are not eligible to enter the United States duty-free under subheading 9912.17.05 or at preferential tariff rates under subheading 9912.17.10 through 9912.17.85 in CY2010.

CAFTA–DR: Pursuant to section 201 of the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (Pub. L. 109–53; 19 U.S.C. 4031), Presidential Proclamation No. 7987 of February 28, 2006 (71 FR 10827), Presidential Proclamation No. 7991 of March 24, 2006 (71 FR 16009), Presidential Proclamation No. 7996 of March 31, 2006 (71 FR 16971), Presidential Proclamation No. 8034 of June 30, 2006 (71 FR 38509), and Presidential Proclamation No. 8111 of February 28, 2007 (72 FR 10025) implemented the CAFTA–DR on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the CAFTA–DR.

U.S. Note 25(b)(i) to subchapter XXII of HTS chapter 98 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of each CAFTA–DR country's trade surplus, by volume, with all sources for goods in HS subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.40, and 1702.60, except that each CAFTA–DR country's exports to the United States of goods classified under HS subheadings 1701.11, 1701.12, 1701.91, and 1701.99 and its imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the CAFTA–DR are not included in the calculation of that country's trade surplus.

U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of each CAFTA–DR country entered under subheading 9822.05.20 in an amount equal to the lesser of that country's trade surplus or the specific quantity set out in that note for that country and that calendar year.

During CY2008, the most recent year for which data is available, the Dominican Republic's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 10,840 metric tons according to data published by the *Instituto Azucarero Dominicano.* Based on this data, USTR determines that the Dominican Republic's trade surplus is negative. Therefore, in accordance with U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98, goods of the Dominican Republic are not eligible to enter the United States duty-free under subheading 9822.05.20 in CY2010.

During CY2008, the most recent year for which data is available, El Salvador's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 77,228 metric tons according to data published by the *Banco Central de Reserva de El Salvador.* Based on this data, USTR determines that El Salvador's trade surplus is 77,228 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for El Salvador for CY2010 is 28,560 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of El Salvador that may be entered duty-free under subheading 9822.05.20 in CY2010 is 28,560 metric tons (i.e., the amount that is the lesser of El Salvador's trade surplus and the specific quantity set out in that note for El Salvador for CY2010).

During CY2008, the most recent year for which data is available, Guatemala's exports of the sugar and syrup goods and sugar-containing products

described above exceeded its imports of those goods by 873,884 metric tons according to data published by the *Asociación de Azucareros de Guatemala.* Based on this data, USTR determines that Guatemala's trade surplus is 873,884 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for Guatemala for CY2010 is 37,740 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Guatemala that may be entered duty-free under subheading 9822.05.20 in CY2010 is 37,740 metric tons (i.e., the amount that is the lesser of Guatemala's trade surplus and the specific quantity set out in that note for Guatemala for CY2010).

During CY2008, the most recent year for which data is available, Honduras' exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 6,163 metric tons according to data published by the *Banco Central de Honduras.* Based on this data, USTR determines that Honduras' trade surplus is 6,163 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for Honduras for CY2010 is 8,640 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Honduras that may be entered duty-free under subheading 9822.05.20 in CY2010 is 6,163 metric tons (i.e., the amount that is the lesser of Honduras' trade surplus and the specific quantity set out in that note for Honduras for CY2010).

During CY2008, the most recent year for which data is available, Nicaragua's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 51,877 metric tons according to data published by the *Ministerio de Fomento, Industria, y Comercio.* Based on this data, USTR determines that Nicaragua's trade surplus is 51,877 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for Nicaragua for CY2010 is 23,760 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Nicaragua that may be entered duty-free under subheading 9822.05.20 in CY2010 is 23,760 metric tons (i.e., the amount that is the lesser of Nicaragua's trade surplus and the specific quantity set out in that note for Nicaragua for CY2010).

Peru: Pursuant to section 201 of the United States—Peru Trade Promotion Agreement Implementation Act (Pub. L. 110–138; 19 U.S.C. 3805 note), Presidential Proclamation No. 8341 of January 16, 2009 (74 FR 4105) implemented the Peru TPA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Peru TPA.

U.S. Note 28(c) to subchapter XXII of HTS chapter 98 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Peru's trade surplus, by volume, with all sources for goods in HS subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.20, 1702.40, and 1702.60, except that Peru's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that are originating goods under the Peru TPA and Peru's exports to the United States of goods classified under HS subheadings 1701.11, 1701.12, 1701.91, and 1701.99 are not included in the calculation of Peru's trade surplus.

U.S. Note 28(d) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar goods of Peru entered under subheading 9822.06.10 in an amount equal to the lesser of Peru's trade surplus or the specific quantity set out in that note for that calendar year.

During CY2008, the most recent year for which data is available, Peru's imports of the sugar goods described above exceeded its exports of those goods by 156,805 metric tons according to data published by its customs authority, the *Superintendencia Nacional de Administration Tributaria.* Based on this data, USTR determines that Peru's trade surplus is negative. Therefore, in accordance with U.S. Note 28(d) to subchapter XXII of HTS chapter 98, goods of Peru are not eligible to enter the United States duty-free under subheading 9822.06.10 in CY2010.

James Murphy,

Assistant United States Trade Representative.

[FR Doc. E9–29858 Filed 12–15–09; 8:45 am]

BILLING CODE 3190–W0–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments Concerning Proposed Trans-Pacific Partnership Trade Agreement

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice of intent to enter into negotiations on a Trans-Pacific Partnership (TPP) trade agreement and request for comments.

SUMMARY: The United States intends to enter into negotiations on a TPP trade agreement with the objective of shaping a high-standard, broad-based regional agreement. USTR is seeking public comments on all elements of the agreement in order to develop U.S. negotiating positions.

DATES: Written comments are due by January 25, 2010.

ADDRESSES: *Submissions via on-line: http://www.regulations.gov.* For alternatives to on-line submissions please contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee (TPSC), at (202) 395–3475.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments, please contact Gloria Blue at the above number. All other questions regarding the TPP trade agreement should be directed to David Bisbee, Deputy Assistant USTR for Southeast Asia and Pacific, at (202) 395–6813.

SUPPLEMENTARY INFORMATION:

1. Background

USTR is observing the relevant procedures of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3804), which apply to agreements entered into before July 1, 2007, with respect to notifying and consulting with Congress regarding the TPP trade agreement negotiations. These procedures include providing Congress with 90 days advance written notice of the President's intent to enter into negotiations and consulting with appropriate Congressional committees regarding the negotiations. To that end, on December 14, 2009, after having consulted with relevant Congressional committees, the USTR notified Congress that the President intends to enter into negotiations of the agreement with the TPP countries with the objective of shaping a high-standard, 21st century agreement with a membership and coverage that provides economically significant market access opportunities for America's workers, farmers, ranchers, service providers, and small businesses. Our initial TPP negotiating partners include Australia, Brunei Darussalam, Chile, New Zealand, Peru, Singapore and Vietnam. The U.S. objective is to expand on this initial group to include additional countries throughout the Asia-Pacific region.

In addition, under the Trade Act of 1974, as amended (19 U.S.C. 2151, 2153), in the case of an agreement such as the proposed TPP trade agreement, the President must (i) afford interested persons an opportunity to present their views regarding any matter relevant to the proposed agreement, (ii) designate an agency or inter-agency committee to hold a public hearing regarding the proposed agreement, and (iii) seek the advice of the U.S. International Trade Commission (ITC) regarding the

probable economic effects on U.S. industries and consumers of the removal of tariffs and non-tariff barriers on imports pursuant to the proposed agreement.

USTR held a public hearing regarding the proposed TPP trade agreement on March 4, 2009, and intends to hold additional public hearings on specific issues pertaining to the proposed negotiations in early 2010. In addition, USTR has requested the ITC to provide advice to USTR on the probable economic effects of an agreement.

2. Public Comments

The TPSC Chair invites interested parties to submit written comments to assist USTR as it develops its negotiating objectives for the proposed regional agreement. Comments may address the reduction or elimination of tariffs or non-tariff barriers on any articles provided for in the Harmonized Tariff Schedule of the United States (HTSUS) that are products of a TPP country, any concession that should be sought by the United States, or any other matter relevant to the proposed agreement. The TPSC Chair invites comments on all of these matters and, in particular, seeks comments addressed to:

(a) General and product-specific negotiating objectives for the proposed regional agreement.

(b) Economic costs and benefits to U.S. producers and consumers of removal of tariffs and removal or reduction in non-tariff barriers on articles traded with the seven TPP countries.

(c) Treatment of specific goods (described by HTSUS numbers) under the proposed regional agreement, including comments on—

(1) Product-specific import or export interests or barriers,

(2) Experience with particular measures that should be addressed in the negotiations, and

(3) Approach to tariff negotiations, including recommended staging and ways to address export priorities and import sensitivities in the context of this regional agreement.

(d) Adequacy of existing customs measures to ensure that imported goods originate from the TPP countries, and appropriate rules of origin for goods entering the United States under the proposed regional agreement.

(e) Existing sanitary and phytosanitary measures and technical barriers to trade imposed by any of the TPP countries that should be addressed in the negotiations.

(f) Existing barriers to trade in services between the United States and any of the TPP countries that should be addressed in the negotiations.

(g) Relevant electronic commerce issues that should be addressed in the negotiations.

(h) Relevant trade-related intellectual property rights issues that should be addressed in the negotiations.

(i) Relevant investment issues that should be addressed in the negotiations.

(j) Relevant competition-related matters that should be addressed in the negotiations.

(k) Relevant government procurement issues that should be addressed in the negotiations.

(l) Relevant environmental issues that should be addressed in the negotiations.

(m) Relevant labor issues that should be addressed in the negotiations.

In commenting on these matters, USTR invites interested parties to take into account the objective of expanding the TPP trade agreement to include other countries in the Asia-Pacific region.

In addition to the matters described above, USTR is considering addressing new and emerging issues in this regional agreement. Accordingly, the TPSC Chair invites comments on approaches that would promote innovation and competitiveness, encourage new technologies and emerging economic sectors, increase the participation of small- and medium-sized businesses in trade, and support the development of efficient production and supply chains that include U.S. firms in order to encourage firms to invest and produce in the United States. The TPSC Chair also invites comments on ways to address other trade-related priorities in this regional agreement, including environmental protection and conservation, transparency, workers rights and protections, development, and other issues. Finally, because the TPP trade agreement will be a regional agreement, the TPSC Chair also invites comments on ways to use the agreement to facilitate trade and promote regulatory coherence and cooperation within the region.

At a later date, USTR, through the TPSC, will publish notice of reviews regarding (a) the possible environmental effects of the proposed agreement and the scope of the U.S. environmental review of the proposed agreement, and (b) the impact of the proposed agreement on U.S. employment and labor markets.

3. Requirements for Submissions

Persons submitting comments must do so in English and must identify (on the first page of the submission) the ''United States—Trans-Pacific Partnership Trade Agreement.'' In order to be assured of consideration, comments should be submitted by January 25, 2010.

In order to ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to make on-line submissions, using the *http://www.regulations.gov* Web site. Comments should be submitted under the following docket: USTR–2009–0041. To find the docket, enter the docket number in the ''Enter Keyword or ID'' window at the *http://www.regulations.gov* home page and click ''Search.'' The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ''Notices'' under ''Document Type'' on the search-results page, and click on the link entitled ''Submit a Comment.'' (For further information on using the www.regulations.gov Web site, please consult the resources provided on the Web site by clicking on the ''Help'' tab.)

The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a comments field, or by attaching a document. USTR prefers submissions to be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''Type comment & Upload File'' field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ''Comments'' field.

For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters ''BC''. Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. Filers of submissions containing business confidential information must also submit a public version of their comments. The file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments or reply comments. Filers submitting comments containing no business confidential information should name their file using the character ''P'', followed by the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits,

annexes, or other attachments in the same file as the submission itself, not as separate files.

USTR strongly urges submitters to file comments through regulations.gov, if at all possible. Any alternative arrangements must be made with Ms. Blue in advance of transmitting a comment. Ms. Blue should be contacted at (202) 395–3475. General information concerning USTR is available at *http://www.ustr.gov.*

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. E9–29841 Filed 12–15–09; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2009–001–N–28]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than February 16, 2010.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590, or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130_____.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6216 or (202) 493–6497, or via E-mail to Mr. Brogan at *robert.brogan@dot.gov,* or to Ms. Toone at *kimberly.toone@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law No. 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

OMB Control Number: 2130–0511.

Title: Designation of Qualified Persons.

Abstract: The collection of information is used to prevent the unsafe movement of defective freight cars. Railroads are required to inspect freight cars for compliance and to determine restrictions on the movements of defective cars. The collection of information is used by FRA to ensure that all freight cars inspections are conducted by qualified persons who have demonstrated to their employing railroads a knowledge and ability to inspect freight cars for compliance with this Part, 49 CFR Part 215.

Form Number(s): None.

Affected Public: Businesses.

Respondent Universe: 728 railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Burden: 40 hours.

Total Responses: 1,200.

Type of Request: Extension of a Currently Approved Collection.

Title: Passenger Train Emergency Preparedness.

OMB Control Number: 2130–0545.

Abstract: The collection of information is due to the passenger train emergency preparedness regulations set forth in 49 CFR Parts 223 and 239 which require railroads to meet minimum Federal standards for the preparation, adoption, and implementation of emergency preparedness plans connected with the operation of passenger trains, including freight railroads hosting operations of rail passenger service. The regulations require luminescent or lighted emergency markings so that passengers and emergency responders can readily determine where the closest and most accessible exit routes are located and how the emergency exit mechanisms are operated. Windows and doors intended for emergency access by responders for extrication of passengers must be marked with retro-reflective material so that emergency responders, particularly in conditions of poor visibility, can easily distinguish them from the less accessible doors and windows. Records

of the inspection, maintenance and repairs of emergency windows and door exits, as well as records of operational efficiency tests, will be used to ensure compliance with the regulations.

Affected Public: Businesses.

Respondent Universe: 22 railroads.

Frequency of Submission: On occasion.

REPORTING BURDEN

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
223.9(d); 239.107—Marking of Emergency Exits.	22 railroads	4,575 decals/1,950 decals	5 minutes/10 minutes	706
—Marking door and window exits w clear instructions.	22 railroads	6,320/1,300 decals	5 min./10 min.	744
	22 railroads	1,800 window rcds	20 minutes	600
239.101, 239.201—Filing of Emergency Preparedness Plan.	3 railroads	1 plan	158 hours	158
—Amendments to Emergency Plans.	2 railroads	1 amendment	2 hours	2
239.101(ii)—Maintenance of Current Emergency Phone Numbers.	22 railroads	2 records/lists	1 hour	2
—Subsequent Years	22 railroads	25 records/lists	30 minutes	13
239.101(a)(3)—Joint Operations.	50 railroad pairs	50 plans	16 hours	800
—Subsequent Years	1 railroad pair	1 plan	16 hours	16
239.101(a)(5)—Liaison with Emergency Responders.	3 railroads	1 plan	40 hours	40
—Subsequent Years	22 railroads	22 updated plans	40 hours	880
239.101(a)(7)(ii) Passenger Safety Information.	3 new railroads/3 commuter railroads.	1,300 cards/3 progs./3 safety messages/3 progs./3 safety messages.	5 min./16 hrs./48 hrs./8 hrs./24 hrs.	396
239.105—Debriefing and Critique.	22 railroads	39 debrief sess	27 hours	1,053
239.301—Operational Efficiency Tests.	22 railroads	22,000 tests/rcds	15 minutes	5,500

Total Responses: 39,399.

Estimated Total Annual Burden: 10,910 hours.

Status: Extension of a Currently Approved Collection.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on December 10, 2009.

Kimberly Coronel,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E9–29844 Filed 12–15–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2009–0133]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection Titled: Federal Lands Highway Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for renewal of an existing information collection that is summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by (please insert date 60 days from published date).

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA–2009–0133, by any of the following methods:

Web site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gye Aung, 202–366–2167, Office of Federal Lands Highway, Federal Highway Administration, Department of Transportation, East Building, Room E61 339, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Federal Lands Highway Program.

OMB Control #: 2125–0598.

Background: Title 23 U.S.C. 204 requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the Federal Lands Highway Program (FLHP). A management system is a process for collecting, organizing, and analyzing data to provide a strategic approach to transportation planning, program development, and project selection. Its purposes are to improve transportation system performance and safety, and to develop alternative strategies for enhancing mobility of people and goods. This data collection clearance addresses the management systems for the National Park Service (NPS) and the Park Roads and Parkways (PRP) Program; Bureau of Indian Affairs (BIA) and the Indian Reservation Roads (IRR) Program; Fish and Wildlife Service (FWS) and the Refuge Roads (RR) Program; and Forest Service (FS) and the Forest Highway (FH) Program.

Outputs from the management systems are important tools for the development of transportation plans and transportation improvement programs, and in making project selection decisions consistent with 23 U.S.C. 204. Further, management system outputs also provide important information to the FHWA for their stewardship and oversight roles for the Park Roads and Parkways, Indian Reservation Roads, Refuge Roads, and Forest Highway Programs. The data collection required to implement these management systems supports the DOT Strategic Plan. The proposed data collection also directly supports the FHWA's Initiatives of Safety, Congestion Mitigation, and Environmental Stewardship and Streamlining that represent the three important strategic planning and performance goals for the agency.

The National Park Service, Bureau of Indian Affairs, Fish and Wildlife Service, and Forest Service are continuing to implement the required management systems and the associated information collections. Completion of this phase-in of the management systems is expected to occur during the time period covered by this information collection, and the average annual burden estimates are based on expected increases in the overall burden over that time period. The management systems vary in complexity among the four agencies and reflect differences in the characteristics of the transportation systems involved such as size, ownership, and eligibility for inclusion in the program. These variations result in differences among the agencies in the expected number of respondents to the information collection, and in the anticipated time necessary to respond to the information collection.

Typical information that might be collected for the management systems includes:

- Traffic information including volumes, speeds, and vehicle classification;
- Pavement features such as number of lanes, length, width, surface type, functional classification, and shoulder information; and pavement condition information such as roughness, distress, rutting, and surface friction;
- Bridge features such as deck width, under/over-clearance, details of structural elements such as girders, joints, railings, bearings, abutments, and piers; and information on the condition of the bridge elements sufficient to describe the nature, extent, and severity of deterioration;
- Safety information such as crash records, crash rates, and an inventory of safety appurtenances such as signs and guardrails; or
- Congestion measures such as roadway level of service or travel delay.

Respondents to the information collection might be collecting and submitting information in one or more of these categories for the portion of their transportation system that is covered under the FLHP. For example, this might include the collection and submission of these types of information for State or county-owned roads that are Forest Highways or Indian Reservation Roads owned by Indian Tribal Governments. Typically, the respondents would collect information each year on a portion of their system. Burden estimates have been developed using this assumption combined with an estimate of the time needed to collect and provide the information.

Respondents: The estimated average annual number of respondents for the management systems for each of the agencies addressed by this information collection is:

NPS management systems—35 States and 40 Metropolitan Planning Organizations (MPOs), regional transportation planning agencies, counties, local or tribal governments.

BIA management systems—35 States and 50 MPOs, regional transportation planning agencies, counties, local or tribal governments.

FWS management systems—35 States and 40 MPOs, regional transportation planning agencies, counties, local or tribal governments.

FS management systems—35 States and 50 MPOs, regional transportation planning agencies, counties, local or tribal governments.

Frequency: Annual.

Estimated Average Annual Burden per Response:

NPS management systems—Approximately 40 hours per respondent.

BIA management systems—Approximately 60 hours per respondent.

FWS management systems—Approximately 20 hours per respondent.

FS management systems—Approximately 60 hours per respondent.

Estimated Total Annual Burden Hours: Total estimated average annual burden is 14,700 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: December 9, 2009.

Judith Kane,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. E9–29886 Filed 12–15–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2009–0132]

Agency Information Collection Activities: Notice of Request for Extension of Currently Approved Information Collection Titled: Developing and Recording Costs for Railroad Adjustments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request

the Office of Management and Budget's (OMB) approval for renewal of an existing information collection, which is summarized below under **SUPPLEMENTARY INFORMATION.** We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by February 16, 2010.

ADDRESSES: You may submit comments identified by DOT Docket ID Number FHWA–2009–00132, by any of the following methods:

Web site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ken Epstein, 202–366–2157, Office of Safety Design, Federal Highway Administration, Department of Transportation, East Building, Room E71–113, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Developing and Recording Costs for Railroad Adjustments.

OMB Control #: 2125–0521.

Background: Under 23 U.S.C. 130, the FHWA reimburses the State highway agencies when they have paid for the cost of projects that (1) eliminate hazards at railroad/highway crossings, or (2) adjust railroad facilities to accommodate the construction of highway projects. The FHWA requires the railroad companies to document their costs incurred for adjusting their facilities. The railroad companies must have a system for recording labor, materials, supplies, and equipment costs incurred when undertaking the necessary railroad work. This record of costs forms the basis for payment by the State highway agency to the railroad company, and in turn FHWA reimburses the State for its payment to the railroad company.

Respondents: Approximately 135 railroad companies are involved in an average of 10 railroad/highway projects per year, total frequency is 1,350 railroad adjustments.

Frequency: Annually.

Estimated Average Burden per Response: The average number of hours required to calculate the railroad adjustment costs and maintain the required records per adjustment is 12 hours.

Estimated Total Annual Burden Hours: The FHWA estimates that the total annual burden imposed on the public by this collection is 16,200 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: 23 U.S.C. 121, 130; 23 CFR 140 Subpart I; the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: December 9, 2009.

Judith Kane,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. E9–29887 Filed 12–15–09; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2006–24644]

TORP Terminal LP, Bienville Offshore Energy Terminal Liquefied Natural Gas Deepwater Port License Application; Preparation of Supplemental Environmental Impact Statement

AGENCY: Maritime Administration, DOT.

ACTION: Notice of availability; Notice of public meeting; Request for comments; Correction.

SUMMARY: On November 20, 2009, the Maritime Administration, in cooperation with the U.S. Coast Guard, published in the **Federal Register** a Notice of Availability of the Draft Supplemental Environmental Impact Statement (DSEIS) for the amended TORP Terminal LP Bienville Offshore Energy Terminal (BOET) Liquefied Natural Gas Deepwater Port license application. Comments on the DSEIS are due by January 4, 2010, 45 days from issuance of the DSEIS. Please note that the DSEIS contained two references to a 30 day comment period, which should be corrected as follows: (1) On the front signature page of the BOET DSEIS, the correct date by which comments must be received should be January 4, 2010; (2) on page 1–10, the correct duration of the comment period should be 45 days.

DATES: The date of the public meeting is unchanged. The public meeting will be held on December 9, 2009 in Mobile, Alabama. The public meeting will be held from 6 p.m. to 8 p.m. and will be preceded by an informational open house from 5 p.m. to 6 p.m. Depending on the number of persons wishing to speak, the public meeting may end later than the stated time.

Material submitted in response to the request for comments on the DSEIS and application must reach the Docket Management Facility by January 4, 2010.

ADDRESSES: The open house and public meeting in Mobile will be held at the Mobile Convention Center, One South Water Street, Mobile, Alabama 36602; telephone: 251–208–2100.

The DSEIS, the application, comments and associated documentation are available for viewing at the Federal Docket Management System Web site: *http://www.regulations.gov* under docket number USCG–2006–24644.

Docket submissions for USCG–2006–24644 should be addressed to: Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

The Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility telephone number is 202–366–9329, the fax number is 202–493–2251, and the Web site for electronic submissions or for electronic access to docket contents is *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Marchman, Maritime Administration, telephone: 202–366–8805, email: *Patrick.Marchman@dot.gov*; or Mr. Linden Houston, Maritime Administration, telephone: 202–366–4839, e-mail: *Linden.Houston@dot.gov*. If you have questions on viewing the docket, call Renee V. Wright, Program

Manager, Docket Operations, telephone 202–493–0402.

(Authority 49 CFR 1.66)

By order of the Maritime Administrator.

Dated: December 7, 2009.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. E9–29533 Filed 12–15–09; 8:45 am]

BILLING CODE 4910–81–P

TENNESSEE VALLEY AUTHORITY

Mountain Reservoirs Land Management Plan, Chatuge, Hiwassee, Blue Ridge, Nottely, Ocoees 1, 2, and 3, Apalachia, and Fontana Reservoirs, Georgia, North Carolina, and Tennessee

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Issuance of Record of Decision (ROD).

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 through 1508) and TVA's procedures for implementing the National Environmental Policy Act (NEPA). TVA has decided to implement Alternative D—the Blended Alternative, the preferred alternative identified in its final environmental impact statement (EIS), ''Mountain Reservoirs Land Management Plan.''

FOR FURTHER INFORMATION CONTACT: James F. Williamson Jr., Senior NEPA Specialist, Environmental Permitting and Compliance, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11D, Knoxville, Tennessee 37902–1401; telephone (865) 632–6418 or e-mail *jfwilliamson@tva.gov.*

SUPPLEMENTARY INFORMATION: In order to protect the integrated operation of the TVA reservoir and power systems, to provide opportunities for public access and use of the reservoir system, and to facilitate economic growth in the Tennessee Valley, TVA develops comprehensive plans for the management of lands associated with its reservoir projects. TVA has developed the ''Mountain Reservoirs Land Management Plan'' to guide management on the following reservoirs: Chatuge, Hiwassee, Blue Ridge, Nottely, Ocoees 1, 2, and 3, Apalachia, and Fontana. All public lands under TVA control on these reservoirs, *i.e.,* 6,273 acres, were included in the planning process. Approximately three-fourths of this land area (4,664 acres) was planned previously under the Forecast System, which was developed in the 1960s. The remaining lands, totaling approximately 1,609 acres, have never been planned. TVA prepared this EIS to assess the potential environmental impacts of implementing the ''Mountain Reservoirs Land Management Plan.''

TVA published a notice of intent to prepare this EIS in the **Federal Register** (72 FR 30657, June 1, 2007). A public scoping meeting was held on June 21, 2007, at the North Georgia Technical College in Blairsville, Georgia, and was attended by 83 people. Scoping comments were received from the U.S. Fish and Wildlife Service, 11 State or local agencies, the Eastern Band of the Cherokee Indians, the Blue Ridge Mountain Electric Membership Corporation, and a number of individuals. TVA received 473 scoping comments from the public. The notice of availability of the draft EIS was published in the **Federal Register** (73 FR 47949, Aug. 15, 2008). Comments on the draft EIS were received from three Federal agencies, eight State agencies, one local agency, two local governments, seven citizens' organizations, and 575 individuals. The notice of availability of the final EIS was published in the **Federal Register** (74 FR 39698, Aug. 7, 2009).

Alternatives Considered

TVA identified four alternatives in the EIS.

Under Alternative A, the No Action/Forecast System Alternative, TVA would continue to use its existing Forecast System designations to manage 4,664 acres (of a total of approximately 6,273 acres) on the nine mountain reservoirs. Under the Forecast System, parcels were assigned to one of 13 categories: Dam Reservation, Public Recreation, Reservoir Operations (Islands), Reservoir Operations (Mainland), Power Transmission and Power Needs, Commercial Recreation, Minor Commercial Landings, Industrial, Navigation Safety Harbors or Landings, Forestry Research, Steam Plant Study, Wildlife Management, and Small Wild Areas. Under Alternative A, approximately 1,609 acres of TVA mountain reservoirs lands unplanned under the Forecast System, including all TVA-owned Fontana Reservoir lands, would continue to be managed according to existing land use agreements, TVA's Shoreline Management Policy, and TVA's Land Policy. However, the unplanned parcels would not be allocated to a current land use zone under this alternative. The currently used allocations include Zone 1 (Non-TVA Shoreland), Zone 2 (Project Operations), Zone 3 (Sensitive Resource Management), Zone 4 (Natural Resource Conservation), Zone 5 (Industrial), Zone 6 (Developed Recreation), and Zone 7 (Shoreline Access). Thus, complete alignment with current TVA policies and guidelines would not occur.

Under Alternative B, the Proposed Land Use Plan Alternative, TVA would adopt a new land management plan based on the current reservoir land planning process and zone allocation definitions to guide future land use decisions. In addition to the 4,664 acres previously planned under the Forecast System, 1,609 acres in 231 parcels that have not been planned would be allocated. Allocations for these parcels would be based on existing land uses.

Under Alternative C, the Proposed Modified Land Use Plan Alternative, parcel allocations would be the same as those proposed under Alternative B for 351 of 360 parcels (*i.e.,* 6,168 of the total 6,273 acres). Alternative C differs from Alternative B in that additional lands would be allocated for Developed Recreation and Industrial uses on Chatuge and Hiwassee reservoirs. These allocations, which were developed in response to proposals received during the scoping process, affect 101.6 acres on four parcels on Chatuge Reservoir and 4.0 acres on two parcels on Hiwassee Reservoir. Allocations for the other parcels on Chatuge and Hiwassee, as well as all parcels on the remaining mountain reservoirs, would be the same as those proposed under Alternative B.

TVA developed Alternative D, the Blended Alternative, following release of the draft EIS. This alternative is a mixture of Alternatives B and C. Alternative D differs from Alternative B in that an additional 6.1 acres on Chatuge Reservoir and 1.6 acres on Hiwassee Reservoir would be allocated to development-oriented uses (*i.e.,* Developed Recreation). Compared to Alternative C, Alternative D involves the allocation of two parcels for more developed uses (*i.e.,* Developed Recreation); whereas, Alternative C involves six parcels being allocated for recreation and industrial uses.

Comments on the Final EIS

The North Carolina Department of Environment and Natural Resources (NCDENR) commented on the final EIS that several rare aquatic species inhabit the area near Parcels 34 and 49 on Hiwassee Reservoir. Should these parcels be allocated for Developed Recreation, NCDENR recommended the use of strict erosion and sedimentation control during construction of any recreational facilities and the use of appropriate signage for public education regarding species occurring in the Hiwassee River. Under the preferred

alternative, *i.e.,* Alternative D, Hiwassee Parcel 34 would be allocated to Zone 4 (Natural Resource Conservation). Under Alternative D, Parcel 49 would be allocated to Zone 6 (Developed Recreation) in anticipation of a request from the Town of Murphy for use of this parcel to extend and make further improvements to the Heritage Riverwalk Trail. TVA would consider developed recreational uses for Parcel 49 through its land use application process. Considerations of applications for landrights allowing recreation use require completion of a recreation-specific review and an environmental review under NEPA. Any necessary mitigation, such as implementing measures to prevent erosion and sedimentation, would be identified in that environmental review, and implementation of such measures would be conditions of approval by the TVA Board of Directors or its designee.

The U.S. Environmental Protection Agency (EPA) also commented on the final EIS. EPA asked for clarification regarding whether a parcel could be reallocated based on a land use request for that parcel that is inconsistent with its allocation under the current plan. TVA's land planning efforts, including the ''Mountain Reservoirs Land Management Plan,'' are designed to allocate shoreline parcels to land uses based on that parcel's current land use as well as its suitability and capability for future uses. These plans serve as guidelines to direct future use of shoreline properties by TVA or by other parties under land use agreements. Under the ''Mountain Reservoirs Land Management Plan,'' any land use request that is obviously inconsistent and incompatible with a parcel's allocation would most likely be rejected. However, TVA could consider the reallocation of a parcel under certain limited circumstances. For example, TVA's Land Policy provides that TVA will consider changing a land use designation outside of the normal planning process only for water-access purposes for industrial or commercial recreation operations on privately owned back-lying land or to implement TVA's Shoreline Management Policy. Additionally, discovery of deeded rights that were previously overlooked or misinterpreted could necessitate a possible change in allocation to accurately reflect those rights, as land plans do not take precedence over such legal rights. In such circumstances, TVA could reallocate the subject parcel, facilitating a potential change in land use. However, such a change in allocation would be subject to approval by the TVA Board of Directors or its designee, pending the completion of an appropriate environmental review. TVA would involve the public appropriately during any environmental review for a parcel reallocation.

EPA also encouraged TVA to facilitate the development of a watershed management plan for each mountain reservoir. TVA partnered with the Hiwassee River Watershed Coalition to develop the ''Lake Chatuge Watershed Action Plan,'' which was completed in 2007. The other mountain reservoirs do not have similar watershed action plans in place. However, TVA monitors ecological indicators of reservoir health and water quality on all of its reservoirs, including the mountain reservoirs, and encourages citizen-led organizations to develop plans to improve reservoir water quality.

EPA expressed concerns about mitigation measures to minimize developmental impacts of shoreline amenities on Hiwassee Parcel 34 and Chatuge Parcel 52 and questioned whether such amenities could be located on brownfield sites rather than on these greenfield sites. Under Alternative C, Hiwassee Parcel 34 would be allocated to Zone 6 (Developed Recreation). This allocation was based on a proposal to use this parcel for stream access to the Hiwassee River for wade fishing. Approvals of such proposed uses of TVA land are subject to completion of an appropriate environmental review. TVA routinely requires the implementation of measures to control erosion and runoff as conditions of approval. The nearest parcel allocated to Zone 6 is Hiwassee Parcel 25, which is approximately a mile from Parcel 34. The Murphy boat launch ramp is located on Parcel 25. Under Alternative B and Alternative D (the preferred alternative), Hiwassee Parcel 34 would be allocated to Zone 4 (Natural Resource Conservation). Under this allocation, limited development consistent with dispersed recreational use of Parcel 34 would be allowed. Additionally, Parcel 46 (allocated to Sensitive Resource Management) provides an approximate 50-foot buffer between Parcel 34 and the Hiwassee River. The 6.1-acre Parcel 52 on Chatuge Reservoir would be allocated to Zone 6 (Developed Recreation) under Alternatives C and D in response to interest expressed by Towns County, the City of Hiwassee, and the Georgia Department of Natural Resources to use the parcel for recreation purposes, including a boat ramp, fishing piers, and other water-based recreational uses. This parcel is suited for this purpose due to its topography and available access. Other potential sites off reservoir (*i.e.,* on private property) would not necessarily be suitable for providing such recreational amenities. Approval of developed recreational use of this parcel would be subject to TVA Board approval pending completion of an appropriate environmental review. Implementation of measures to prevent adverse effects to water quality would likely be a condition of that approval. At this time, TVA has not received a formal land use request for Parcel 52.

EPA requested that the ROD further address cumulative effects relative to the proposed land allocations and parcel use requests, focusing on the selected alternative. TVA recognizes that some long-term environmental changes are likely on the mountain reservoirs, primarily on Nottely, Blue Ridge, and Chatuge, due to the amount of residential development around these reservoirs. Such development can potentially affect reservoir water quality. Parcel allocations under Alternative B essentially represent the current situation in that allocations reflect the current land use on the respective parcels. Allocations under Alternative D, the preferred alternative, would differ from those under Alternative B on two parcels, totaling 7.7 acres out of a total of 6,273 acres. The two parcels involved, Chatuge Parcel 52 and Hiwassee Parcel 49, would be allocated for Developed Recreation under Alternative D. Although use of these parcels for Developed Recreation would have some environmental effects, these are not expected to be significant with respect to either parcel. The placement of any necessary measures to prevent water quality degradation would likely be imposed as conditions of TVA's approval of the requested land use. The additional recreational opportunities afforded by these amenities are not expected to affect local population growth on Chatuge or Hiwassee reservoir. Thus, implementation of Alternative D is not expected to cause any measurable cumulative environmental effects.

The Tribal Historic Preservation Officer of the Seminole Tribe of Florida requested a cultural resource assessment survey for the remainder of the project area. A comprehensive cultural resources survey of all TVA-managed land on the mountain reservoirs is not feasible at this time due to the extensive amount of land involved. However, before undertaking any land-disturbing action or prior to allowing any such activities, TVA would conduct a cultural resources survey, including a survey of archaeological sites, on the

subject properties in accordance with the requirements of the National Historic Preservation Act.

Decision

TVA has decided to implement Alternative D, the Blended Alternative. Under this alternative, the land use zone allocations would provide public benefits while balancing competing demands for the use of public lands. Significant resources, including threatened and endangered species, cultural resources, wetlands, unique habitats, water quality, and visual character of the reservoirs, would be protected under the allocations prescribed under Alternative D.

Environmentally Preferred Alternative

Under Alternative B, parcel allocations were made based on the current land uses for each parcel. Thus, inasmuch as there would be essentially no future change under Alternative B in any parcel's land use from its current status, this alternative is the environmentally preferred alternative. However, implementation of Alternative D, TVA's preferred alternative, would involve the same parcel allocations on 358 of the total 360 parcels. Under Alternative D, the 6.1-acre Chatuge Parcel 52 and the 1.6-acre Hiwassee Parcel 49 would be allocated for possible developed recreational use. Such allocations are not expected to result in adverse environmental effects. Recreational allocations on these two parcels would afford additional local recreational opportunities.

Mitigation

No specific mitigation measures were identified to reduce potential environmental effects. However, before taking actions that could result in adverse environmental effects or allowing such actions to occur on properties it controls, TVA would perform an appropriate site-specific environmental review to determine necessary mitigative measures or precautions.

Dated: December 7, 2009.

Janet C. Herrin,

Senior Vice President, River Operations.

[FR Doc. E9–29868 Filed 12–15–09; 8:45 am]

BILLING CODE 8120–08–P

Federal Register

Wednesday,
December 16, 2009

Part II

Department of Transportation

Federal Highway Administration

23 CFR Part 655

National Standards for Traffic Control Devices; the 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–2007–28977]

RIN 2125–AF22

National Standards for Traffic Control Devices; the 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 for Streets and Highways (MUTCD) (also referred to as ''the Manual'') is incorporated by reference within our regulations, 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 2009 Edition of the MUTCD.

DATES: *Effective Date:* This final rule is effective January 15, 2010. 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 January 15, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Hari Kalla, Office of Transportation Operations, (202) 366–5915; or Mr. Raymond Cuprill, Office of the Chief Counsel, (202) 366–0791, Federal Highway Administration, 1200 New Jersey Ave., SE., 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 Federal eRulemaking portal at: *http://www.regulations.gov.* Electronic submission and retrieval help and guidelines are available under the help section of the Web site. It is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded from 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.access.gpo.gov/nara.*

Background

On January 2, 2008, at 73 FR 268, the FHWA published an NPA proposing revisions to the MUTCD. Those changes were proposed to be designated as the next edition of the MUTCD. Interested persons were invited to submit comments to FHWA Docket No. FHWA–2007–28977. 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 2009 Edition of the MUTCD.

The text of the 2009 Edition of the MUTCD, with these final rule changes incorporated, and documents showing the adopted changes from the 2003 Edition, are available for inspection and copying, as prescribed in 49 CFR part 7, at the FHWA Office of Transportation Operations (HOTO–1), 1200 New Jersey Avenue, SE., Washington, DC 20590. Furthermore, the text of the 2009 Edition of the MUTCD, with these final rule changes incorporated, and documents showing the adopted changes from the 2003 Edition, are available on the FHWA's MUTCD Internet site *http://mutcd.fhwa.dot.gov.* The previous version of the MUTCD, the 2003 MUTCD with Revisions 1 and 2 incorporated, is also available on this Internet site. The 2009 Edition supersedes all previous editions and revisions of the MUTCD.

Summary of Comments

The FHWA received 1,841 letters submitted to the docket, containing over 15,000 individual comments on the MUTCD in general or on one or more parts, chapters, sections, or paragraphs contained in the MUTCD. 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 submitted comments. The FHWA has reviewed and analyzed all of the comments received. The NCUTCD comments included support for all items in the NPA except as otherwise indicated. 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. All of the items discussed below were proposed in the NPA unless otherwise indicated.

Discussion of General Amendments to the MUTCD

1. The FHWA received several general comments from State DOTs, local agencies, associations, and citizens regarding the NPA. Two local agencies, a traffic control device vendor, an association, and two citizens expressed general support for the changes in the MUTCD, such as incorporating into the MUTCD recommendations of the Older Driver Handbook, the Synthesis of Non-MUTCD Traffic Signs, and new technologies. In addition to the overall general comments, some of the commenters had specific comments that relate to the entire MUTCD. Those topics that the FHWA considers to be substantive and non-editorial in nature are discussed in the following items within this section.

2. The NCUTCD submitted a letter suggesting that the FHWA issue a supplemental notice of proposed amendments (SNPA). Fourteen State DOTs, AASHTO, and the Chair of the NCUTCD submitted duplicate copies of the NCUTCD's letter in support of an SNPA. In addition, three State DOTs, a county DOT, an NCUTCD member, and a traffic engineering consultant also stated support for the NCUTCD's letter. The NCUTCD's letter included the following statements in support of an SNPA:

1. The NPA did not include a quantified assessment of the economic impacts of the proposed changes on public agencies and the private sector.

2. More details are needed regarding some of the proposed changes and some of the proposed changes need to be reorganized or reformatted.

3. The extent of the proposed changes and the number of expected comments is such that the final rule would be significantly different from the NPA version, and would therefore constitute a new document which should be reviewed as an SNPA prior to becoming a final rule.

4. Because of the interconnectivity between the language in the various sections, chapters, and parts, a change in one section might have impacts on multiple other sections. Therefore, an SNPA is needed in order to have the opportunity to review additional changes resulting from responses to comments to assess whether they are consistent with each other.

5. There is precedent for issuing multiple proposed rules for changes to the MUTCD.

6. It is essential that the FHWA provide an opportunity to review the FHWA responses to the docket so that implementation and liability changes can be identified, assessed, and discussed before a final rule is published.

7. An SNPA is needed to assess the FHWA response to comments and evaluate the level of engineering flexibility that will be provided in the next edition of the MUTCD.

Five State DOTs, a local agency, nine toll road operators, a major retail business owner, and a traffic engineering consultant also expressed general support for an SNPA.

Two bicycle associations, a traffic engineering consultant, and a citizen disagreed with the need for an SNPA and requested that FHWA publish a final rule. The two bicycle associations suggested that if an SNPA were to be published instead of a final rule, the FHWA should issue Interim Approvals for all new devices and applications in Part 9 so that public agencies can begin installing them to improve conditions for bicyclists.

The FHWA carefully reviewed and considered the concerns both for and against issuing an SNPA and decided that an SNPA is not necessary or appropriate. The FHWA determined that the seven specific statements cited by the NCUTCD in support of an SNPA do not justify delaying the finalization of a new edition of the MUTCD that will significantly improve the safety and efficiency of highway travel. Additionally, in making decisions in the final rule regarding the various technical issues cited in the letters from the NCUTCD and others who requested an SNPA, the FHWA has taken into consideration the concerns expressed. To address the concerns, in most cases the FHWA has revised certain provisions to make them less restrictive or has deleted from the final rule certain provisions that were proposed in the NPA, has reorganized and reformatted material to clarify it, and has eliminated specific target compliance dates or established long compliance periods consistent with service lives of the devices. In most cases the new provisions apply only to new installations or reconstructions of devices, and the provisions for systematic upgrading cited in Section 655.603(d)(1) of title 23, Code of Federal Regulations [1] allow existing noncompliant devices in good condition to remain in place until the end of their service lives, thus minimizing any impacts of new requirements on State or local highway agencies and owners of private roads open to public travel.

3. The FHWA received comments from three local agency DOTs, an association of counties, and a citizen suggesting that there are too many proposed changes to the MUTCD and that many of the changes are too complex. The FHWA believes that continuously updating the MUTCD is necessary in order to incorporate advances in technology, new research results, and state of the practice in traffic control devices. Since the MUTCD's purpose is to improve safety and efficiency, the MUTCD must be revised to remain current with these new technologies and applications.

4. A State DOT, 10 local agency DOTs, an association representing local DOTs, and a traffic engineering consultant expressed concern that there were too many new STANDARD statements (or GUIDANCE statements elevated to STANDARD statements) in the proposed revisions, and that the large number of changes places an undue financial burden on agencies. The FHWA believes that the changes to the MUTCD will provide improved uniformity in traffic control device applications across the country, thereby increasing safety, and that the additional Standards will not result in undue financial burden on agencies. As discussed under Amendments to the MUTCD Introduction, in the vast majority of cases existing devices in good condition that are not in compliance with new standards can remain in place for the remainder of their service life, thus minimizing any impacts of new requirements on State or local highway agencies and owners of private roads open to public travel.

5. The FHWA received comments from a State DOT and three city DOTs opposing the scope of the changes within the MUTCD and suggesting that many of the changes are more appropriate for a handbook, rather than the MUTCD. Several of the commenters expressed concern that the MUTCD was becoming more prescriptive in nature, thus limiting creativity, flexibility, and judgment. The FHWA believes that the widespread use of the MUTCD by State and local agencies and design professionals, and its importance as a Federal regulation for traffic control devices justifies the level of detail incorporated in the MUTCD. Further, the FHWA believes that sufficient justification has been provided for any new standards and that ample latitude for flexibility and judgment is provided in the application of Guidance and Options in the MUTCD.

6. The FHWA adopts a new cover page for this edition of the MUTCD that maintains general consistency with covers of previous editions, but with changes to give it a distinctive appearance to minimize the possibility of confusion by users. The date of this edition, which is identified on the cover and elsewhere within the document, is the year in which the final rule is issued.

7. The FHWA includes paragraph numbers in the margins for each paragraph of each section for the final page images of this edition of the MUTCD. The FHWA includes these paragraph numbers in order to aid practitioners in referencing the MUTCD, as well as to assist readers of future MUTCD notices of proposed amendments. The FHWA posted sample pages on its MUTCD Web site showing four possible methods for paragraph numbering and as part of the NPA asked interested persons to review the sample pages and provide comments to the docket on the paragraph numbering options. Based on comments, the FHWA numbers the paragraphs in the manner that was shown as Alternative #3, with dark numerals outside the margin, and in a font that is easy to read without being distracting.

8. The NCUTCD, two State DOTs, and a citizen provided comments regarding the format of MUTCD pages, print style, numbering of sections, etc. Based on a comment from the NCUTCD, the FHWA changes the font of GUIDANCE statements to italics to distinguish them from OPTION and SUPPORT statements. As part of this change, the FHWA eliminates italics from the titles of figures and tables.

9. The FHWA received several comments regarding the use of metric units in the MUTCD. The NCUTCD, six State DOTs, ATSSA, an NCUTCD member, and two traffic engineering consultants suggested that the metric units be removed in their entirety or that the English units precede the metric units, and a traffic engineering consultant suggested that the MUTCD continue to be issued with both systems of measurement. Because metric units are not currently used in the U.S. for traffic control device applications, the FHWA determines that only English units are to be used in the MUTCD text, figures, and tables and places metric

[1] The Code of Federal Regulations can be viewed at the following Internet Web site: *http://www.gpoaccess.gov/CFR/.*

equivalent values for all English unit values used in the MUTCD in a new Appendix A2 in this final rule. This preserves the soft conversions of the English to metric values in the MUTCD while also providing a document that is less cumbersome to read and apply. This change is consistent with an Informational Memorandum from FHWA's Executive Director, dated November 25, 2008,[2] stating that use of metric measurements will now be optional in all FHWA documents, including letters, memoranda, publications, reports, and information on FHWA Web sites.

10. Throughout the MUTCD, the FHWA incorporates minor changes in text, figures, and tables for grammatical or style consistency, to improve consistency with related text or figures, to improve clarity, or to correct minor errors. Where the FHWA adds a new chapter within a part of the MUTCD, a new section within a chapter of the MUTCD, or a new item within a listing, the chapters or sections or items that follow the addition are renumbered or relettered accordingly. All Tables of Contents, Lists of Figures, Lists of Tables, and page headers and footers are revised as appropriate to reflect the changes.

11. The FHWA modifies figures and tables to reflect changes in the text and adds figures and tables to illustrate new or revised text.

12. In various sections of the Manual, the FHWA relocates statements or paragraphs in order to place subject material together in logical order, to provide continuity, or to improve flow. In addition, the FHWA changes the titles of some sections, figures, and tables in order to more accurately describe the content.

13. As proposed in the NPA, the FHWA removes the phrase ''reasonably safe'' throughout the Manual because it cannot be easily defined, and as a result it is open to too much subjective interpretation. The FHWA received a comment from a local DOT opposed to this revision, stating that there are some circumstances in the MUTCD where the phrase ''reasonably safe'' reflects real-world conditions, and that removing the phrase could pose a liability problem to State and local agencies in civil litigation. The FHWA disagrees because of the subjectivity of the term and for each occurrence of the term either eliminates or replaces the term with suitable language that is more appropriate.

14. The FHWA changes the references to the book previously titled ''Standard Highway Signs'' to refer to the current title, ''Standard Highway Signs and Markings.'' This reflects FHWA's change of the title of that book to more accurately reflect its content, which includes information regarding pavement markings. The FHWA received a comment from ATSSA in support of this change. The FHWA also resolves the inaccuracies between the sign illustrations in the MUTCD and the ''Standard Highway Signs and Markings'' (SHSM) book to the extent practical in the MUTCD figures.

15. The FHWA conducted a comprehensive review of all of the sign codes used throughout the Manual, and revises sign codes in several places in order to provide more consistency and clarity. As part of this process, the FHWA revises the term ''sign code'' to ''sign designation'' to avoid confusion with other uses of the word ''code.'' The FHWA received a comment from ATSSA in support of this change. A State DOT opposed sign nomenclature changes, stating that these changes could be complex for agencies that catalog sign inventory databases based on the nomenclature. The FHWA understands the issues related to inventory databases but determines that the nomenclature changes are necessary for consistency. The FHWA received a comment from ATSSA suggesting that the suffix ''w'' be used for word message signs to avoid confusion with the ''a'' suffix being used for abbreviations in the route marker series (such as M4–1a and M4–7a). The FHWA disagrees and uses the ''a'' suffix in sign designations for word message signs that are alternatives to symbol signs, as presented in the NPA. The FHWA uses the ''P'' suffix for designations for plaques to clarify that these devices must accompany a sign and cannot be used alone. ATSSA supported this change. Also, based on a comment from a citizen, the FHWA adds a column to the sign size tables in Parts 6 and 9 to cite the applicable MUTCD Section for each sign so that MUTCD users can review the pertinent information for each sign. The sign size tables for other Parts of the MUTCD already have this column.

16. Based on a comment from the NCUTCD that a single location should be provided where all definitions can be found, the FHWA places all definitions in Part 1 by relocating to Section 1A.13 all definitions that were previously contained or repeated in the MUTCD Introduction and in Parts 2 through 10 of the 2003 MUTCD and in the NPA.

17. The FHWA adds information in the MUTCD regarding toll plaza applications, because toll facilities are becoming more common and there is a need to provide more consistent use of signs, signals, and markings in advance of and at toll plazas, in order to enhance safety and convenience for road users. The FHWA adds provisions on toll plaza traffic control devices to Parts 2, 3, and 4 that reflect the results of research studies on best practices for traffic control strategies at toll plazas,[3] FHWA's policy on toll plaza traffic control devices,[4] and FHWA's report on ''Strategies for Improving Safety at Toll Collection Facilities.'' [5] The NCUTCD and 10 agencies that operate toll facilities suggested that the toll road related material be placed in a new, separate Part to facilitate the use of this material. The FHWA understands that the toll operators would like to have the information consolidated into one area, but disagrees with adding a separate Part. Instead, the FHWA creates new chapters for toll plazas within Parts 2, 3, and 4 and places the new toll-related material in those chapters.

18. The FHWA expands the provisions regarding preferential lanes and adds new provisions regarding managed lanes in various parts of the MUTCD to address the increasing complexity and use of these types of lanes. Although four agencies that operate toll facilities expressed support for the need for increased uniformity in traffic control devices on managed lanes for the purposes of improving traffic safety, eight agencies (including some of those who also supported the need for including toll facilities in the MUTCD) expressed concern that the changes will place a financial burden on their agency, and two of these agencies felt that the changes were too restrictive and should reflect recommendations, rather than requirements. The FHWA understands that changes in the MUTCD are often met with financial concerns; however, the FHWA believes that the provisions for systematic upgrading

[2] Informational Memorandum, ''Update on Metric Use Requirements for FHWA Documents,'' by Jeffrey Paniati, dated November 25, 2008, can be viewed at the following Internet Web site: *http://www.fhwa.dot.gov/programadmin/contracts/1108metr.cfm.*

[3] ''State of the Practice and Recommendations on Traffic Control Strategies at Toll Plazas,'' June 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/rpt/tcstoll/index.htm.*

[4] ''Toll Plaza Traffic Control Devices Policy,'' dated September 8, 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/policy/tcstollmemo/tcstoll_policy.htm.*

[5] ''Strategies for Improving Safety at Toll Collection Facilities,'' Report number FHWA–IF–08–005, May 2008, can be viewed at the following Internet Web site: *http://ops.fhwa.dot.gov/tolling_pricing/resources/report/toll_summary/index.htm.*

cited in Section 655.603(d)(1) of title 23, Code of Federal Regulations [6] will enable changes associated with the final rule to be accommodated without significant expense. The information on preferential and managed lanes is contained primarily in Parts 2 and 3 and is intended to address specific signing and marking issues associated with High Occupancy Toll (HOT) lanes, variable tolls and other operational strategies on managed lanes, etc. To better facilitate user understanding, the FHWA creates new chapters for preferential and managed lanes in Parts 2 and 3 and places the new and existing material on those subjects in those chapters. In addition, as proposed in the NPA, the FHWA eliminates some information regarding preferential lanes that is too specific for the MUTCD because it deals with highway planning and programmatic matters rather than the traffic control devices for preferential lanes.

19. The FHWA received comments from a variety of commenters on subject material that was not included in the NPA. In some cases those comments pertain to existing subject matter in the 2003 Edition that was not proposed for change in the NPA, while in other cases the commenters suggest new material for the MUTCD such as new signs or different traffic control device applications from those included in the 2003 Edition or the NPA. Comments received during the comment period that were outside the scope of this rulemaking are neither discussed in this preamble nor addressed in the final rule. The FHWA appreciates these comments, and might consider some of these ideas for potential future rulemaking activities.

Discussion of Amendments Within the Introduction

20. The FHWA revises paragraph 01 regarding the definition of traffic control devices to reflect that traffic control devices on private roads open to public travel are placed by authority of the private property owner or private official having jurisdiction. A State DOT commented that the existing language and that proposed in the NPA for this paragraph implied that public agencies have the authority to place traffic control devices on private roads open to public travel. The FHWA agrees that clarification is needed and revises the text accordingly.

21. In the NPA, the FHWA proposed revisions and additions to the text regarding the locations where the MUTCD applies. Two city DOTs, an NCUTCD member, three transportation professionals, a traffic control device vendor, and two citizens all supported the changes, as proposed in the NPA and as currently provided in the CFR, to apply the MUTCD to private roads open to public travel. Two State DOTs, a local DOT, and an employee of a State DOT opposed applying the MUTCD to private roads, mostly because of concerns about enforcement of the provisions. The FHWA recognizes that enforcement can only occur when a State includes the requirement to comply with MUTCD in State ordinances, local building codes, development approvals, site plans, etc., and as a result of the potential tort liability to the owners of the private roads. The FHWA believes that public agency traffic engineers are not expected to enforce this provision for existing conditions on private roads open to public travel.

Two State DOTs and two toll road operators suggested that the wording be revised to reflect that toll roads may be operated by public, quasi-public, or private entities and that toll roads are gated and restricted by tolling. The FHWA agrees and revises the language in this final rule and in 23 CFR 655.603(a),[7] to clarify that, for the purpose of applicability of the MUTCD, toll roads under the jurisdiction of public agencies or authorities or of public-private partnerships are considered to be public facilities, and that ''open to public travel'' includes private toll roads and roads within shopping centers, airports, sports arenas, and other similar business and/or recreation facilities that are privately owned, but where the public is allowed to travel without access restrictions. To address the comments from two toll road operators, this final rule language further clarifies that except for gated toll roads, roads within private gated properties where public access is restricted at all times shall not be considered to be open to public travel.

The FHWA received several comments from a major retail business operator suggesting that there are many items in the MUTCD that are not easily applicable to parking lots within shopping centers and the driving aisles within those parking lots. The FHWA agrees that, while MUTCD general principles and standard traffic control device designs should be used in parking lots, there are some MUTCD provisions that do not easily translate to conditions typically found in parking lots and parking garages. The FHWA believes that additional future consideration is needed to determine appropriate and feasible standards and guidance for the application of traffic control devices in parking lots. Therefore, the FHWA exempts parking spaces and driving aisles in parking lots, both privately and publicly owned, from MUTCD applicability in this final rule. The MUTCD continues to be applicable to ring roads, roads providing access to or egress from public roads, and circulation roads on private property open to public travel. Accordingly, throughout the MUTCD, where the term ''private property open to public travel'' was used in the NPA, the FHWA clarifies the term to be ''private road open to public travel'' and provides a precise definition of that term in Section 1A.13 in this final rule. The FHWA also incorporates these changes into 23 CFR 655.603(a).

As proposed in the NPA, the FHWA also modifies the wording of 23 CFR 655.603(a) to remove the exemption from MUTCD applicability for military bases, based on a request from the Military Surface Deployment and Distribution Command to include military bases, in order to facilitate road user safety through conformity and consistency with national standards.

22. The FHWA adds SUPPORT paragraph 05 to clarify that pictographs embedded within signs are not in themselves considered traffic control devices and thus the pictographs are not subject to the provisions in paragraph 04 that prohibit patented, copyrighted, or trademarked items. This clarification is necessary to address frequent questions from users of the MUTCD on this subject.

23. In concert with the change to show dimensions throughout the MUTCD in only English units, the FHWA revises the text in paragraphs 13 and 14 to provide a reference to new Appendix A2 for tables converting each of the English unit numerical values to the equivalent Metric values and to recommend that if metric units are to be used in laying out distances or determining sizes of devices, such units should be specified on plan drawings and made known to those responsible for designing, installing, or maintaining traffic control devices.

24. In the NPA, the FHWA proposed to revise the paragraph regarding adoption of MUTCD revisions by the States or other Federal agencies, substantial conformance of State or

[6] The Code of Federal Regulations can be viewed at the following Internet Web site: *http://www.gpoaccess.gov/CFR/*.

[7] The **Federal Register** Notice for the Final Rule, dated December 14, 2006, Vol. 71, No. 240, pages 75111–75115, can be viewed at the following Internet Web site: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2006_register&docid=fr14de06-6.pdf*.

other Federal agency MUTCDs or Supplements, and compliance periods for new and existing devices to reflect the requirements of the Code of Federal Regulations applicable to the MUTCD that have been in effect since 2006.[8] In this final rule, the FHWA further revises the text to make it clearer and more easily understood by users. The FHWA divides the single paragraph into several separate paragraphs containing applicable text on certain subjects that are presented in a more logical sequence. New text consistent with the CFR is added regarding compliance of new or reconstructed devices, and Option and Support text regarding replacement of existing noncompliant devices is revised for clarity and relocated from the end of the MUTCD Introduction to follow other related text.

25. In the NPA, the FHWA asked for comments regarding the possibility of incorporating the phase-in target compliance periods into the body of the MUTCD text throughout the applicable parts and sections in this Final Rule. The FHWA considered this change because the list of target compliance periods is lengthy, and it might be more convenient and effective for practitioners to have target compliance periods embedded in the text, rather than in a different area of the Manual. The Minnesota DOT has incorporated the target compliance periods into its State MUTCD text, and the FHWA asked whether Minnesota's method is preferable to listing all the target compliance periods in the MUTCD Introduction. The NCUTCD, ATSSA, a State DOT, a toll facility operator, an NCUTCD member, and a traffic control device vendor favored placing the compliance periods within the sections to which that they pertain. The NCUTCD also suggested that a reference be placed in the Introduction to a list of all target compliance dates on the MUTCD Web site. The FHWA understands that there are advantages and disadvantages to placing the target compliance dates within the text. Placing the target compliance dates within the sections to which they apply might result in some agencies delaying action to comply with the provision until the compliance date approaches. As a result, the FHWA continues to provide the target compliance date information in the Introduction, and does not embed the dates within the section text. However, to consolidate and improve the clarity of this information, the FHWA relocates the listing of target compliance dates from the body of the MUTCD Introduction to a new Table I–2.

In new Table I–2, FHWA includes the specific target compliance dates for those items whose dates were determined through previous rulemaking, now that the effective dates are known, and deletes from the listing any items for which the target compliance dates have passed by the date of the publication of this final rule.

The FHWA deletes most of the large number of new target compliance dates that were proposed in the NPA. Section 655.603(d)(1) of title 23, Code of Federal Regulations, states that for existing highways ''each State, in cooperation with its political subdivisions, and Federal agency shall have a program as required by 23 U.S.C. 402(a), which shall include provisions for the systematic upgrading of substandard traffic control devices and for the installation of needed devices to achieve conformity with the MUTCD.'' Although the FHWA may establish specific target compliance dates to achieve compliance with respect to specific devices, the systematic upgrade program allows public agencies and officials having jurisdiction to upgrade their existing noncompliant devices when the devices are no longer serviceable because they reach the end of their service life or otherwise need to be replaced, or when other events such as highway improvement or reconstruction projects occur, thus minimizing any impacts to State or local highway agencies and owners of private roads open to public travel. Target compliance periods shorter than expected service life have generally only been established in unusual cases when a new MUTCD requirement is deemed to be so critically important from a safety impact standpoint that it justifies earlier replacement of noncompliant existing devices. In some cases, the FHWA has adopted target compliance dates for certain provisions, such as a requirement to do a study or to evaluate the timing of traffic signal clearance intervals, that are not directly related to the service life of a device but which the FHWA believes can be reasonably accommodated within typical agency procedures and practices. The FHWA reviewed all the proposed target compliance dates in the NPA in the context of the CFR language, the general intents stated above, and the comments received, and the FHWA establishes only 12 new target compliance dates in this final rule. Each of these new target dates is discussed in detail under the appropriate item later in this preamble.

Additionally, for new target compliance dates, the FHWA establishes specific dates (December 31 of a particular year) rather than the previous practice of setting target compliance dates as a certain number of years from the effective date of the final rule. The FHWA believes that specific end of calendar year target compliance dates will assist MUTCD users by making the dates clear without the need to determine what date a final rule became effective. It should also be noted that the target compliance dates define the end of the ''phase-in compliance period'' as discussed for various items in the remainder of this document.

Discussion of Amendments Within Part 1

26. In Section 1A.07, Responsibility for Traffic Control Devices, the FHWA revises paragraphs 01 and 02 to be consistent with the language of 23 CFR 655.603 regarding the applicability of the MUTCD as the national standard for all traffic control devices installed on any street, highway, bikeway, or private road open to public travel. The FHWA adopts language for these paragraphs in this final rule that is consistent with terminology regarding private roads as discussed above under Introduction to the MUTCD.

The FHWA received a comment from a citizen opposed to changing ''bicycle trail'' to ''bikeways'' as proposed in the NPA. However, because the MUTCD defines bikeway as the generic term for any road, street, or shared-use path that is specifically designated for bicycle travel, the FHWA retains the word ''bikeways'' in this final rule.

The FHWA received three comments from local agencies opposed to including the term ''private property'' because of their belief that the property owner should be responsible for maintaining traffic control devices on private property, not a public agency or other entity. As discussed previously, the FHWA revises the term ''private property'' to ''private roads.'' To respond to the comments from the local agencies, the FHWA modifies the language in this final rule to clarify that, in the case of private roads open to public travel, it is the property owner or the private official having jurisdiction who is responsible for traffic control device design, placement, maintenance, operation, and uniformity, consistent with language in the MUTCD Introduction.

The FHWA adds a Support sentence in this final rule about adoption of the national MUTCD, supplements, or State

[8] The **Federal Register** Notice for the Final Rule, dated December 14, 2006, Vol. 71, No. 240, pages 75111–75115, can be viewed at the following Internet Web site: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2006_register&docid=fr14de06-6.pdf.*

manuals by all States and a new GUIDANCE paragraph recommending that these State manuals or supplements should be reviewed for specific provisions relating to that State. The NCUTCD recommended these additions and the FHWA agrees that this is necessary to clarify that there is a need to review the specific State Manuals for local requirements.

As requested by the U.S. Military Command, and supported by ATSSA, the FHWA expands paragraph 07 to add the U.S. Military Command to the list of Federal agencies that have adopted the national MUTCD.

Two State DOTs opposed the proposed change of paragraph 08 to a GUIDANCE statement that would recommend that States adopt Section 15–116 of the Uniform Vehicle Code (UVC) because the adoption of State laws is outside of the control of State DOTs and is in the hands of elected officials. The FHWA retains and adopts this change in this final rule and reiterates that this is GUIDANCE, a statement of recommended but not mandatory practice, and as a result the MUTCD is merely recommending the adoption of this section of the UVC by the States, in accordance with their laws and constitutions.

27. In Section 1A.08 Authority for Placement of Traffic Control Devices, in the NPA the FHWA proposed adding a new SUPPORT statement describing certain signs and other devices that do not have any traffic control purpose that are placed with the permission of the public agency or official having jurisdiction and a new GUIDANCE statement that such signs and other devices should not be located where they will interfere with or detract from traffic control devices. The FHWA proposed this change to clarify that there are some signs and devices that are placed within the right-of-way for distinct purposes that are not traffic control devices. The FHWA received comments from the NCUTCD, five State DOTs, a local agency, a vendor, and an association agreeing with the proposed SUPPORT statement. A State DOT, a local DOT, and a traffic device vendor suggested that some of the items included in the SUPPORT statement, such as markers to guide snowplow operators, markers that identify fire hydrant locations, markers that identify underground utility locations, and design features such as speed humps are indeed traffic control devices and their application should be standardized by including them in the MUTCD. The FHWA disagrees with adding explicit standards for these devices in the MUTCD, noting that States may establish requirements for these devices and design features under their adopted policy for use of the public right-of-way. The FHWA adopts the SUPPORT statement, as proposed in the NPA but with minor editorial changes, in this final rule.

Based on comments from the NCUTCD, a State DOT, and a toll road operator, the FHWA changes the proposed GUIDANCE statement to a STANDARD statement in this final rule to require, rather than just recommend, that such signs and other devices shall not be located where they will interfere with or detract from traffic control devices, since it is important that traffic control devices not be blocked or interfered with. This is also necessary for consistency with other provisions in the MUTCD about device placement, such as the requirements in Sections 2D.50 and 2H.08 that community wayfinding signs and acknowledgement signs shall not be installed in a position where they would obscure the road users' view of other traffic control devices. Signs and other devices that do not have any traffic control purpose that are placed within the highway right-of-way have even less importance than community wayfinding and acknowledgement signs.

28. In Section 1A.09 Engineering Study and Engineering Judgment, the FHWA received comments from the NCUTCD, a State DOT, and two toll road operators recommending the removal of the existing STANDARD statement stating that the MUTCD shall not be a legal requirement for the installation of traffic control devices, because it is a general provision for all devices in the Manual that is inconsistent with numerous specific requirements elsewhere in the MUTCD that specific devices must be installed, and such requirements are ''legal requirements.'' The commenters also suggested that this Standard statement may not be consistent with the Guidance statement that immediately follows it. The FHWA agrees that this STANDARD statement is not easily understood by users of the MUTCD outside of the legal profession, but this statement has been the subject of important court interpretations regarding the applicability of the MUTCD and has legal significance beyond its plain meaning. The FHWA believes that, in the future, consideration should be given to removing or revising this statement, but additional legal study should be undertaken before doing so. Therefore, the FHWA decides to retain this STANDARD statement but cautions users of the MUTCD to consult with legal counsel before attempting to ascertain the meaning of the statement.

The FHWA did not propose in the NPA a significant change to the second paragraph of the GUIDANCE statement as it appears in the 2003 MUTCD. However, four Kansas counties, the Kansas Association of Counties, and an engineer from Kansas suggested revising the language that recommends that jurisdictions with responsibility for traffic control that do not have engineers on their staffs who are trained and/or experienced in traffic control devices should seek engineering assistance from others. The commenters felt that many applications of the MUTCD are straightforward and well illustrated, and engineering assistance is not needed. As a result, the commenters felt that the language should be revised to recommend engineering assistance only if warranted due to the complexity of the situation. The commenters also recommended removing language about smaller agencies requesting assistance of larger agencies because of liability reasons. The FHWA disagrees with these comments and in this final rule adopts the revisions to the GUIDANCE statement as proposed in the NPA. However, to address the concerns, the FHWA also adds a SUPPORT statement noting that, as part of the Federal-aid Program, each State is required to have a Local Technology Assistance Program (LTAP) that provides technical assistance to local highway agencies and that requisite technical training in the application of the principles of the MUTCD and, as needed, engineering assistance, is available from the State's LTAP.

The FHWA received a comment suggesting that the first paragraph of the GUIDANCE statement in the 2003 MUTCD be revised so that the phrase ''this Manual should not be considered a substitute for engineering judgment'' cannot be used to ignore Standards based on ''engineering judgment,'' such as creating new sign symbols. The FHWA agrees that this language conflicts with other statements in the Manual regarding the intent and strength of Standards and in this final rule revises the GUIDANCE statement in Section 1A.09, the definition of the text heading ''Standard'' in Section 1A.13, and the definitions of engineering judgment and engineering study in Section 1A.13, to resolve the conflict and to make these statements consistent with each other.

29. In Section 1A.10 Interpretations, Experimentations, Changes, and Interim Approvals, in the NPA the FHWA proposed to revise paragraph 03 to indicate that electronic submittals of

requests for interpretation, permission to experiment, interim approvals, or changes shall be submitted electronically rather than by standard mail, and proposed to include the e-mail address for such electronic submittals. As part of this change, the FHWA proposed to add an OPTION statement that includes the postal address for mailing of requests in the event that the submitter does not have access to e-mail. The FHWA received comments from the NCUTCD, a State DOT and two toll road operators recommending that the STANDARD statement be changed to GUIDANCE or SUPPORT as this might not be convenient for all agencies. The FHWA disagrees with these comments as adequate provision for submission by standard mail is provided in the OPTION statement. The FHWA is aware that some written requests that are submitted by standard mail are lost or damaged in the screening of all postal mail that is sent to FHWA headquarters. As a result, e-mail submittals are preferred but standard mail submittals are also allowed. The FHWA adopts in this final rule the STANDARD and OPTION as proposed in the NPA but with minor editorial changes.

The FHWA in this final rule adopts the proposed change of paragraph 20, regarding local jurisdictions informing their State DOT of locations where they are using devices under an Interim Approval, to a GUIDANCE statement (formerly a STANDARD statement in the 2003 MUTCD). The FHWA received comments from a State DOT and two toll road operators in support of the revision and a comment from another State DOT opposed to the revision because of their belief that the local jurisdiction should be required, rather than merely recommended, to notify the State DOT of locations where a traffic control device or application under an interim approval is being used. The FHWA disagrees with this comment as not all State DOTs believe that such notifications are needed and because State DOTs can require such notification when they adopt the MUTCD.

The FHWA received a comment from a State DOT suggesting that a new STANDARD statement as proposed in the NPA be expanded to also require that jurisdictions check with their State DOT for official status of an Interim Approval in their State before requesting permission from the FHWA. The FHWA agrees with the concept and adopts a new GUIDANCE paragraph 21 in this final rule about requests for both experimentation and interim approvals, which recommends that local agencies be aware of any State requirements and policies that might apply to these processes.

30. In Section 1A.11 Relation to Other Publications, the FHWA proposed in the NPA to add four FHWA publications and a publication by the American National Standards Institute (ANSI). The FHWA publications cover topics such as roundabouts, designing sidewalks and trails for access, older drivers, and ramp management and control. The ANSI publication discusses high-visibility public safety vests. In addition, the FHWA proposed revising the list to reflect current editions of the publications and adding Web site addresses to obtain the documents. The FHWA adopts these new publications and revisions in this final rule. In addition, based on comments from the NCUTCD, a utility commission, and an engineering consultant, the FHWA adds several other new publications that are useful sources of information. These publications include four FHWA documents covering topics in signal timing, signalized intersections, railroad-highway grade crossings, and changeable message signs and an AASHTO publication on pedestrian facilities.

31. In Section 1A.12 Color Code, in the NPA the FHWA proposed adding to the STANDARD statement the assignment of the color purple to indicate facilities or lanes that are allowed to be used only by vehicles equipped with electronic toll collection (ETC) devices. ATSSA, a State DOT, four toll road operators, a traffic control device vendor, and a citizen all supported adding the color purple for signing and marking ETC facilities and lanes. A toll road operator in Florida stated that their past experience has shown that the color purple fades rapidly in Florida and will likely do so in other States with similar climates. A toll road operator in Texas questioned whether there were any purple materials for signs and markings that would meet Texas DOT durability and nighttime standards. The Illinois Tollway expressed a similar concern about challenges in design and application to ensure that effective color contrast is provided under all circumstances. The FHWA disagrees with comments that adequate materials do not exist, particularly with the adjustment in color values discussed below, and incorporates this change to readily identify such facilities or lanes using signs and pavement markings as discussed in the changes in Parts 2 and 3. As a part of the change, in this final rule the FHWA revises the text to reflect the intended general use of the color purple for lanes restricted to use only by vehicles with registered electronic toll accounts, such as in ETC systems utilizing transponders or video/license plate recognition systems to identify a vehicle with a registered toll account. Where a toll lane or facility is not restricted to specific vehicles and any vehicle without a toll account can use a toll lane or facility because a license plate recognition system sends the vehicle owner a bill for the toll, the use of the color purple is inappropriate.

Color specifications for signing and marking materials are contained in title 23 of the Code of Federal Regulations, part 655, appendix to subpart F, Tables 1 through 6. The FHWA received a comment from a signing material manufacturer stating that the proposed values for the color coordinates in the NPA were too restrictive. Based on retroreflectivity evaluations, the commenter suggested that the daytime chromaticity coordinates for the purple colored sign sheeting be shifted to a redder shade, and that a new set of chromaticity coordinates be generated for a nighttime color that also allows for a redder shift and that might be different from the daytime requirements. A toll road operator suggested that the color purple designated by the chromaticity coordinates is not the same hue as the color their agency currently uses. The FHWA has reviewed the color properties of the purple signing materials available from a variety of manufacturers and adopts daytime and nighttime color coordinates for purple retroreflective sign material (Tables 1 and 2) that are slightly revised from the values that were proposed in the NPA. The adopted daytime color coordinates are based on a large series of measurements of various purple materials that are close to or match the Pantone color selected by the EZ–Pass consortium. With the minor adjustments as adopted, there are sufficient materials that meet the values to provide for competition, but without reducing color recognition. The adopted nighttime color coordinates are similar to the nighttime coordinates for purple pavement markings. The FHWA also adopts daytime and nighttime color coordinates and luminance factors for purple retroreflective marking material (Tables 5, 5A, and 6) as proposed in the NPA. The values for purple in the tables are as indicated below (no change in the existing values for luminance factors for purple as contained in Table 1A):

TABLE 1—DAYTIME CHROMATICITY COORDINATES FOR PURPLE RETROREFLECTIVE SIGN MATERIAL

x	y
0.302	0.064
0.310	0.210
0.380	0.255
0.468	0.140

TABLE 2—NIGHTTIME CHROMATICITY COORDINATES FOR PURPLE RETROREFLECTIVE SIGN MATERIAL

x	y
0.355	0.088
0.385	0.288
0.500	0.350
0.635	0.221

TABLE 5—DAYTIME CHROMATICITY COORDINATES FOR PURPLE RETROREFLECTIVE PAVEMENT MARKING MATERIAL

x	y
0.300	0.064
0.309	0.260
0.362	0.295
0.475	0.144

TABLE 5A—DAYTIME LUMINANCE FACTORS FOR PURPLE RETROREFLECTIVE PAVEMENT MARKING MATERIAL

Minimum	Maximum
5	15

TABLE 6—NIGHTTIME CHROMATICITY COORDINATES FOR PURPLE RETROREFLECTIVE PAVEMENT MARKING MATERIAL

x	y
0.338	0.380
0.425	0.365
0.470	0.385
0.635	0.221

32. In Section 1A.13 Definitions of Headings, Words and Phrases in This Manual, as discussed previously, the FHWA places all definitions in Part 1 by relocating to Section 1A.13 all definitions that were previously contained or repeated in the MUTCD Introduction and in Parts 2 through 10. In regard to the definitions of the text headings ''Standard'' and ''Guidance,'' the FHWA clarifies that the verb ''may'' is not used in STANDARD or GUIDANCE statements, based on comments from a State DOT. Also based on a State DOT comment, the FHWA further clarifies the definition of STANDARD statements by adding that such statements shall not be modified or compromised based on engineering judgment or engineering studies. This prohibition has always been inherent in the meaning of Standards, but the FHWA is aware of cases where the lack of explicit text to this effect has resulted in the misapplication of engineering judgment or studies. Some agencies believed that Standards could be ignored based on engineering judgment or an engineering study, which is not the case.

Additionally, the FHWA revises the definitions for various words and phrases to better reflect accepted practice and terminologies and for consistency in the usage of these terms in one or more Parts of the MUTCD. Except as specifically discussed, there were a few comments of an editorial nature regarding some of these definitions that the FHWA incorporates in this final rule, as appropriate.

The FHWA proposed in the NPA to specify that the height of a raised pavement marker is not to exceed approximately 1 inch above the road surface, rather than specifying a minimum height, in order to clarify that tubular markers and other similar devices that might be placed on or in the roadway are not raised pavement markers. Based on recommendations from the NCUTCD, two State DOTs, and a traffic control device manufacturer, the FHWA changes the height requirement of a raised pavement marker to not exceed 1 inch for a permanent marker or 2 inches for a temporary flexible marker and references Part 6 for information on temporary flexible markers.

The FHWA clarifies the definition of ''intersection'' to reflect comments from three State DOTs, two city DOTs, and an NCUTCD member suggesting that several of the items within the definition were confusing and needed clarification. The FHWA also clarifies the definition of ''special purpose road'' by deleting the phrase ''or that provides local access,'' because the definition in the 2003 MUTCD was overly broad. The FHWA received comments from two local DOTs in Washington State opposed to the FHWA's proposed clarification that neighborhood residential streets are not special-purpose roads and signing for such streets should be the same as that for other conventional roads. One of those commenters suggested that neighborhood residential streets should be treated differently from other conventional roads and suggested that there should be two classes of conventional roads: High-speed and low-speed. The FHWA disagrees with the commenters and retains the definition, as proposed in the NPA in Section 2A.01, and notes that neighborhood streets are two-lane conventional roads within the definition for ''conventional road.''

The FHWA also adds definitions for a variety of new terms to the list of definitions because they are used in the MUTCD and need to be defined. In the NPA, the FHWA proposed using the term ''hybrid signal;'' however, based on comments from two State DOTs and three city DOTs, the FHWA changes the term ''hybrid signal'' to ''hybrid beacon'' throughout the MUTCD to emphasize that it is not intended that approaching vehicles stop at a dark beacon face as they are required to do at a dark traffic control signal in some States. To address comments from the NCUTCD, two State DOTs, and seven agencies that operate toll facilities, the FHWA adopts the definition for ''open road tolling (ORT),'' rather than ''open road electronic toll collection'' as proposed in the NPA, to match current use of the term. To reflect the changes discussed previously in the MUTCD Introduction, in this final rule the FHWA revises the term ''private property open to public travel'' to ''private road open to public travel'' and clarifies the definition to reflect that parking areas and driving aisles within parking areas are not included. The FHWA also adds a definition of ''parking area'' since that term is used in the MUTCD. The FHWA also makes minor revisions to several definitions to improve clarity and consistency, as suggested by comments. In the NPA, the FHWA proposed to include in the definition of the term ''school zone'' that it is an area where special law enforcement activity or increased fines for traffic violations are authorized. An NCUTCD member suggested that such enforcement is not required for the area to be considered a school zone. The FHWA agrees, and deletes that criterion from the definition in this final rule. The NCUTCD, two State DOTs, two toll road operators, and an NCUTCD member suggested that the proposed definition of ''worker'' be revised to include workers that are not on foot, such as equipment operators, toll collectors, etc. In addition, the NCUTCD, a State DOT, and a toll road operator suggested that ''pathway'' also be added to the definition of ''worker'' since workers on pathways are also subject to potential harm. The FHWA decides to add pathway to the

definition, but does not make the other suggested change, because this definition is general in nature and other specifics about workers are covered in Section 6D.03.

The FHWA received many comments suggesting other new terms be added to the list of definitions. In response to the comments received, the FHWA decides not to add all of the terms suggested, but adds definitions for ''accessible pedestrian signal detector,'' ''altered speed zone,'' ''attended lane,'' ''average daily traffic (ADT),'' ''downstream,'' ''dropped lane,'' ''ETC account only lane,'' ''exact change lane,'' ''grade crossing,'' ''lane drop,'' ''open road tolling point,'' ''overhead sign,'' ''plaque,'' ''post-mounted sign,'' ''primary signal face,'' ''pushbutton information message,'' ''rail traffic,'' ''signing,'' ''statutory speed zone,'' ''supplemental signal face,'' ''toll booth,'' ''toll island,'' ''toll lane,'' ''toll plaza,'' ''toll-ticket system,'' and ''upstream'' because they are used in the MUTCD and should be defined.

33. The FHWA adds a new section following Section 1A.13. This new section is numbered and titled Section 1A.14 Meanings of Acronyms and Abbreviations in This Manual, and contains a STANDARD statement with 42 acronyms and abbreviations and their meanings. The FHWA adds this new section to assist readers with the acronyms and abbreviations used throughout the Manual. In the NPA, the FHWA proposed 38 acronyms and abbreviations. The NCUTCD, ATSSA, and two State DOTs suggested several more acronyms and abbreviations. The FHWA conducted a review of terms used more than once in the MUTCD text and/or figures and adds five acronyms and their definitions in this final rule. For those terms used only once, the FHWA decides not to include their acronyms and their definitions in this final rule. The FHWA also deletes one of the abbreviations, km/h, that was proposed in the NPA, because of the deletion of metric values from the MUTCD.

34. In Section 1A.15 (numbered Section 1A.14 in the 2003 MUTCD) Abbreviations Used on Traffic Control Devices, the FHWA adds paragraph 02 indicating that when the word messages shown in Table 1A–2 need to be abbreviated on a Portable Changeable Message Sign (PCMS), the abbreviations shown in Table 1A–2 shall be used and that, unless indicated by an asterisk, these abbreviations shall only be used on PCMSs. The original research [9] on abbreviations was based on the need to shorten words when used on portable changeable message signs because of the limited number of characters available, unlike fixed-message signs. Many of the abbreviations were developed for words that would not otherwise normally be abbreviated on signs, and the intent was not to abbreviate such words on fixed-message signs. A local DOT opposed adding abbreviations to the MUTCD, preferring instead to allow their use only on a case-by-case basis. The NCUTCD suggested that Table 1A–2 be moved to Part 6 because PCMSs are covered in Chapter 6F; however, the FHWA decides not to relocate the table because PCMSs can be used outside of temporary traffic control zones and some of the abbreviations used on PCMSs apply to applications other than temporary traffic control.

35. In Table 1A–1 Acceptable Abbreviations, the FHWA adds several additional abbreviations for various terms that are often used on signs or markings and for which a single abbreviation for each is needed to enhance uniformity. A traffic engineering consultant opposed the use of the abbreviation AM for two separate meanings (morning and AM radio); however, the FHWA retains the abbreviation for both meanings based on effective use of both abbreviations by several States and because context of use differentiates the meanings. Based on comments from a State DOT and a traffic engineering consultant regarding the use of the abbreviation ''LA'' for lane, the FHWA places the note ''see Table 1A–2'' in the column for the abbreviation for lane, and makes subsequent changes in Table 1A–2 to clarify the use of the abbreviation ''LN'' for use with PCMSs. Another State DOT suggested adding several abbreviations and the FHWA agrees to add abbreviations for ''Saint,'' ''Mount,'' and ''Mountain'' as ''ST,'' ''MT,'' and ''MTN,'' respectively. Although the FHWA proposed an abbreviation for township in the NPA, the FHWA removes this abbreviation from this final rule based on comments from a traffic engineering consultant. The FHWA also removes several abbreviations from Table 1A–1 that are symbols rather than abbreviations (such as ''D'' for diesel on general service signs) and revises several abbreviations based on accepted practice in the specific context of the manner in which fixed messages are developed. The FHWA removes from Table 1A–1 some words that should not be abbreviated on static signs or large permanent full-matrix changeable message signs.

In concert with these changes to Table 1A–1, the FHWA revises the title of Table 1A–2 to ''Abbreviations That Shall Only Be Used on Portable Changeable Message Signs'' and adds to Table 1A–2 some of the abbreviations that were removed from Table 1A–1. The FHWA also revises the content of Table 1A–2 to specifically list the abbreviations (some of which can only be used with a prompt word) that are appropriate for use only on PCMSs. A local DOT opposed the abbreviations for downtown and slippery as being unclear. The FHWA disagrees, because the abbreviations are based on research and experience, and retains in this final rule the abbreviations for these terms that were proposed in the NPA. Three State DOTs suggested that the abbreviations for eastbound (and the other directions) be shortened to two letters. While the FHWA agrees that traffic engineers understand the two-letter abbreviations (EB, WB, NB, and SB), research has shown that those abbreviations are not well understood by the public. Two State DOTs suggested that there might be cases where abbreviations need to be used on static signs, and as a result, the FHWA reviewed the list of abbreviations and has added additional asterisks to items that are acceptable for use on permanent CMSs and static signs. As discussed above, the FHWA revises the prompt word for the abbreviation ''LN'' to include the roadway name and allows the use of the combination ''[roadway name] LN'' to be used on traffic devices other than PCMSs without the use of the prompt words ''Right,'' ''Left,'' or ''Center.''

Discussion of Amendments Within Part 2—Signs —General

36. In this final rule, the FHWA reorganizes the information regarding toll road signs and preferential and managed lane signs into two separate chapters. Although the information was not organized in the NPA in this manner, the FHWA received comments from several State and local DOTs, as well as toll road operators, suggesting that the information would be easier to find if it was contained in separate Parts of the MUTCD. As discussed above under General, the FHWA disagrees with adding new Parts but agrees with consolidating this information into new chapters and adopts new Chapters 2F Toll Road Signs and 2G Preferential and Managed Lane Signs in this final rule.

[9] Report number FHWA/RD–81/039 ''Human Factors Design of Dynamic Displays'' by C.L. Dudek and R.D. Huchingson, Final Report, May 1982, is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, and at the Web site: *http://www.ntis.gov.*

Discussion regarding specific elements of those chapters and comments submitted to the docket are contained in the appropriate sections below.

Discussion of Amendments Within Chapter 2A

37. In Section 2A.03 Standardization of Application, in the NPA the FHWA proposed deleting paragraph 02, which recommends that signs should be used only where justified by engineering judgment or studies. Although ATSSA agreed with the proposal, three State DOTs, three local DOTs, and two associations suggested retaining the statement because determining the placement of signs is an engineering function. The FHWA agrees and retains the paragraph in this final rule. The FHWA notes that this statement is not a requirement for an engineering study for the determination to use each individual sign because the determination for the use of many regulatory signs is based upon State laws and local agency ordinances.

38. In Section 2A.06 Design of Signs, as proposed in the NPA, the FHWA relocates a STANDARD paragraph regarding symbols on signs, and the associated OPTION paragraph, from Section 1A.03 to this section. The FHWA incorporates this change because Section 2A.06 is the most likely place for a reader to look for information regarding sign design.

In addition, as proposed in the NPA, the FHWA adds information regarding the use of e-mail addresses to paragraphs 14 and 16. The use of e-mail addresses on signs is to be the same as Internet Web site addresses. Five State DOTs opposed the provisions and suggested that Internet and e-mail addresses be allowed because they provide important information for travelers, including information about work zones, carpools, and toll facilities. The FHWA agrees that Internet information can be helpful, but adopts the changes as proposed based upon research[10] that has identified the upper range of driver workload to be 4 bits of information (4 individual characters) before glancing back to the road. E-mail addresses are just as difficult to read and remember as Internet Web site addresses and constitute the same issues for a driver traveling at highway speeds.

Lastly, the FHWA in this final rule relocates and consolidates existing and proposed text concerning the design of pictographs on signs from other sections in chapters 2D, 2E, and 2J to a new paragraph 17 in Section 2A.06. This material on pictographs also incorporates the FHWA's Official Interpretation 2–646(I).[11]

39. The FHWA relocates the information in Section 2A.07 of the 2003 MUTCD to new Chapter 2L in order to consolidate all information on changeable message signs into one chapter.

40. In Section 2A.07 Retroreflectivity and Illumination (Section 2A.08 in the 2003 MUTCD), the FHWA proposed in the NPA to revise the existing GUIDANCE statement to clarify that overhead sign installations on freeways and expressways should be illuminated unless an engineering study shows that retroreflection will perform effectively without illumination, and that overhead sign installations on conventional or special purpose roads should be illuminated unless engineering judgment indicates that retroreflection will perform effectively without illumination. ATSSA, an NCUTCD member, and a traffic control device manufacturer all supported the change. A State DOT and two local DOTs opposed the revision, because they felt that illumination of overhead signs, particularly on conventional roadways, is not necessary. In this final rule, the FHWA deletes the existing and proposed guidance about illumination of overhead signs, because the minimum maintained retroreflectivity levels for overhead signs that were adopted as Revision 2 of the 2003 MUTCD[12] provide for adequate performance of these signs. Highway agencies can determine to illuminate overhead signs based on their own policies or on studies of specific problem areas.

In the NPA, the FHWA proposed to add a paragraph prohibiting the use of individual LED pixels and groups of LEDs within the background area of a sign, except for the STOP/SLOW paddles used by flaggers and the STOP paddles used by adult crossing guards. The FHWA's intent was to clarify that LEDs are to be used only in the border or in the legend/symbol and not in the background of signs. Although ATSSA supported the clarification, three State DOTs, a local DOT, and a traffic engineering consultant expressed confusion and possible contradiction between this statement and others in the MUTCD. To respond to the need to clarify the statement, and the desire to place all of the information related to LEDs and their application in one place, the FHWA adds paragraphs 07, 08, 11, and 12 to this section in this final rule.

41. On January 22, 2008, after the NPA was published, the FHWA adopted revision Number 2 of the 2003 MUTCD to add minimum maintained retroreflectivity requirements for signs in Section 2A.09 (Section 2A.08 in the NPA) and a new Table 2A–3 detailing minimum retroreflectivity values. The FHWA incorporates that text and table into Section 2A.08 in this final rule, with a minor editorial correction to the table to match the applicable text. The FHWA also in this final rule adds to the table the new Bold Symbol signs (W2–7, 8 Double Side Roads and W11–16–22 Large Animals) that are adopted in Chapter 2C, for consistency and accuracy regarding minimum retroreflectivity values.

42. In Section 2A.10 Sign Colors (Section 2A.11 in the 2003 MUTCD), the FHWA proposed in the NPA to add an OPTION statement that allows the use of fluorescent colors when the corresponding color is required. The NCUTCD, a State DOT, two local agencies, and an NCUTCD member all supported the use of fluorescent colors, while a traffic engineering consultant opposed the addition of fluorescent colors without guidance on when they should be used. The FHWA adopts this change in this final rule with minor editorial revisions in order to give jurisdictions the flexibility to use fluorescent colors when they determine they are needed in order to attract additional attention to the signs. As part of this change, the FHWA revises the color specifications in 23 CFR part 655, appendix to subpart F, Tables 3, 3A, and 4 to add the fluorescent version of the color red, as proposed in the NPA. The color specifications for fluorescent yellow, fluorescent orange and fluorescent pink are already included in those tables of the appendix to 23 CFR part 655, subpart F.

43. The FHWA proposed in the NPA to make several changes to Table 2A–5 Common Uses of Sign Colors, to correspond to proposed changes in the text. Specifically, the FHWA proposed to add the color purple for Electronic Toll Collection signs and to remove the use of the color yellow from school signs. The FHWA also proposed to add additional types of Changeable Message Signs and expand the table to include various legend and background colors for those signs, consistent with the

[10] ''Additional Investigations on Driver Information Overload,'' NCHRP Report 488, 2003, can be viewed at the following Internet Web site: *http://www.trb.org/news/blurb_detail.asp?id=1324.*

[11] This official interpretation can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/2_646.htm.*

[12] Sign retroreflectivity final rule was published in the **Federal Register** at 72 FR 72574 on December 21, 2007 and can be viewed at the following Internet Web site: *http://www.gpoaccess.gov/fr/index.html.*

proposed text of proposed new Chapter 2M (numbered Chapter 2L in this final rule) as discussed below. In addition, the FHWA proposed to note that fluorescent versions of orange, red, and yellow background colors may be used. The NCUTCD and ATSSA supported these changes. The FHWA adopts the changes and, for consistency with Section 1A.12, the FHWA adds a footnote to Table 2A–5 to indicate that the color purple is only used on plaques or header panels mounted with other signs and only for lanes restricted to vehicles with registered toll accounts, and that purple is not used as a full sign background, nor is it used for toll lanes with video/license plate recognition that any vehicle without a registered toll account may use.

44. In Section 2A.11 Dimensions (Section 2A.12 in the 2003 MUTCD), in this final rule the FHWA adds new provisions to the STANDARD and GUIDANCE statements regarding the appropriate use of the various columns in the tables throughout the MUTCD that describe sizes for signs on various classes of roads, as proposed in the NPA. While a traffic control device manufacturer supported the referenced tables, a State DOT, two city DOTs, and an NCUTCD member opposed the dimensions, stating that they are too prescriptive, no longer allow jurisdictions to use good engineering judgment in determining sign sizes, and could result in larger signs. The FHWA disagrees, because the sizes specified are appropriate to enable letter sizes sufficient to meet the legibility needs of all drivers, including older drivers. These sizes remain largely unchanged from the 2003 MUTCD and only a few specific sign sizes were increased. The FHWA adopts this language to clarify how the columns in the sign size tables are intended to be used. The FHWA also adds language in each of the sections throughout the MUTCD that refer to a sign size table, to refer back to this generally applicable text in Section 2A.11, and deletes repetitive text on use of the various columns in the size tables that appeared in other sections throughout the 2003 MUTCD.

45. In Section 2A.12 Symbols (Section 2A.13 in the 2003 MUTCD), the FHWA adds a STANDARD statement and a corresponding OPTION statement at the end of the section prohibiting the use of symbols from one type of sign on a different type of sign, except in limited circumstances or as specifically authorized in the MUTCD. While a State DOT and a local DOT supported these revisions, two other State DOTs and another local DOT opposed the changes and suggested that it would be simpler to use the same symbols for recreational and cultural interest areas on other signs. The FHWA disagrees with the commenters because many approved symbols for recreational and cultural area guide signing are not appropriate for use on warning or regulatory signs. The colors and shapes of symbols are designed to have a specific impact depending on the intended use of that type of sign. Intermixing symbols from one type of sign to a different type of sign can affect the impact and can be potentially confusing, and therefore should be specifically prohibited. The FHWA adopts this change as proposed in the NPA, with minor editorial revisions.

46. In Section 2A.13 Word Messages (Section 2A.14 in the 2003 MUTCD), the FHWA revises the first GUIDANCE statement to recommend that the minimum specific ratio for letter height should be 1 inch of letter height per 30 feet of legibility distance. In conjunction with this proposed change, the FHWA deletes the SUPPORT statement that followed this paragraph in the 2003 MUTCD. The NCUTCD and ATSSA supported these changes. Four State DOTs, seven local DOTs, an NCUTCD member, a traffic engineering consultant, and a citizen all opposed the change, stating that the larger letter heights would create larger signs, and suggesting that there was a lack of significant research and justification. The FHWA notes that the majority of sign sizes remain the same as the 2003 MUTCD and only a few specific sign designs which had legends too small to be read from an appropriate distance were increased in size. Additionally, signs in good condition may remain in place as long as they are serviceable until they are replaced under the periodic maintenance program of each agency. The FHWA adopts these changes in order to be consistent with recommendations from the Older Driver Handbook [13] that sign legibility be based on 20/40 vision. Most States allow drivers with 20/40 corrected vision to obtain driver's licenses, and with the increasing numbers of older drivers, the FHWA believes that 20/40 vision should be the basis of letter heights used on signs. This change will generally not impact the design of guide signs because the provisions in the 2003 MUTCD for guide sign letter heights already provided sufficient legibility distances for 20/40 vision in most cases. The sizes of regulatory and warning signs used in some situations will need to be increased to provide for larger letter sizes. Specific changes to sign sizes resulting from the change in letter height are discussed below in the items pertaining to the sign size tables in other chapters in Part 2 and in certain other Parts of the MUTCD.

ATSSA, a State DOT, a research institute, and a traffic engineering consultant suggested that the FHWA add the positive contrast Clearview font into the SHSM and MUTCD based on the research done under the experimental use of the font demonstrating significant legibility enhancements for older drivers. The FHWA did not propose such an addition in the NPA and the FHWA disagrees with the commenters and does not add the font. Although the Clearview font received Interim Approval in September 2004 for positive-contrast guide sign legends only, some research to date has shown that negative contrast mixed-case Clearview legends are not as legible as standard SHSM alphabets. The practicality of maintaining two separate alphabet systems, one for positive-contrast and one for negative-contrast legends, has also been taken into consideration. Further, the alternative alphabet did not undergo any testing on numerals and special characters, which have been reported to be problematic from a legibility standpoint, nor has any testing been performed on a narrower series. It would be premature to categorically adopt the alternative alphabet for a marginal theoretical improvement in legibility where no supporting evidence of a demonstrable improvement has been reported by those agencies who have erected signing using the alternate alphabets. Highway agencies can continue to use the Clearview font for positive contrast legends on guide signs under the provisions of the FHWA's Interim Approval IA–5 dated September 2, 2004.[14]

ATSSA, a State DOT, a local agency, and a citizen supported the FHWA's proposal to eliminate the option to use all upper-case letters for names of places, streets, and highways and to require that such names be composed of a combination of lower-case letters with initial upper-case letters. However, 5

[13] ''Highway Design Handbook for Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–103, May 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01103/coverfront.htm.* Also see recommendation number II.A(1) in ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May 2001, which can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.*

[14] Interim Approval IA–5 can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/res-ia_clearview_font.htm.*

State DOTs, 10 local DOTs, an NCUTCD member, an association of local counties, and a traffic engineering consultant opposed the change and suggested that the use of all upper-case letters remain an option, or that the FHWA change the proposed STANDARD statement to a GUIDANCE statement. Many of the commenters expressed concern with cost and thought that while the mixed-case words might be easier to read, the amount of improvement in legibility did not justify the cost. The FHWA adopts the STANDARD requirement for mixed-case lettering for names of places, streets, and highways because published research [15] supports the enhanced legibility of mixed-case legends in comparison to all upper-case legends. The FHWA also notes that under the systematic upgrading provisions of Section 655.603(d)(1) of title 23, Code of Federal Regulations, existing signs in good condition can remain for the remainder of their service life.

The FHWA also adds text in Section 2A.13 regarding fractions, hyphens, and relationships of upper case to lower case letters in mixed-case words used in word messages in this final rule, for consistency with other MUTCD provisions in Chapters 2D and 2E, information in the SHSM book, and accepted sign design practices necessary for proper sign word message legibility.

47. In Section 2A.14 Sign Borders (Section 2A.15 in the 2003 MUTCD), the FHWA clarifies the GUIDANCE statement to indicate that the corner and border radii on signs should be concentric with one another. The FHWA received a comment from ATSSA in support of this revision and the FHWA adopts the proposed text with editorial revisions in this final rule to better facilitate the use of sign fabrication software with inset borders.

48. The FHWA adds a new section numbered and titled Section 2A.15 Enhanced Conspicuity for Standard Signs. This section contains an OPTION statement regarding the methods that may be used to enhance the conspicuity of standard regulatory, warning, or guide signs and a STANDARD statement prohibiting the use of strobe lights as a sign conspicuity enhancement method. The NCUTCD, ATSSA, and several State and local DOTs, NCUTCD members, and traffic engineering consultants commented on the various conspicuity enhancement methods proposed in the NPA. Some commenters felt that having a large variety of methods for sign conspicuity would not help with uniformity, and therefore the methods should be deleted altogether, or at least the number of items reduced. Other commenters provided comments about the specific methods. Several commenters suggested that a red strip (item F in the NPA) should only be permitted on signs indicating that a stop, yield, or prohibition is involved with the sign. To avoid confusion, the FHWA does not adopt item F in this final rule. The FHWA believes that adding specific methods for increasing sign conspicuity will actually result in more uniform use of conspicuity methods, because agencies will have access to a list of optional uses, rather than creating an unlimited number of their own methods. The methods contained in the OPTION reflect widespread and successful practices by State and local agencies, and as a result, the FHWA incorporates the methods, with minor editorial changes for consistency with other MUTCD sections, in this final rule.

The New York State DOT opposed the FHWA's proposed prohibition of the use of strobe lights for conspicuity of highway signs, stating that there is no research indicating that their use is dangerous and that information about their use in New York shows that they can have a very positive effect on highway safety. The FHWA disagrees and notes that published reports [16] on experimentation with the application of strobe lights to traffic signals have not demonstrated lasting safety effects and therefore it is unlikely that application of strobes to other traffic control devices would have lasting effects. The FHWA also notes that New York State has not provided any documentation of positive effects.

The FHWA incorporates this new section to provide improved uniformity of enhanced conspicuity treatments to benefit road users.

49. The FHWA received several comments associated with Figure 2A–1 Examples of Enhanced Conspicuity for Signs. Many of the comments were the same as those expressed for the written text in Section 2A.15. Based on comments from a State DOT, the FHWA adds two new drawings illustrating the use of the words ''NEW'' and ''NOTICE'' on the yellow sign panel and renumbers the drawings accordingly. The FHWA also adds that orange flags may be used on drawing B and deletes the drawing showing the use of a red strip of retroreflective sheeting on a regulatory sign panel.

50. In Section 2A.16 Standardization of Location, the FHWA adds to paragraph 06 an additional recommended criterion for locating signs where they do not obscure the line of sight to approaching vehicles on a major street for drivers who are stopped on minor-street approaches. The FHWA received comments from two State DOTs and a local DOT supporting this proposed revision and the FHWA adopts this change in this final rule to reflect good engineering practice and improved safety.

As proposed in the NPA, the FHWA adds to paragraph 10 that the placement of community wayfinding and acknowledgment guide signs should have a lower priority than other guide signs. The FHWA received a comment from a State DOT and local DOT in support of this addition and incorporates it in this final rule to clarify the priority of sign type placement, reflecting the addition to the manual of new types of guide signs.

In the NPA, the FHWA proposed to add a paragraph to the last GUIDANCE statement to provide recommendations on the placement of STOP and YIELD signs at intersections, and to clarify that the dimension shown in Figure 2A–3 for the maximum distance of STOP or YIELD signs from the edge of the traveled way of the intersected roadway is GUIDANCE. A State DOT, a local DOT, and an NCUTCD member agreed with this statement. In this final rule the FHWA moves this statement to Section 2B.10 based on a comment, since the statement is more appropriately related to the content of that section.

51. The FHWA received comments from the NCUTCD regarding proposed revisions to Figure 2A–2, and as a result, changes the title to ''Examples of Heights and Lateral Locations of Sign Installations'' to indicate that these are examples and to be consistent with the text in Sections 2A.16, 2A.18, and 2A.19. Although a State DOT, an NCUTCD member, and a traffic engineering consultant opposed the use of the 12-foot dimension between the edge of the pavement and the sign in drawings A and D, the FHWA disagrees and retains the 12-foot dimension in this final rule, because the guidance text in Section 2A.19 recommends the 12-foot dimension, and therefore the figure should reflect the text. The FHWA received similar comments about the

[15] Research on this topic is cited and discussed in ''Highway Design Handbook for Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–103, May 2001, which can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01103/coverfront.htm*.

[16] ''Evaluation of Strobe Lights in Red Lens of Traffic Signals,'' by Benjamin H. Cottrell, Virginia Transportation Research Council, was published in 1995 in Transportation Research Record number 1495, which is available for purchase from the Transportation Research Board's bookstore, which can be accessed at the following Internet Web site: *http://pubsindex.trb.org/*.

lateral offset dimensions in Figure 2A–3; however, the FHWA retains the offsets as shown in the NPA, because the MUTCD text remains unchanged. The dimensions in the figure were merely corrected to maintain consistency with the text.

52. In Section 2A.18 Mounting Height, the FHWA adopts the change of paragraph 01 to a STANDARD, as proposed in the NPA, to require that the provisions of this section apply to all signs and object markers, unless specifically stated otherwise elsewhere in the Manual. The FHWA incorporates this change to emphasize that the mounting heights in this section are mandatory, including in relation to pedestrian considerations.

The FHWA also clarifies that mounting heights are to be measured vertically from the bottom of the sign to the level of the edge of the traveled way. The FHWA also adds text to clarify that a minimum height of 7 feet is to be used for signs installed at the side of the road in business, commercial, or residential areas where parking or pedestrian movements are likely to occur, or where the view of the sign might be obstructed, or where signs are installed above sidewalks. In concert with these changes, the FHWA adds that a sign shall not project more than 4 inches into a pedestrian facility if the bottom of a secondary sign that is mounted below another sign is mounted lower than 7 feet. The FHWA had proposed these provisions as a GUIDANCE statement in the NPA; however, based on comments from the Utah DOT and an advocacy group for the blind, the FHWA changes this to a STANDARD statement in this final rule to be consistent with requirements of the Americans with Disabilities Act as set forth in ADAAG provisions [17] regarding signs in the vicinity of pedestrian activity and in order to make the mounting height language consistent throughout the Manual. In addition, the FHWA reorganizes the order of the text within the STANDARD statements in this section for clarity.

53. In Section 2A.19 Lateral Offset, the FHWA received a comment from a State DOT expressing the need to reconcile the compliance date for the existing statement in this Section that requires post-mounted supports to be crashworthy if in the clear zone. The FHWA notes that there is an existing target compliance date of January 17, 2013, that was established with the final rule [18] for the 2003 Edition of the MUTCD for crashworthiness of sign supports for roads with posted speed limits of 50 mph or higher. No specific target compliance date was established for roads with posted speed limits of 45 mph or less and for all roads with unposted speed limits. The FHWA believes that no target compliance date is needed for crashworthiness of sign supports on these lower speed roads and that systematic upgrading processes will suffice in ultimately achieving crashworthiness of all sign supports.

Discussion of Amendments Within Chapter 2B

54. As proposed in the NPA, in Section 2B.02 Design of Regulatory Signs, the FHWA adopts the change of paragraph 01 to a STANDARD statement to clarify that regulatory signs are rectangular unless specifically designated otherwise. As part of this change, the FHWA also adds a reference to the Standard Highway Signs and Markings [19] book for sign design elements.

The FHWA also relocates the first two paragraphs of Section 2B.54 of the 2003 MUTCD to a new OPTION statement in Section 2B.02, because the paragraphs contain information about regulatory word messages and symbols that is more relevant in this section.

55. In Section 2B.03 Size of Regulatory Signs, the FHWA had proposed in the NPA to reference a new Table 2B–2 with minimum sizes for certain regulatory signs facing traffic on multi-lane conventional roads. Based on comments from the NCUTCD and an NCUTCD member, the FHWA instead adds a column to Table 2B–1 for multi-lane conventional roads in this final rule, rather than an entire new table. To address these comments, as well as those from two State DOTs, concerning specific regulatory signs identified in Table 2B–1 other than STOP signs, the FHWA also adds two exemptions to the requirement to use the larger sign sizes on multi-lane conventional roads: (1) For the size of signs mounted in the median on the left-hand side of the roadway that are in addition to the signs placed on the right-hand side and (2) for multi-lane conventional roads with posted speed limits of 35 mph or less. The FHWA received comments in opposition to the larger sign sizes, primarily because of cost concerns, from three local DOTs and a traffic engineering consultant. The FHWA disagrees with these comments because any impacts are mitigated by the systematic upgrading provisions (23 CFR 655.603(d)(1)) that enable highway agencies to upgrade to the larger sizes as the existing signs are replaced at the end of their service life. The FHWA believes that the new text and information in the table is necessary to provide signs on multi-lane approaches that are more visible and legible to drivers with visual acuity of 20/40. On multi-lane roads, increased legibility distances are also needed because of the potential blockage of signs by other vehicles.

In the NPA, the FHWA also included a requirement that the minimum size of 36 inches x 36 inches shall be used for STOP signs that face multi-lane approaches. While ATSSA, the NCUTCD, a State DOT, and a local DOT supported the requirement, a State DOT and six city DOTs opposed the change, particularly as it related to STOP signs on low-speed roads. The FHWA adopts the requirement to use larger STOP signs, because increased STOP sign sizes have been shown to reduce crashes by 19%.[20] However, the FHWA clarifies the minimum size requirement for STOP signs as 36 inches x 36 inches facing side roads (one or more lanes) where they intersect multi-lane highways that have speed limits of 45 mph or higher. For multi-lane highways or streets that have speed limits of 40 mph or less, the STOP signs on the side-road approaches shall follow the sizes shown for conventional roads in Table 2B–1. STOP signs that face traffic on the multi-lane highway shall be a minimum size of 36 inches x 36 inches.

Finally, based on a comment from a State DOT, the FHWA adds a GUIDANCE statement that the minimum size for regulatory signs facing traffic on exit and entrance ramps should be the size identified in Table 2B–1 for the mainline roadway classification listed for each of the columns.

56. The FHWA received comments related to specific sign sizes in Table 2B–2 proposed in the NPA. As discussed above, the FHWA combines proposed Table 2B–2 into Table 2B–1 in this final rule. The NCUTCD, two State DOTs, two local DOTs, two NCUTCD

[17] The Americans With Disabilities Accessibility Guidelines (ADAAG) can be viewed at the following Internet Web site: *http://www.access-board.gov/ada-aba/index.htm.*

[18] The **Federal Register** Notice for this Final Rule, dated November 20, 2003 (Volume 68, Number 224, Page 65496–65583) can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/texts/2125-AE67.pdf.*

[19] The current edition of ''Standard Highway Signs and Markings,'' FHWA, 2004 Edition, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/ser-shs_millennium.htm.*

[20] ''Crash Reduction Factors Desktop Reference,'' publication number FHWA–SA–07–015, September, 2007, can be viewed at the following Internet Web site: *http://www.transportation.org/sites/scohts/docs/Crash%20Reduction%20Factors%20Desktop%20Reference%2012–19–07.pdf.*

members, and a traffic engineering consultant opposed the larger sizes of various signs, including YIELD signs, DO NOT ENTER signs, ONE WAY signs, parking signs, and signs used on traffic signal mast arms. The FHWA adopts the larger sizes as proposed in the NPA because of the critical nature of the information conveyed by these signs. These larger sizes are more legible, especially to older drivers, and therefore these critical message signs merit larger sized legends.

57. The FHWA makes several changes to Table 2B–1 Regulatory Sign and Plaque Sizes. These changes include adding more sizes in the ''Minimum'' column for use in low-speed environments and adding several more signs and supplemental plaques to the table to correspond with other changes within Part 2. A local DOT opposed many of the minimum sizes shown in the table because they are larger than those used in that State's urban areas. The commenter believes that in urban areas the space available for signs along sidewalks and medians can often be very narrow, making it difficult to place larger signs without encroaching into the street, buildings, landscaping, utilities, signals, or pedestrian right-of-way. A traffic engineering consultant questioned the justification for the increased sizes and expressed concern about the wind loading on traffic signal mast arms because of the larger sign sizes. A State DOT and a local DOT also expressed the desire to use smaller sign sizes on traffic signal mast arms and for some other signs. The FHWA reiterates that the increase in sign and plaque sizes is to improve driver recognition and response time, with the intent of meeting the needs of road users with 20/40 visual acuity. Letter heights smaller than 6 inches become problematic in meeting the needs of drivers with 20/40 visual acuity, therefore the FHWA adopts in this final rule the proposed increases in the sizes of signs. The FHWA also received several comments from the NCUTCD and its members suggesting additional revisions beyond those shown in the NPA that the FHWA incorporates in this final rule. These revisions include adding signs to the table that were inadvertently not included in the NPA and adjusting the sizes of some of the signs to reflect the larger letter sizes associated with 20/40 visual acuity as discussed previously under Chapter 2A.

58. The FHWA adds a new section numbered and titled Section 2B.04 Right-of-Way at Intersections. This section contains information contained in Section 2B.05 of the 2003 MUTCD. In addition, as proposed in the NPA, the FHWA adds recommendations on the factors that should be considered in establishing intersection control and the use of STOP and YIELD signs. A State DOT and a city DOT supported these new criteria. A State DOT supported the majority of the criteria, but suggested that approach speeds should not be included in the conditions. The FHWA agrees and deletes that condition in this final rule. Two city DOTs suggested that the criteria, particularly item B, required too much data collection, which can be expensive and require resources beyond those available at the local level. The FHWA disagrees and adopts the remaining criteria, because the FHWA believes an engineering evaluation, which includes data collection, needs to be performed for STOP and YIELD sign applications, which are critical right-of-way controls. The additional guidance is intended to provide a more logical progression from least restrictive to more restrictive controls.

As proposed in the NPA, the FHWA adds paragraph 05, to the existing GUIDANCE statement that YIELD signs should not be used for speed control. The 2003 MUTCD already included the recommendation that STOP signs not be used for speed control. A local DOT supported the addition of YIELD signs to this recommendation; however, a State DOT and a local DOT suggested that the FHWA revise the statement to indicate that STOP and YIELD signs should not be used ''exclusively'' for speed control, because there are occasions where STOP and YIELD signs serve a secondary purpose as speed control measures. The FHWA disagrees with revising the language and notes that a system of alternating two-way stops remains allowable for neighborhood traffic control.

The FHWA also adds a STANDARD statement that prohibits the use of STOP and YIELD signs in conjunction with other traffic control signal operation, except for the cases specified in the STANDARD. Much of this information was in Section 2B.05 of the 2003 MUTCD; however, the FHWA adds a specific case regarding channelized turn lanes to the list of cases where STOP or YIELD signs can be used, reflecting common practice.

As proposed in the NPA, the FHWA adds a STANDARD statement prohibiting the use of STOP signs and YIELD signs on different approaches to the same unsignalized intersection if those approaches conflict with or oppose each other, except as noted in Section 2B.09. Two State DOTs, a city DOT, and an NCUTCD member opposed this statement because they felt that there are circumstances where this practice should be allowed. The FHWA disagrees, because this prohibition is needed for consistency with the adopted STANDARD statement for use of STOP and YIELD signs in conjunction with traffic signal operation, and the FHWA notes that an EXCEPT RIGHT TURN R1–10P plaque is incorporated in this final rule in Section 2B.05 to address many of the situations cited by the commenters.

Finally, the FHWA adds a STANDARD statement as proposed in the NPA for the use of folding STOP signs for traffic signal power outages by adding language to the MUTCD that corresponds to Official Interpretation #2–545.[21] Although two city DOTs opposed this language, in part because of concerns about liability, three State DOTs and a city DOT supported the language, with editorial changes. Many of the comments pertained to incorporating additional information from the Official Interpretation into the MUTCD. The FHWA does not believe that the MUTCD is the appropriate location for this information. The FHWA does, however, revise the text in this final rule to clarify the language on how folding STOP signs are to be installed and manually retrieved in conjunction with signal operation upon restoration of electrical power.

59. The FHWA renumbers and retitles Section 2B.04 of the 2003 MUTCD to Section 2B.05 STOP Sign and ALL WAY Plaque. As part of this change, the FHWA proposed to revise the STANDARD statement to require the use of the ALL-WAY supplemental plaque if all intersection approaches are controlled by STOP signs, to limit the use of the ALL-WAY plaque to only those locations where all intersection approaches are controlled by STOP signs, and to prohibit the use of supplemental plaques with the legend 2-WAY, 3-WAY, 4-WAY, etc., below STOP signs. ATSSA, a local DOT, a traffic engineering consultant, and a citizen supported the new requirements, while five State DOTs, four local DOTs and an association representing local DOTs, and a NCUTCD member opposed the proposed requirements. Many of the commenters felt that all or some of the existing 2-WAY, 3-WAY, or 4-WAY plaques should be retained because they are understood by road users, and to replace the signs would be unnecessarily expensive. The FHWA disagrees for two reasons: (1) The ALL-WAY plaque is the same size as the 2-

[21] FHWA's Official Interpretation #2–545, April 9, 2004, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/pdf/2_545.pdf.*

WAY, 3-WAY, and 4-WAY plaques and the required replacements can be accomplished through the systematic upgrading processes of Section 655.603(d)(1) of title 23, Code of Federal Regulations; and (2) the word message ''ALL-WAY'' more clearly communicates that all approaches are required to stop, which is critical information for road users facing a STOP control at an intersection. The FHWA adopts the requirements, as proposed, to provide uniformity in the use of supplemental plaques with STOP signs, especially at locations where all approaches are controlled by STOP signs.

The FHWA adds a GUIDANCE statement recommending the use of plaques with appropriate alternate messages, such as TRAFFIC FROM RIGHT DOES NOT STOP, where STOP signs control all but one approach to the intersection. A city DOT opposed this recommendation, suggesting that it should be either an Option, or eliminated from the MUTCD. The FHWA disagrees and adopts the change to encourage the use of these plaques at intersections that need increased driver awareness regarding an unexpected right-of-way control. A State DOT opposed the revision because the regulatory and warning signs should not be installed on the same post. The FHWA adds language to Section 2A.16 to clarify that these plaques may be posted below a STOP sign.

Finally, as proposed in the NPA, the FHWA adds an OPTION allowing the use of a new EXCEPT RIGHT TURN (R1–10P) plaque mounted below a STOP sign when an engineering study determines that a special combination of geometry and traffic volumes is present that makes it possible for right-turning traffic on the approach to be permitted to enter the intersection without stopping. ATSSA, a State DOT, and a local DOT supported this new plaque and associated language, while a State DOT and a local DOT opposed it, citing their beliefs that it might cause conflicts between vehicles that have to stop with those that do not have to stop and that it will reduce the integrity of the STOP sign. The FHWA disagrees and adopts this change to give agencies flexibility in establishing right-of-way controls for such special conditions. Since this is an optional use, agencies are not required to use this sign. The Sign Synthesis Study [22] found that at least 12 States have developed 7 different sign messages for this purpose. The adopted sign provides for the uniform use of the simplest, most accurate legend.

60. The FHWA relocates much of the information in Section 2B.05 STOP Sign Applications of the 2003 MUTCD to Section 2B.04 Right-of-Way at Intersections. The FHWA adds additional language to the remaining GUIDANCE statement in Section 2B.06 STOP Sign Applications that lists conditions under which the use of a STOP sign should be considered. A State DOT supported the language with the criteria for STOP signs, and several commenters provided editorial comments or asked questions. The FHWA reiterates that the language in this section provides agencies with specific and quantitative guidance regarding the use of STOP signs only, while the guidance and criteria set forth in Section 2B.05 encompass the need for right-of-way control in the form of YIELD and STOP conditions. The FHWA also received a comment from a retail owner suggesting that this section does not specifically address the use of STOP signs in parking areas. As discussed previously regarding the MUTCD Introduction, the FHWA exempts parking lots from MUTCD applicability.

61. The FHWA deletes Section 2B.06 STOP Sign Placement from the 2003 MUTCD because most of the text in this section is incorporated into Section 2B.10 of this final rule.

62. In Section 2B.09 YIELD Sign Applications, as proposed in the NPA, the FHWA clarifies the STANDARD statement by adding that YIELD signs at roundabouts shall be used to control the approach roadways and shall not be used to control the circular roadway. Four State DOTs, two local DOTs, two NCUTCD members, five bicycle/pedestrian advocacy associations, and four citizens supported the changes to this section. A State DOT and a local DOT expressed concern about portions of the section that were removed that would allow YIELD signs to be used instead of STOP signs at some locations and the removal of the visibility requirement for YIELD sign installations. The FHWA disagrees with these commenters because the text changes in Section 2B.09 do not materially change the meaning of the provisions regarding where YIELD signs may be used. The FHWA adopts this change to provide uniformity in signing at roundabouts and to reflect the prevailing practices of modern roundabout design.

Two traffic engineering consultants suggested that YIELD signs be prohibited to assign the right-of-way on all approaches to an intersection, other than for a roundabout intersection. The FHWA agrees and clarifies the proposed STANDARD statement in this final rule so that it is explicitly clear that YIELD signs shall not be used to control the right-of-way on all approaches to an intersection, other than for all approaches to a roundabout intersection, for consistency with requirements for traffic signal controlled intersections and STOP controlled intersections.

63. The FHWA retitles Section 2B.10 to ''STOP Sign or YIELD Sign Placement'' to reflect the relocation of language regarding STOP sign placement from Section 2B.06 of the 2003 MUTCD to this section.

In the NPA the FHWA proposed to delete the requirement from paragraph 01 that YIELD signs be placed on both the left-hand and right-hand sides of approaches to roundabouts with more than one lane and instead makes this a GUIDANCE statement in paragraph 16. In concert with this change, the FHWA also proposed to add an OPTION allowing similar placement of a YIELD sign on the left-hand side of a single lane roundabout approach if a raised splitter island is available. A local DOT and a traffic engineering consultant supported these changes, and the FHWA adopts this language to reflect current practice on signing roundabout approaches and to allow agencies additional flexibility.

To address comments from the NCUTCD, a State DOT, and a local DOT, the FHWA relocates the GUIDANCE statement recommending that STOP and YIELD signs not be placed further than 50 feet back from the edge of the pavement of the intersected roadway to this section in this final rule. In the NPA, this statement was proposed in Section 2A.16.

In the NPA, the FHWA proposed adding a paragraph to the STANDARD that prohibited the mounting of items other than retroreflective strips on the supports, official traffic control signs, sign installation dates, inventory stickers, anti-vandalism stickers, and bar codes on the fronts or backs of STOP or YIELD signs or on their supports. To address a comment from a State DOT suggesting that the FHWA clarify the intent of the language, the FHWA separates the information into three paragraphs in this final rule. Paragraph 04 details the placement of items on the fronts of STOP or Yield signs, paragraph 05 describes items placed on the backs of STOP or Yield signs, and paragraph 06 describes the placement of items on the fronts or backs of STOP or YIELD signs supports.

[22] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 18, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

The FHWA also proposed in the NPA to indicate that a sign that is mounted back-to-back with a STOP or YIELD sign should stay within the edges of the STOP or YIELD sign. While two DOTs and an NCUTCD member supported this language, four State DOTs, two local DOTs, and a citizen opposed this language, because they felt that DO NOT ENTER signs should be allowed to be mounted on the back of STOP signs without increasing the size of the STOP sign to the extent required. Two local DOTs and a citizen opposed the language in general, because they felt that a sign mounted on the back of a STOP or YIELD sign would show its bare aluminum side, which would serve to highlight or frame the STOP or YIELD sign. The FHWA disagrees with the commenters because it is critical to assure that the shape of these very important intersection right-of-way signs can be discerned from the opposite direction of approach. The FHWA adopts these changes to clarify the GUIDANCE statement that a sign that is mounted back-to-back with a STOP or YIELD sign should stay within the edges of the STOP or YIELD sign, and adds that, if needed, the size of the STOP or YIELD sign should be increased to accomplish this recommendation.

The FHWA adds paragraph 16 recommending that an additional YIELD sign be placed on the left-hand side of the multi-lane roundabout approach if a raised splitter island is available. A State DOT and a traffic engineering consultant supported this recommendation, while a local agency felt that it should be an option, rather than a recommendation. The FHWA believes that the left-hand side YIELD sign is important for multi-lane approaches to roundabouts due to the curvature at the roundabout entry and this sign should be provided if a splitter island is present. The FHWA adopts the NPA language in this final rule.

As proposed in the NPA, the FHWA adds paragraph 19 prohibiting the placement of multiple STOP signs or multiple YIELD signs on the same support facing the same direction. The NCUTCD, a State DOT, and two local DOTs supported this change. The FHWA adopts this change to prohibit this practice, because there have been no studies or research documenting any safety benefits of this practice and it is potentially confusing, and there are many other acceptable and proven methods of adding emphasis, such as detailed in Section 2A.15.

64. The FHWA retitles Section 2B.11 to ''Yield Here to Pedestrians Signs and Stop Here for Pedestrians Signs'' to reflect additional language in the STANDARD, GUIDANCE, and OPTION statement that FHWA adds to this section regarding the use of Stop Here for Pedestrians Signs. The language is consistent with similar language in Part 7 regarding the placement of these signs, as well as stop and yield lines. The FHWA proposed adding the Stop Here for Pedestrians sign because some State laws require motorists to come to a full stop for, rather than just yield to, pedestrians in a crosswalk. The NCUTCD, a local DOT, and a bicycle/pedestrian advocacy association supported the changes; however, a State DOT and an NCUTCD member opposed restricting the use of R1–5 Yield (Stop) Here to Pedestrian signs to only multi-lane approaches. The FHWA adopts the changes as proposed and notes that these signs were developed as a countermeasure for the multiple threat situations for pedestrians and there is no need for advance yielding (stopping) on a single lane approach to a crosswalk.

In addition, the FHWA proposed in the NPA to add STANDARD and OPTION statements at the end of the section regarding the combination use of the Yield Here to (Stop Here for) Pedestrian (R1–5 series) sign in the vicinity of the Pedestrian Crossing warning (W11–2) sign. The FHWA received comments from the NCUTCD, three State DOTs, four local DOTs, and two traffic consultants who supported the concept, but found the wording confusing. As a result, the FHWA adopts a revised STANDARD statement in this final rule that restricts blocking the view of the W11–2 sign, or placing it on the same post as a R1–5 series sign. The FHWA also adopts paragraph 05 in the OPTION statement to allow Pedestrian Crossing signs to be mounted overhead where Yield Here to (Stop Here for) signs have been installed in advance of the crosswalk. The FHWA also allows the use of advance Pedestrian Crossing (W11–2) signs on the approach with AHEAD or distance plaques and In-Street Pedestrian Crossing signs at the crosswalk where Yield Here to (Stop Here for) Pedestrian signs have been installed. The FHWA adopts this new language to be consistent with similar language that is being adopted in Part 7, which is based on FHWA's Official Interpretation # 2–566.[23]

65. In Section 2B.12 In-Street and Overhead Pedestrian Crossing Signs, the FHWA proposed in the NPA to add STANDARD, GUIDANCE, and OPTION statements regarding the use of the new Overhead Pedestrian Crossing (R1–9 or R1–9a) sign that may be used to remind road users of laws regarding right-of-way at an unsignalized pedestrian crosswalk. ATSSA, an NCUTCD member, and a local DOT supported the inclusion of the Overhead Pedestrian Crossing signs and their design, while another NCUTCD member, two State DOTs, and a local DOT opposed the signs and/or their designs because they wanted more flexibility. The FHWA disagrees with the commenters and adds the text as proposed and this sign, with the design as proposed in the NPA, in this final rule. This is based on the Sign Synthesis Study,[24] which revealed that some agencies use an overhead sign because it is needed in some applications. The FHWA adds this sign to Table 2B–1, Figure 2B–2, and to the appropriate text and figures in Part 7, for consistency.

In the NPA, the FHWA proposed to insert new GUIDANCE and OPTION statements regarding conditions and criteria to be used in determining when In-Street Pedestrian Crossing signs should be used at unsignalized intersections. The NCUTCD, an NCUTCD member, 2 State DOTs, and 3 local DOTs opposed the recommended criteria, specifically the criteria to use the signs at crossing locations where there are 25 or more pedestrians per hour. The FHWA agrees and removes the criteria from this final rule, and adopts the OPTION statement allowing highway agencies to develop criteria for determining the applicability of In-Street Pedestrian Crossing signs.

As proposed in the NPA, the FHWA also adds paragraph 03 requiring that the In-Street Pedestrian Crossing sign, if used, be placed only in the roadway at the crosswalk location on the center line, on a lane line, or on a median island. While an NCUTCD member supported the language, two State DOTs and two local DOTs opposed the language, suggesting that locating this sign in the crosswalk was not the original intent of this device, and that doing so might actually pose a safety issue by distracting or obstructing the pedestrian's or driver's view. The FHWA received comments from a City DOT opposed to the proposed language restricting the location of overhead pedestrian crossing signs to over the roadway at the crosswalk location and

[23] FHWA's Official Interpretation #2–566(I), July 27, 2005, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/2_566.htm.*

[24] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 19, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

prohibiting the installation of the signs at signalized locations. The commenter felt that there are unique locations where the requirements need to be relaxed to allow flexibility. The FHWA disagrees with these comments, because the experimentation that led to the original inclusion of the R1–6 In-Street Pedestrian Sign in the MUTCD only involved signs located in the street itself, where it is highly visible to the approaching driver, and did not include any application of the R1–6 sign behind the curb. The FHWA does not have any information that would support placement of this sign at locations out of the roadway itself. The FHWA adopts the language in this final rule to be consistent with similar language proposed in Part 7, which is based on FHWA's Official Interpretation # 7–64(1).[25]

In addition, in the NPA the FHWA proposed revising paragraph 10 to specify that the In-Street Pedestrian Crossing sign shall have a black legend and border on a white background, surrounded by an outer fluorescent yellow-green background area, or by a yellow background area. The FHWA adopts this language, with editorial edits, based on comments from two State DOTs suggesting the need to clarify the color of the background area.

The FHWA also proposed revising paragraph 11 to indicate that unless an In-Street Pedestrian Crossing sign is placed on a physical island, it is to be designed to bend over and then bounce back to its normal vertical position when struck by a vehicle. A local DOT and a traffic control device manufacturer supported this provision, while a State DOT opposed the language, stating that drums, cones, and other types of devices used within roadways are not required to have this ability. The FHWA adopts this language in this final rule because while all signs must be crashworthy, these in-street signs need to have special supports to minimize damage to vehicles and injuries to pedestrians if the signs are struck by a passing vehicle.

Finally, the FHWA adds paragraph 13 that provides requirements for the mounting heights of In-Street Pedestrian Crossing signs. A traffic control device manufacturer opposed the mounting height requirements; however, FHWA adopts these requirements as proposed in the NPA to preclude incorrect mounting of this sign when it is on an island and to assure that the signs are crashworthy by not being mounted above vehicle windshield height.[26]

66. In Section 2B.13 Speed Limit Sign, the FHWA proposed in the NPA to add to the STANDARD a statement that speed zones (other than statutory speed limits) shall only be established on the basis of an engineering study that includes an analysis of the current speed distribution of free-flowing vehicles. A State DOT and a local DOT supported this new language, while a State DOT, a local DOT, and an advocacy association opposed the language because they felt it was too restrictive. In addition, a State DOT, an association of local DOTs, and six local DOTs expressed concern that some roadways do not have volumes that are high enough to allow the collection of speed distributions, and there are some types of roads, such as residential streets and school zones, where the free-flow speed is actually the safety issue. The FHWA adopts this change in this final rule to clarify that consideration is to be given to the free-flow speed when determining altered speed zones, and to clarify that statutorily established speed limits, such as those typically established by State laws setting statewide maximum limits for various classes of roads (such as neighborhood roads and school zones), do not require an engineering study. The FHWA also proposed to add a new SUPPORT statement to provide additional information about the difference between a statutory speed limit and an altered speed zone. A citizen opposed the descriptions because he believes they offer a way to avoid doing a proper speed survey and thus enable jurisdictions to post unreasonably low speed limits. The FHWA disagrees, as this is only a SUPPORT statement that does not affect the other provisions regarding studies to establish speed limits, and the FHWA adopts the SUPPORT statement in this final rule to clarify the difference between statutory speed limits and altered speed zones.

The FHWA also proposed to add a new OPTION statement to permit the use of several new plaques (R2–5P series) to be mounted with the Speed Limit Sign when a jurisdiction has a policy of installing speed limit signs only on the streets that enter from a jurisdictional boundary or from a higher-speed street to indicate that the speed limit is applicable to the entire city, neighborhood, or residential area unless otherwise posted. A State DOT, a local DOT, and a retired traffic engineer supported the new language; however, a State DOT opposed the language, because it felt that such plaques can be difficult to enforce and have the potential to be abused. The FHWA disagrees with the commenter and adopts this change in this final rule, with editorial clarification, to reflect common practice in some urban areas, as documented by the Sign Synthesis Study,[27] and because it is often unnecessary and overly costly to install a speed limit sign on every minor residential street.

The FHWA also proposed to add paragraph 09 to recommend that a Reduced Speed Limit Ahead sign be used where the speed limit is being reduced by more than 10 mph, or where engineering judgment indicates the need for advance notice. One State DOT supported this new recommendation; however, another State DOT opposed this recommendation, stating that to install reduced speed limit signs in advance of every 10 mph reduction in speed would be infeasible. A turnpike authority suggested that speed limit drops of more than 10 mph at a time should be discouraged. The FHWA adopts this change in this final rule because the practice of installing reduced speed signs in advance of speed zones with more than a 10 mph reduction has been in place in many States for decades. In addition, some States and local highway agencies have engaged in the practice of establishing speed limits more than 10 mph lower than the rural statutory speed limit when entering a town or commercial area, and road users need to be warned of such situations. The FHWA also adopts this change in order to provide consistency with changes contained in Chapter 2C.

The FHWA clarifies the STANDARD statement proposed in the NPA for the establishment of speed zones on the basis of an engineering study of the current speed distribution of free-flowing vehicles, by adding SUPPORT and OPTION statements in this final rule in response to comments from the NCUTCD. That organization suggested more clarification as to engineering studies that should be conducted to reevaluate non-statutory speed limits and the posting of altered speed zones. The FHWA believes these adopted changes will assist agencies with reevaluating non-statutory speed limits on segments of their roadways that have

[25] FHWA's Official Interpretation #7–64(I), July 23, 2004, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/7_64.htm.*

[26] Information on the FHWA's crash-testing of in-street signs can be viewed at the following Internet Web site: *http://safety.fhwa.dot.gov/roadway%5Fdept/policy_guide/road_hardware/breakaway/signsupports.cfm.*

[27] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, pages 19–20, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

undergone significant changes since the last review; such as the addition or elimination of parking, change in the number of travel lanes, changes in bicycle lane configuration, or signal coordination and in determining speed limits in speed zones.

As discussed above, in the NPA the FHWA proposed to add in paragraph 01 of the STANDARD statement a requirement that the engineering study that is performed to determine a speed zone shall include an analysis of the current speed distribution of free-flowing vehicles. Based on a comment from the Regulatory and Warning Signs Technical Committee of the NCUTCD to include additional guidance and supporting information for the establishment of speed zones in the vicinity of signalized intersections, the FHWA adds paragraph 13 to the GUIDANCE statement to recommend that speed studies on signalized intersection approaches be taken outside the influence area of the traffic control signal, which is generally considered to be approximately ½ mile, to avoid obtaining skewed results for the 85th percentile speed. Following this GUIDANCE, the FHWA adds a SUPPORT statement regarding the use of advance warning signs in the vicinity of signalized intersections. The FHWA believes that this new text provides agencies with additional information that is useful in establishing speed zones and gaining motorists' awareness.

Finally, the FHWA adds a new GUIDANCE statement to indicate that Speed Limit signs should not be used to warn of an advisory speed for a roadway condition, based on a comment from the NCUTCD that this is needed for consistency with the provisions of Section 2C.08 Advisory Speed Plaque. The FHWA also adds a reference to Section 2C.08 for information on advisory speed plaques for these conditions.

67. In Section 2B.17 Higher Fines Signs and Plaque, the FHWA proposed changes to OPTION, GUIDANCE, STANDARD, and SUPPORT statements. In this final rule, the FHWA revises the existing and proposed text to be consistent with similar provisions in Chapter 6F and Chapter 7B for the application of Higher Fines signs and plaque.

68. The FHWA relocates all of the text from Section 2B.18 Location of Speed Limit Sign of the 2003 MUTCD to Section 2B.13 Speed Limit Sign (see item 66 above).

69. In Section 2B.18 (Section 2B.19 of the 2003 MUTCD), the FHWA changes the title to ''Movement Prohibition Signs'' to incorporate the inclusion of the No Straight Through (R3–27) sign in the GUIDANCE statement in this section. The NCUTCD, ATSSA, a State DOT, two local DOTs, an association, and two citizens supported this new sign, although some of the commenters also suggested that the signs be allowed for other applications. A State DOT and two local DOTs opposed the new sign because they felt that it was unnecessary. The commenters suggested that the DO NOT ENTER (R5–1) sign serves the same purpose. The FHWA disagrees and adopts the symbolic No Straight Through sign as proposed in the NPA. The sign is most commonly used for traffic restrictions associated with traffic calming programs. The sign is useful at intersections having four approaches, where the through movement to be prohibited is onto a street or road that does not have a ''Do Not Enter'' condition, such as when 90-degree turns into the roadway are allowed, but the straight ahead movement into the roadway is prohibited. This new sign uses the standard Canadian MUTCD RB–10 sign as the basis of the design. The FHWA adds an illustration of this new sign to Figure 2B–4.

The FHWA also changes paragraph 09 regarding the use of Turn Prohibition Signs adjacent to signal heads from an OPTION to a GUIDANCE statement. Although a local DOT opposed strengthening this language to a recommendation, the FHWA believes that for conspicuity reasons, these signs should be mounted near the appropriate signal face, and this reflects typical practice. Therefore, the FHWA adopts in this final rule the proposed changes to a recommended practice rather than an option.

Additionally, the FHWA adds new STANDARD and SUPPORT statements at the end of this section to prohibit the use of No Left Turn, No U-Turn, and combination No U-Turn/No Left Turn signs at roundabouts in order to prohibit drivers from turning left onto the circular roadway of a roundabout. The language also indicates that Roundabout Directional Arrow and/or ONE WAY signs are the appropriate signs to indicate the travel direction for this condition. The NCUTCD and two of its members, a State DOT, two local DOTs, and a traffic engineering consultant supported the proposed language. Some comments in support of the proposal also indicated that there might be unique existing situations where the design of the roundabout is confusing and/or driver expectancy is such that a No Left Turn sign is needed to correct driver behavior at roundabout approaches. The FHWA disagrees with those comments and suggests that the Roundabout Directional Arrow and/or ONE WAY signs can be used to help in those situations. The FHWA adopts the language as proposed in the NPA to provide uniformity in signing at roundabouts and to reduce the possibility of confusion for drivers that intend to turn left by circumnavigating the roundabout.

70. In Section 2B.19 (Section 2B.20 of the 2003 MUTCD) Intersection Lane Control Signs, the FHWA proposed to add to the GUIDANCE statement that overhead lane control signs should be installed over the appropriate lanes on signalized approaches where lane drops, multiple-lane turns with shared through-and-turn lanes, or other lane-use controls that would be unexpected by unfamiliar road users are present. The NCUTCD, an NCUTCD member, a local DOT, and a citizen supported the language that lane control signs should be mounted overhead. Eight State DOTs and seven local DOTs, however, suggested that placing lane control signs overhead, as well as using oversized post-mounted signs, should be an option, rather than a recommendation, because of the costs involved. The FHWA adopts the recommendation to use overhead signs for the stated conditions, however to address the comments from the DOTs, the FHWA provides additional information in this final rule to clarify alternatives to mounting overhead signs when it is impractical to do so. These changes are adopted to enhance safety and efficiency by providing for more effective signing for potentially confusing intersection configurations.

The FHWA also proposed to add a paragraph at the end of the OPTION statement regarding the types of arrows that may be used on Intersection Lane Control signs at roundabouts. ATSSA, the NCUTCD, an NCUTCD member, a State DOT, and two local DOTs supported the arrow shapes, while another NCUTCD member thought that including four different ways to show each movement lacked uniformity. A traffic engineering consultant supported the various options for arrows because he believes that road users understand and interpret normal lane control arrows better than fish hook arrows. A local DOT suggested that the left-turn arrow should be prohibited from use at roundabout intersections. The FHWA adopts the changes as proposed in the NPA along with ''Figure 2B–5 Intersection Lane Control Sign Arrow Options for Roundabouts'' illustrating the signs, to reflect current practice for roundabout signing and to correspond with similar options for pavement

marking arrows on roundabout approaches in Part 3. The FHWA notes that human factors research [28] found that all of the arrow designs shown for roundabout movements were well understood by the public.

71. In Section 2B.20 (Section 2B.21 in the 2003 MUTCD) Mandatory Movement Lane Control Signs, the FHWA proposed in the NPA to revise the first paragraph of the STANDARD statement to clarify that Mandatory Movement Lane Use Control signs shall indicate only the single vehicle movement that is required from each lane, and to clarify the placement of the signs. The FHWA also proposed to add that where three or more lanes are available to through traffic and Mandatory Movement Lane Control symbol signs are used, they shall be mounted overhead. A State DOT supported this requirement; however, four State DOTs, three local DOTs, two NCUTCD members, and a citizen opposed the requirement, suggesting that overhead installations are not always practical and that post-mounted R3–5 signs with plaques are sufficient and easily understood. The FHWA disagrees and notes that the intent is to prohibit post-mounted lane use control signs on approaches with three or more through lanes, because the needed lane use information is more visible overhead rather than off to the side where traffic in the adjacent lanes limits the visibility of post-mounted signs. In addition, lane use regulatory signing is to be placed over the lane to which it applies on approaches with three or more through lanes, and not just where one of the lanes changes to a mandatory turn lane or combination turn lane. This is crucial information for motorists and the lack of overhead lane use signing contributes to crashes on multilane approaches to intersections. The FHWA also adopts these changes for consistency with Section 2B.21.

In this final rule, the FHWA changes paragraph 05 from a STANDARD statement to a GUIDANCE statement to recommend, rather than require, that R3–5 series supplemental plaques (LEFT LANE, TAXI LANE, etc.) for R3–5 series lane control signs on two-lane approaches be mounted above the associated R3–5 sign. Although these changes were not proposed in the NPA, the FHWA adopts these changes in response to comments from the NCUTCD and a citizen. The commenters suggested that this statement was more appropriate as a recommendation, and they also indicated that the supplemental plaques should be added above the sign, rather than below, since placing the information at the top of the sign assembly allows drivers to quickly determine if the sign applies to them. The FHWA agrees and incorporates these changes in this final rule.

The FHWA also add paragraphs 06 and 07 in response to a comment from the NCUTCD to clarify the use of R3–7 LEFT (RIGHT) LANE MUST TURN LEFT (RIGHT) Mandatory Movement Lane Control signs, because they are being misused throughout the country. The FHWA agrees and adds these paragraphs in the final rule to clarify where these signs should and should not be used.

Finally, as proposed in the NPA, the FHWA adds an OPTION statement at the end of this section describing the optional use of the new BEGIN RIGHT TURN LANE (R3–20R) and BEGIN LEFT TURN LANE (R3–20L) signs at the upstream end of the turn lane taper of mandatory turn lanes. The FHWA adds this change to give agencies flexibility to use these new signs to designate the beginning of mandatory turn lanes where needed for enforcement purposes. The NCUTCD, ATSSA, and a local DOT supported this change. A State DOT and a NCUTCD member opposed the introduction of the R3–20 sign, because the R3–7 and R3–5 signs are available and therefore they believe that another sign is not needed and would reduce uniformity. The FHWA disagrees, because this new optional sign will provide road users additional information regarding mandatory turn lanes. The FHWA adopts the R3–20 sign, incorporating an editorial suggestion regarding its placement, in this final rule.

72. In Section 2B.21 (Section 2B.22 in the 2003 MUTCD) Optional Movement Lane Control Sign, the FHWA revises the STANDARD statement, as proposed in the NPA, to clarify that, if used, Optional Movement Lane Control signs shall be located in advance of and/or at the intersection where the lane controls apply. This change also provides consistency with Section 2B.20 regarding placement of Mandatory Movement Lane Control Signs.

The FHWA also adopts the proposed paragraph 05 requiring that Optional Movement Lane Control (R3–6) signs be mounted overhead if used on an approach where the number of lanes available to through traffic is three or more. Similar to the comments in Section 2B.20, a local DOT supported this change, while two State DOTs, two local DOTs, and two NCUTCD members opposed this change, suggesting that it should be optional rather than recommended. The FHWA disagrees because lane use regulation is critical information for drivers that can be obscured by other traffic on approaches of three or more through lanes when post-mounted.

Similar to comparable provisions in Section 2B.20, in this final rule the FHWA changes paragraph 06 from a STANDARD statement, as proposed in the NPA, to a GUIDANCE statement to recommend, rather than require, that R3–5 series supplemental plaques (LEFT LANE, TAXI LANE, etc) for R3–5 series lane control signs on two-lane approaches be mounted above the associated R3–6 sign, for consistency with a similar statement in Section 2B.20.

The FHWA also adds paragraph 08, as proposed in the NPA, prohibiting the use of the word message ONLY when more than one movement is permitted from a lane. The FHWA adopts this change in this final rule to be consistent with other requirements in the MUTCD regarding the use of the term ONLY for lane use.

73. In Section 2B.22 Advance Intersection Lane Control Signs (Section 2B.23 in the 2003 MUTCD), the FHWA proposed in the NPA to add paragraph 05 prohibiting the overhead placement of Advance Intersection Lane Control (R3–8) signs where the number of lanes available to traffic on an approach is three or more. In such cases, overhead R3–5 signs are used. The NCUTCD, a State DOT, three local DOTs, and a traffic engineering consultant pointed out confusing language in the statement proposed in the NPA. The FHWA clarifies the language in this final rule to refer to the total number of lanes, not just through lanes. This section pertains to advance lane use signs, while Section 2B.19 addresses lane use control signs at the intersection.

74. The FHWA adds a new section numbered and titled Section 2B.23 RIGHT (LEFT) LANE MUST EXIT Sign. This section, as proposed in the NPA, contained an OPTION statement describing the use of this sign for a lane of a freeway or expressway that is approaching a grade-separated interchange where traffic in the lane is required to depart the roadway onto the exit ramp at the next interchange. As documented in the Sign Synthesis Study,[29] at least 12 States currently use

[28] ''Lane Restriction Signing and Marking for Double-Lane Roundabouts'', Final Report, October 2007, by John A. Molino, Vaughn W. Inman, Bryan J. Katz, and Amanda Emo, for the Traffic Control Devices Pooled Fund Study, can be viewed at the following Internet Web site: *http://www.pooledfund.org/documents/TPF-5_065/FinalRoundaboutReport.pdf.*

[29] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 22, can be viewed at

this type of regulatory sign for freeway lane drop situations to establish the ''must exit'' regulation and make it enforceable where warning signs (such as the overhead ''Exit Only'' black-on-yellow warning plaque on guide signs) and markings alone have proven ineffective. ATSSA, an NCUTCD member, and a local DOT supported the new RIGHT (LEFT) LANE MUST EXIT (R3–33) sign; however, another NCUTCD member opposed the sign because he felt that there are similar signs in the MUTCD that can be used. The FHWA disagrees because there are no other post-mounted regulatory signs that adequately convey this message. The FHWA adopts this section in this final rule with revisions to indicate that this sign may be used to supplement an overhead EXIT ONLY guide sign, in response to a comment from a toll road operator that further clarification was needed to preclude unintended uses of the R3–33 sign.

75. Although the FHWA did not propose in the NPA any significant changes to Section 2B.24 Two-Way Left Turn Only Signs, the FHWA received comments from three local DOTs suggesting that two-way left turn only signs are no longer necessary because this turn configuration has been in use for long enough that motorists are familiar with its operation. The commenters suggested that two-way left turn only signs be optional, rather than recommended. The FHWA disagrees because the operation of two-way left-turn lanes is a regulatory application requiring motorists to turn left out of the lane rather than using the lane as an auxiliary through lane. Lane markings alone regulate traffic only for NO PASSING zones; therefore two-way left turn only signs are needed. The FHWA retains this section, as it existed in the 2003 MUTCD, with minor editorial changes.

76. Although not proposed in the NPA, the FHWA adds a new section numbered and titled Section 2B.25 BEGIN and END Plaques, consisting of an OPTION statement for the optional use of the BEGIN or END plaque and a STANDARD statement that, if the plaque is used, it is to be placed above a regulatory sign. The FHWA adds this new section in response to comments from the NCUTCD that the existing END plaques already contained in Section 2D.22 and the BEGIN plaque proposed in the NPA in Section 2D.23 should be made available for optional use with any regulatory sign. The NCUTCD based its suggestion on recommendation #15 from the Sign Synthesis Study.[30] The FHWA agrees and adopts this new section, along with an illustration of the plaques in Figure 2B–6, in this final rule.

77. The FHWA adds a new section titled Section 2B.27 Jughandle Signs. As proposed in the NPA, this section contains SUPPORT, STANDARD, and OPTION statements regarding the use of regulatory signs for jughandles. A State DOT suggested that road users would be better served by advance guide signing for jug handles, rather than regulatory signing. The FHWA disagrees because regulatory signing is critical for jughandles since the geometry typically requires left turns and U-turns to be made via a right turn, either in advance of or beyond the intersection, and this is contrary to normal driver expectations. The Sign Synthesis Study [31] found that jughandles are currently in common use in at least six States and the FHWA believes that jughandles are likely to see increasing use in the future in more States in order to improve intersection safety and operations. Therefore, in order to provide agencies with uniform signing practices for several of the most common geometric layouts of jughandles, the FHWA adds this new section along with several new signs and a figure to illustrate their use. ATSSA and a local DOT supported the regulatory signs illustrated in the figure. The NCUTCD suggested editorial changes to the text and to the arrows on some of the signs, which the FHWA adopts in this final rule. Although a local DOT opposed the use of ''U Turn and Left Turn'' language on the R3–24 signs, the FHWA incorporates the sign designs, as proposed in the NPA, because the sign designs and their applications have effectively been in use in several States for decades and are critical information for road user decisions for the condition of an indirect left turn.

78. In Section 2B.28 DO NOT PASS Sign (Section 2B.29 of the 2003 MUTCD), in the NPA the FHWA proposed a new symbol sign for the DO NOT PASS (R4–1) Sign. ATSSA, three local DOTs, and two citizens supported the new symbol signs. Although the proposed symbol sign has been in use and is well understood in Europe and Canada (the Canadian MUTCD RB–31 sign) for many decades,[32] the FHWA does not adopt the symbol sign in this final rule because of comments from the NCUTCD and two of its members, seven State DOTs, and five local DOTs suggesting that U.S. drivers would not understand its meaning. The FHWA agrees that additional human factors testing of the symbol is desirable before future consideration of adoption of this symbol.

79. In the NPA, the FHWA proposed to add a new section numbered and titled Section 2B.35 DO NOT PASS WHEN SOLID LINE IS ON YOUR SIDE sign, which contained an OPTION statement describing the use of this word message sign. ATSSA and two local DOTs supported this new sign. Although at least five States use signs to remind road users of the meaning of a solid yellow line for no-passing zones, the NCUTCD and two of its members, eight State DOTs, four local DOTs, and a local association of traffic engineers recommended deleting this section and the associated sign in its entirety because they felt that the proposed sign was not needed. Many stated that the No Passing Pennant (W14–3) warning sign may be used for this purpose. The FHWA agrees and does not adopt this section or the sign in this final rule.

80. In the NPA, the FHWA proposed to retitle Section 2B.31 of the 2003 MUTCD to ''KEEP RIGHT EXCEPT TO PASS Sign and SLOWER TRAFFIC KEEP RIGHT Sign'' to reflect the proposed addition of a new KEEP RIGHT EXCEPT TO PASS sign in this section. The Sign Synthesis Study [33] found that at least 19 States use a ''Keep Right Except to Pass'' sign to legally require vehicles to stay in the right-hand lane of a multi-lane highway except when passing a slower vehicle, and the FHWA feels that a consistent message should be provided to road users. The NCUTCD, an NCUTCD member, ATSSA, and a local DOT supported the new KEEP RIGHT EXCEPT TO PASS sign. The NCUTCD also noted that the new KEEP RIGHT EXCEPT TO PASS sign is used for different situations than the SLOWER TRAFFIC KEEP RIGHT sign. The FHWA agrees and adopts

the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[30] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, pages 22–23, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[31] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 24, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[32] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 24, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[33] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 25, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

revisions in this final rule to separate the applications of each of the signs, including placing the new KEEP RIGHT EXCEPT TO PASS sign in its own Section, numbered Section 2B.30 in this final rule.

81. In Section 2B.31 (numbered Section 2B.32 in the 2003 MUTCD), as proposed in the NPA, the FHWA retitles the Section to ''TRUCKS USE RIGHT LANE Sign'' and revises the section to discontinue the use of the TRUCK LANE XXX FEET (R4–6) as a regulatory sign because the message is one of guidance information (distance to the start of the truck lane) rather than regulatory in nature. This is consistent with changes in Chapter 2D that add a new guide sign with this message. The FHWA also adds an OPTION statement, as proposed in the NPA, which describes the appropriate optional use of the TRUCKS USE RIGHT LANE sign on multi-lane roadways to reduce unnecessary lane changing.

82. In Section 2B.32 Keep Right and Keep Left Signs (numbered Section 2B.33 in the 2003 MUTCD) the FHWA adds a new narrow Keep Right (R4–7c) sign that may be installed on narrow medians where there is insufficient lateral clearance for a standard width Keep Right sign. ATSSA, a State DOT, two local DOTs, and a traffic engineering consultant supported this new sign. In the NPA, the FHWA proposed that this narrower sign may be installed on medians less than 6 feet in width; however, in this final rule the FHWA revises the permitted use of this sign to medians less than 4 feet wide based on a comment from ATSSA. The FHWA adopts this new sign, which is only 12 inches wide rather than the standard 24-inch wide R4–7 sign, to reflect current practice in some States and to provide other agencies with the flexibility to use this sign where applicable.

83. As proposed in the NPA, the FHWA adds three new sections following Section 2B.32. The first new section is numbered and titled Section 2B.33 STAY IN LANE Sign, and contains OPTION and GUIDANCE statements on the use of STAY IN LANE (R4–9) signs and the pavement markings that should be used with them. The second new section is numbered and titled Section 2B.34 RUNAWAY VEHICLES ONLY Sign, and contains a GUIDANCE statement regarding the use of the RUNAWAY VEHICLES ONLY sign near truck escape ramp entrances. Both the STAY IN LANE and RUNAWAY VEHICLES ONLY signs are existing signs illustrated in Figure 2B–10 (Figure 2B–8 of the 2003 MUTCD), but not described in the text of the 2003 MUTCD. The third new section is numbered and titled Section 2B.35 Slow Vehicle Turn-Out Signs, and contains SUPPORT, OPTION, and STANDARD statements regarding three new signs that may be used on two-lane highways where physical turn-out areas are provided for the purpose of giving a group of faster vehicles an opportunity to pass a slow-moving vehicle. ATSSA and a local DOT supported the SLOW VEHICLES WITH XX OR MORE FOLLOWING VEHICLES MUST USE TURN–OUT (R4–12) sign; however, two State DOTs opposed the sign because of safety concerns. As documented in the Sign Synthesis Study,[34] at least eight States, mostly in the west, use regulatory signs to legally require slow moving vehicles to use the turnout if a certain number of following vehicles are being impeded. Most of the eight States use similar wording on their signs, but there are some variations. The FHWA adds these new signs in this final rule to provide for uniformity of the message.

84. As proposed in the NPA, the FHWA adds a new section numbered and titled Section 2B.36 DO NOT DRIVE ON SHOULDER Sign and DO NOT PASS ON SHOULDER Sign, which contains an OPTION statement regarding the use of these two new signs to inform road users that use of the shoulder as a travel lane or to pass other vehicles is prohibited. ATSSA supported these two new signs. The FHWA adopts these 2 new signs in this final rule because the Sign Synthesis Study [35] found that at least 19 States are using some version of regulatory sign to prohibit driving, turning, and/or passing on shoulders and the FHWA feels that consistent and uniform messages for these purposes should be provided to road users.

85. In Sections 2B.37 DO NOT ENTER Sign and 2B.38 WRONG WAY Sign (Sections 2B.34 and 2B.35 of the 2003 MUTCD) the FHWA adds SUPPORT statements, as proposed in the NPA. These statements reference Section 2B.41, which allows lower mounting heights for Do Not Enter and Wrong Way signs as a specific exception when an engineering study indicates that it would address wrong-way movements at freeway/expressway exit ramps. The FHWA adopts this exception based on recommendations from the Older Driver handbook [36] and positive experience in several States.

86. In Section 2B.39 Selective Exclusion Signs (Section 2B.36 in the 2003 MUTCD), as proposed in the NPA, the FHWA changes the legend of several existing selective exclusion signs to use the word NO rather than PROHIBITED or EXCLUDED, to simplify the messages and make them easier to read from a distance. ATSSA, a State DOT, and a local DOT supported this change. The FHWA also adds the new No Skaters *(*R9–13) and No Equestrians (R9–14) signs to this list, as well as to Figure 2B–11, based on comments from the NCUTCD, a State DOT, two NCUTCD members, and several pedestrian/bicycle associations.

To respond to a comment from a State DOT, the FHWA adds paragraph 06 to recommend that the NO PEDESTRIANS OR BICYCLES (R5–10b) sign, when used on a freeway or expressway exit or entrance ramp, should be installed in a location where it is clearly visible to any pedestrian or bicyclist attempting to enter the limited access facility from a street intersecting the exit ramp.

In the NPA, the FHWA proposed to add two new regulatory signs, AUTHORIZED VEHICLES ONLY and FOR OFFICIAL USE ONLY to the last OPTION statement to reflect current practice. While ATSSA and a local DOT supported both of these signs, an NCUTCD member suggested that their meaning was so similar that only one sign is needed. The FHWA agrees and adopts the AUTHORIZED VEHICLES ONLY (R5–11) sign in this final rule and deletes the FOR OFFICIAL USE ONLY sign.

87. In Figure 2B–26 (Figure 2B–18 in the 2003 MUTCD) Pedestrian Signs and Plaques, the FHWA in this final rule modifies the designs of the R10–3, R10–3a through R10–3e, R10–4 and R10–4a to include the Canadian MUTCD standard symbol for pushbuttons (in addition to the words), as proposed in the NPA, to begin the symbolization of the ''pushbutton'' message. The FHWA adopts this change to provide better harmony in North American signing design, which is needed as a result of the increased travel between the U.S., Canada, and Mexico resulting from NAFTA. The FHWA is adopting this new pushbutton symbol on several signs throughout the MUTCD.

[34] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 25, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[35] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 25, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[36] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendation II.D(4d).

88. As proposed in the NPA, in Section 2B.40 ONE WAY Signs (Section 2B.37 of the 2003 MUTCD), the FHWA changes paragraph 03 to a STANDARD to require, rather than recommend, that at an intersection with a divided highway having a median width of 30 feet or more, ONE WAY signs be placed on the near right and far left corners of each intersection with the directional roadways to reflect recommendations from the Older Driver handbook.[37] In concert with these changes, and based on comments from a State DOT, the FHWA clarifies that, at an intersection with a divided highway that has a median width of less than 30 feet, Keep Right (R4–7) signs shall be installed, visible to traffic on the divided highway and each crossroad approach, and/or ONE WAY signs shall be placed, visible to each crossroad approach, on the near right and far left corners of the intersection. The FHWA also adds an OPTION statement allowing ONE WAY signs to also be placed on the far right corner of an intersection with a divided highway that has a median width of less than 30 feet. The FHWA revises Figures 2B–15 through 2B–17 accordingly.

The FHWA also adds two STANDARD paragraphs as proposed in the NPA to require two ONE WAY signs for each approach for T-intersections and cross intersections, one on the near side and one on the far side. The FHWA adopts this change to reflect recommendations from the Older Driver handbook.[38]

The FHWA establishes a target compliance date of December 31, 2019, (approximately 10 years from the effective date of this final rule) for the installation of the additional ONE WAY and/or Keep Right signs required to achieve compliance with these provisions at existing locations. The FHWA establishes this target compliance date because of the demonstrated safety issues associated with wrong-way travel on divided highways and because the FHWA anticipates that installation of the required additional signs at existing locations will provide significant safety benefits to road users. State and local highway agencies and owners of private roads open to public travel can schedule the installation of the additional required signs in conjunction with their programs for maintaining and replacing other signs at existing locations that are worn out or damaged, thus minimizing any impacts.

The FHWA also adds new OPTION, GUIDANCE, and SUPPORT statements at the end of the Section regarding the use of ONE WAY signs on central islands of roundabouts. The FHWA adopts this text to promote consistency in signing for roundabouts.

Additionally, to respond to a comment from the NCUTCD and to provide highway agencies with a uniform method of communicating potentially important messages, in this final rule the FHWA adds BEGIN ONE WAY and END ONE WAY signs as optional signs that may be used to notify approaching road users of the beginning point or ending point of a one-way directional roadway. These new optional signs are consistent with existing sign designs. The Signs Synthesis Report [39] indicates these signs are in use in some States. The FHWA adopts the signs in the text and includes them in Figure 2B–13, and notes that the impact of this addition is mitigated as the use of these signs is optional.

89. As proposed in the NPA, the FHWA relocates the information from Section 2E.50 of the 2003 MUTCD to a new section numbered and titled Section 2B.41 Wrong-Way Traffic Control at Interchange Ramps. The FHWA adopts this change because these types of signs are regulatory in nature, rather than guide signs.

In addition, the FHWA adds paragraph 06 allowing the option to mount a DO NOT ENTER sign(s) and/or a WRONG WAY sign(s) along the exit ramp facing a road user at a lower mounting height under specific conditions. A local DOT supported this option, while two State DOTs and a local DOT expressed concerns about the crashworthiness of signs at this lower mounting height. Another local DOT suggested that a lower mounting height should not be allowed for signs, because other signs are restricted from being installed in this manner. The FHWA disagrees with the commenters and adopts this language in this final rule because of the effective application of this option in several States,[40] research conducted by Texas Transportation Institute,[41] and the results of crash testing of sign supports of various heights as documented in AASHTO's Roadside Design Guide.[42]

90. In Section 2B.42 Divided Highway Crossing Signs (Section 2B.38 in the 2003 MUTCD), the FHWA proposed in the NPA to change the first OPTION statement to a STANDARD statement to require the use of Divided Highway Crossing Signs for all approaches to divided highways in order to encompass recommendations from the Older Driver handbook.[43] Although ATSSA supported this change, six State DOTs, eight local DOTs, three NCUTCD members, a traffic engineering consultant, and a citizen all opposed the change, suggesting that it was unrealistic in urban areas and would involve the installation of too many signs. As a result of the comments, the FHWA reevaluated this proposal and the underlying research and recommendations from the Older Driver Handbook. Based on that review, the FHWA revises the first STANDARD statement to require the installation of a Divided Highway Crossing sign on unsignalized minor-street approaches from which both left turns and through movements are permitted onto a divided highway having a median width at the intersection itself of 30 feet or greater. The FHWA notes that the operational and safety issues with side road approaches to divided highways is for left turns out of the side road approach onto the divided highway and for through crossing movements from the side road approach, rather than for right turn movements, and revises the STANDARD and OPTION statements accordingly. As part of this change, the FHWA also adopts an OPTION statement to allow the Divided Highway Crossing sign to be omitted if the divided road has average annual daily traffic less than 400 vehicles per day and a speed limit of 30 mph or less. The FHWA also adopts an OPTION

[37] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendations I.E(4), I.K(2), and I.K(3).

[38] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendations I.K(4) and I.K(5).

[39] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 26, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[40] ''Marking the Way to Greater Safety,'' Senior Mobility Series: Article 4, Public Roads Magazine, July/August 2006, page 55, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/pubrds/06jul/08.htm.*

[41] ''Countermeasures for Wrong-Way Movement on Freeways: Overview of Project Activities and Findings,'' Report number FHWA/TX–04/4128–1, January 2004, by Scott A. Cooner, A. Scott Cothron, and Steven E. Ranft, can be viewed at the following Internet Web site: *http://tti.tamu.edu/documents/4128–1.pdf.*

[42] ''Roadside Design Guide, 3rd Edition,'' 2002, is available for purchase from the American Association of State Highway and Transportation Officials, via the Internet Web site: *https://bookstore.transportation.org/item_details.aspx?ID=148.*

[43] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendation I.K(1).

statement permitting the use of the Divided Highway Crossing sign facing signalized minor-street approaches from which both left and right turns are permitted onto a divided highway having a median width of 30 feet or greater at the intersection.

The FHWA also proposed in the NPA to change the existing 2nd OPTION statement to a STANDARD statement in order to require that the Divided Highway Crossing sign be located on the near right corner of the intersection. The FHWA adopts this change as proposed. As part of this change, the FHWA also adds an OPTION statement to permit the installation of an additional Divided Highway Crossing sign on the left-hand side of the approach to supplement the sign on the near right corner of the intersection. The FHWA adopts these to implement recommendations from the Older Driver handbook.[44]

91. As proposed in the NPA, the FHWA adds a new section numbered and titled Section 2B.43 Roundabout Directional Arrow Signs, containing STANDARD, GUIDANCE, and OPTION statements on the use of Roundabout Directional Arrow Signs. ATSSA, an NCUTCD member, a local DOT, and a traffic engineering consultant supported the use of these signs. Two State DOTs, three local DOTs, two traffic engineering consultants, an NCUTCD member, and a citizen commented about the design of the sign. The NCUTCD member supported the sign design. Many of the commenters suggested that the background color should be yellow rather than white. The FHWA disagrees, noting that the use of the black and yellow W1–8 Chevron sign is reserved for application to warning of horizontal curvature. The FHWA notes that the regulatory sign for use at roundabouts is the Roundabout Directional Arrow and not the Chevron Alignment sign, which is a warning sign.

The FHWA adopts the recommendation to mount the sign at least 4 feet high when used on the central island of a roundabout, as proposed in the NPA. A traffic engineering consultant supported this recommendation, while a State DOT expressed concerns about the mounting height. The FHWA notes that information regarding crashworthiness of sign supports at various mounting heights is provided in AASHTO's Roadside Design Guide.[45]

92. The FHWA adopts a new section numbered and titled Section 2B.44 Roundabout Circulation Plaque, as proposed in the NPA, that contains GUIDANCE and OPTION statements regarding the use of the Roundabout Circulation Sign at roundabouts and other circular intersections. ATSSA, a local DOT, and a traffic engineering consultant supported this new section and the associated sign, while a State DOT and a local DOT suggested that more signs at roundabouts are not needed. Three local DOTs suggested that a supplemental YIELD TO TRAFFIC IN CIRCLE plaque under the YIELD sign be permitted. The FHWA disagrees and does not incorporate the supplemental plaque in this final rule, because the FHWA is not aware of any studies documenting the effectiveness of such a plaque, but the FHWA notes that the MUTCD provides agencies the flexibility to develop and use word message plaques at problem locations if they deem it necessary. The FHWA adopts this section and the associated sign as proposed in the NPA.

93. The FHWA also adopts a new section numbered and titled Section 2B.45 Examples of Roundabout Signing, as proposed in the NPA, that contains a SUPPORT statement referencing new Figures 2B–21 through 2B–23 that illustrate examples of regulatory and warning signs for roundabouts of various configurations. The SUPPORT statement also references other areas in the Manual that contain information on guide signing and pavement markings at roundabouts. The FHWA adopts this new section in order to add valuable information regarding regulatory and warning signs at roundabouts to the MUTCD.

An NCUTCD member supported the designs depicted in Figures 2B–21 through 2B–23 on the basis of applied laboratory studies. A State DOT, a local DOT, and a traffic engineering consultant suggested that the Pedestrian Crossing signs shown in Figures 2B–21 and 2B–22 should be required, rather than optional. Two State DOTs suggested that the Roundabout Advance Warning sign should be required, rather than optional. The FHWA disagrees because the decision to place a warning sign is based upon engineering judgment and that the only mandatory warning signs are the advance railroad crossing warning sign and certain horizontal alignment warning signs in certain conditions.

94. In Section 2B.47 Design of Parking, Standing, and Stopping Signs (Section 2B.40 in the 2003 MUTCD), the FHWA adopts several changes to the colors of the borders of parking signs, as proposed in the NPA. The FHWA revises paragraph 03 to reflect that the Parking Prohibition signs R8–4 and R8–7 and the alternate design for the R7–201aP plaque shall have a black legend and border on a white background, and the R8–3 sign shall have a black legend and border and a red circle and slash on a white background. A traffic engineering consultant supported the black border, while a local DOT opposed the use of a black border. The FHWA adopts the color changes to reflect the existing designs of these specific signs.

Based on a comment from an NCUTCD member, the FHWA relocates the VAN ACCESSIBLE plaque from this section and Figure 2B–24 to Chapter 2I and Figure 2I–1. As part of this change, the FHWA changes its sign designation to D9–6a. The FHWA also changes paragraph 08 to a STANDARD to require that a VAN ACCESSIBLE plaque be installed below the R7–8 sign where parking spaces that are reserved for persons with disabilities are designed to accommodate wheelchair vans. The FHWA adopts this change to reflect Section 502.6 of the Americans with Disabilities Act. A traffic engineering consultant opposed this requirement and questioned how agencies are to enforce the requirement on private property. As discussed previously under the MUTCD Introduction, the FHWA deletes the requirement for MUTCD applicability to parking lots.

The FHWA also adds information in this STANDARD (paragraph 08) that specifies the required colors of the R7–8 sign and the R7–8P plaque to reflect the existing color schemes for this sign and plaque as illustrated in Figure 2B–24. A local DOT opposed the colors for the R7–8 sign, because all of the signs in that State have white lettering on a blue background. The FHWA disagrees and notes that such signs do not conform to the MUTCD standard design of green legend and border with white on blue ADA symbol. The FHWA notes that it did not propose a change to the existing sign design in the NPA.

Finally, the FHWA adds information, as proposed in the NPA, regarding the use of Pay for Parking and Parking Pay Station signs where a fee is charged for parking and a midblock pay station is used instead of individual parking meters. The FHWA adopts these signs to

[44] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendation I.K(1).

[45] ''Roadside Design Guide, 3rd Edition,'' 2002, is available for purchase from the American Association of State Highway and Transportation Officials, via the Internet Web site: *https://bookstore.transportation.org/item_details.aspx?ID=148.*

reflect current practice in many areas where cities and towns are replacing individual parking space meters with a ''pay and display'' system. The FHWA adopts a design for the fee station sign that is very similar to a standard European symbol, because the results of the Sign Synthesis Study [46] showed that several U.S. cities are using a sign very similar to the European design. ATSSA and a local DOT supported the addition of the Pay for Parking series of signs; however, an NCUTCD member suggested that the signs needed to be more standardized. The FHWA agrees and removes the signs designated as R7–21a and R7–22a from the text of this final rule and Figure 2B–24. Based on comments from the NCUTCD, the FHWA also adopts an OPTION statement regarding the color-coding of time limits to provide clearer and quicker recognition by the driver for different time limits.

95. In Section 2B.51 Pedestrian Crossing Signs (Section 2B.44 in the 2003 MUTCD), the FHWA proposed in the NPA to add a GUIDANCE statement to recommend that No Pedestrian Crossing signs be supplemented with detectable guidance, such as grass strips, landscaping, planters, fencing, rails or barriers, in order to provide pedestrians who have visual disabilities with additional guidance as to where not to cross. A local DOT supported the revision as proposed in the NPA. Three associations for the visually impaired, an orientation and mobility specialist, and seven citizens suggested that this statement be strengthened to a requirement because, without a physical restriction of the crossing, pedestrians who are visually impaired might cross at a location without realizing that crossing is prohibited, creating a dangerous situation. While the FHWA understands the concerns raised by the commenters, there are too many variables to make this action mandatory. Many sites cannot accommodate physical barriers, as evidenced by two local DOTs that requested that this statement be an option because they felt that the recommendation was too restrictive and unachievable in many instances, especially within already built environments. In addition, a State DOT and two local DOTs commented that the items proposed in the NPA for creating the physical barrier are not traffic control devices, and therefore should not be included in the MUTCD. The FHWA agrees that this statement is not appropriate for the MUTCD and does not adopt the language in this final rule.

96. In the changes adopted in this final rule the FHWA separates the material proposed in the NPA for Section 2B.59 Traffic Signal Signs (Section 2B.45 of the 2003 MUTCD) into three separate sections. The FHWA believes that separating the material into three sections, based on the type of signs, will make it easier for practitioners to find information about the various types of signs. The new sections are adopted in this final rule as Section 2B.52 Traffic Signal Pedestrian Actuation Signs, Section 2B.53 Traffic Signal Signs, and Section 2B.54 No Turn on Red Signs.

97. In Section 2B.52 Traffic Signal Pedestrian and Bicycle Actuation Signs, the FHWA revises paragraphs 02 and 03 and the sign images in Figure 2B–26 to correspond with adopted changes in Chapter 4E requiring that signs for pedestrian pushbuttons clearly indicate which crosswalk signal is actuated by each pedestrian detector. The revisions eliminate the use of the R10–1, R10–3, and R10–4 sign designs (as shown in the 2003 MUTCD) because these do not identify a specific crosswalk, and therefore do not meet the requirements in Chapter 4E. ATSSA supported the new sign designs as proposed in the NPA; however, a State DOT and two traffic control device vendors opposed the creation of new pedestrian crosswalk signs. The commenters suggested that the multiple changes in signs place a costly burden on both the industry and local municipalities for new artwork, tooling, and mixed inventory of signs, which in turn compromises uniformity. The FHWA disagrees with the opponents' comments because it is important that pedestrians be given a clear indication of which crosswalk the pushbutton controls.

A State DOT and two local DOTs opposed removal of the R10–4b sign, because they are using the sign and feel it is readily understood by the public. The FHWA disagrees and removes the existing R10–4b sign, because the new R10 series signs include an illustration of a hand with a finger touching the pushbutton. The NCUTCD, ATSSA, and a local DOT supported the new hand illustration. A traffic control device vendor and a citizen opposed the increase in size of pedestrian signs from 9 inches x 12 inches to 9 inches x 15 inches to accommodate the finger symbol. The commenters felt that the existing size is sufficiently large enough and that the larger size will increase the cost of the sign and potentially encourage graffiti. A State DOT, three local DOTs, three NCUTCD members, four bicycle/pedestrian associations, two traffic control device vendors, and a citizen opposed the use of the hand illustration in the sign designs because of concerns about user understanding and the size and orientation of the hand illustration in relation to the arrow on the sign. The FHWA believes that, based on Canadian usage, the hand illustration will be understood by users and that addition of the symbol justifies the slightly larger sign size; however, in response to the comments, in this final rule the FHWA adds a GUIDANCE paragraph 05 to recommend that the orientation of the finger should point in the respective direction of the arrow on the signs, and revises the sign images in Figure 2B–26 accordingly.

A local DOT suggested that the legend on the educational plaques for the R10–3e and R10–3i signs be revised to more accurately reflect the instructions that should be given to pedestrians at a crosswalk with countdown signals. As a result, the FHWA revises the legend to be consistent with the text of Section 4E.02. The FHWA adopts the new sign designs and revises the text in this section to clarify how to use the R10 series of pushbutton signs appropriately.

The FHWA also adds paragraphs 07 and 08 regarding the use of new R10–24 and R10–26 signs, where a pushbutton detector has been installed exclusively to actuate a green phase for bicyclists, and a new R10–25 sign, where a pushbutton detector has been installed for pedestrians to activate In-Roadway Warning Lights or flashing beacons. Bikes need less time to cross than pedestrians do, so the pushbuttons actuate timing specifically appropriate for bikes, which is an operationally efficient strategy. The FHWA received comments from the NCUTCD, two of its members, a State DOT, and four bicycle/pedestrian associations in support of the new R10–24 sign, but with suggestions to rephrase the wording to specify a ''green phase for bicyclists,'' rather than a ''special bicycle phase.'' The FHWA agrees and adopts the new sign, and associated revised text, as well as an alternative design with an arrow designated R10–26, in this final rule. ATSSA and an association for the blind supported the new R10–25 sign to activate warning lights. The association for the blind suggested changing the text on the sign to ''flashing lights'' to clarify the message. The FHWA adopts in this final rule these new signs to reflect current practice as documented by the

[46] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 27, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

Sign Synthesis Study,[47] and to provide consistent and uniform messages for these purposes.

In the NPA, the FHWA proposed to add a new FOR MORE CROSSING TIME HOLD BUTTON DOWN FOR 2 SECONDS (R10–32P) sign to this section for use where an extended push button press is used to provide additional crossing time. Although two local DOTs were opposed to this sign, stating that it might lead to pedestrian confusion, or might be used inappropriately, the FHWA adopts this sign in this final rule, with a revised legend which more clearly communicates to pedestrians the meaning than the legend that was proposed in the NPA, to correspond with comparable provisions in adopted in Chapter 4E. The FHWA also illustrates the sign image in Figure 2B–26. The adopted sign legend is PUSH BUTTON FOR 2 SECONDS FOR EXTRA CROSSING TIME.

98. In Section 2B.53 Traffic Signal Signs, the FHWA deletes the first GUIDANCE statement that appeared in the 2003 MUTCD. This statement, regarding the placement of Traffic Signal signs adjacent to traffic signal faces, was overly broad. Instead, in this final rule, the FHWA specifically recommends the locations of individual signs as appropriate.

The FHWA removes the LEFT TURN SIGNAL YIELD ON GREEN (R10–21) sign in this final rule, because the provisions in Part 4 that are the only reason for using this sign have been removed in the adopted text for Part 4. The FHWA also adds paragraphs 03 and 04 regarding the location of LEFT ON GREEN ARROW ONLY and LEFT TURN YIELD ON GREEN signs, independently and with an AT SIGNAL supplemental plaque, as proposed in the NPA. The FHWA adopts this language based on recommendations from the Older Driver handbook.[48]

Finally, to correspond with changes proposed in Part 4 to add a new Pedestrian Hybrid Beacon, the FHWA proposed a paragraph in the NPA that describes the use of a CROSSWALK STOP ON RED (R10–23) sign that is to be used in conjunction with pedestrian hybrid beacons. While ATSSA supported the new sign, four local DOTs opposed the new sign, primarily because they thought that it was not needed. Some commenters felt that road users should know to stop on a red signal and should not need a sign instructing them to do so. Other commenters felt that the sign would cause confusion, because road users are to stop on a solid red and then proceed on a flashing red after they stop, while other felt that they should have more flexibility to develop a better sign. The FHWA disagrees with the commenters because the extensive experience with the sign in Tucson, AZ has not indicated a problem with the sign being understood by road users and the sign is needed at pedestrian hybrid beacons to reinforce the regulatory requirements. To address a comment from a local DOT suggesting that the use of this sign be restricted to only locations with pedestrian hybrid beacons, but not required at all pedestrian hybrid beacons as proposed in the NPA, the FHWA adopts revised language in this final rule, to clarify that the sign is to be used only at locations with pedestrian hybrid beacons.

99. In Section 2B.54 No Turn on Red Signs, in paragraph 03, the FHWA adds item F to the list of conditions where consideration should be given to the use of No Turn on Red signs. In the NPA, the FHWA proposed that this item refer to locations where the skew angle of the intersecting roadways creates difficulty for older drivers to see traffic approaching from their left. The FHWA proposed this change based on recommendations from the Older Driver handbook.[49] A former NCUTCD member suggested that the specific criteria regarding skewed intersections should not be added, since sight distance to the left is covered under condition A. The FHWA disagrees with the commenter and retains item F in this final rule because the adequacy of sight distance is associated with the selection of adequate gaps for a right turn on red movement. Three State DOTs, two local DOTs, and an NCUTCD member suggested that turns at skewed intersections can be difficult for all drivers, not just older drivers, and suggested that FHWA delete the word ''older.'' The FHWA agrees and adopts item F in this final rule to indicate that skew angled intersections are difficult for all drivers, by deleting the word ''older.''

The FHWA adds paragraph 05 regarding the use of a blank-out sign instead of a NO TURN ON RED sign during certain times of the day or during portions of a signal cycle where a leading pedestrian interval is provided. An NCUTCD member supported this new information, and the FHWA adopts this new text to correspond to other changes in Part 4 regarding the use of these signs. The FHWA also adds information regarding the use of a post-mounted NO TURN ON RED EXCEPT FROM RIGHT LANE sign and a NO TURN ON RED FROM THIS LANE (with down arrow) overhead sign that may be used on signalized approaches with more than one right-turn lane.

100. Concerning Figure 2B–27 Traffic Signal Signs and Plaques (Figure 2B–19 in the 2003 MUTCD) proposed in the NPA, the FHWA received comments from ATSSA, a State DOT, a local DOT, an NCUTCD member, and a traffic engineering consultant supporting the design change of the TURNING TRAFFIC MUST YIELD TO PEDESTRIANS (R10–15) sign to a symbolic, rather than word message sign. An NCUTCD member, a State DOT, and a local DOT opposed the new design because of the use of yellow (normally reserved for warning signs) on the regulatory sign background and the symbols and sign layout. The sign design has been extensively and successfully used by the New York City DOT [50] and was reviewed favorably by the Regulatory and Warning Sign Technical Committee and the full NCUTCD. The FHWA adopts this new design to reduce the number of words, give a more precise symbolized message, and make the sign more conspicuous to road users.

ATSSA and a local DOT supported the proposed LEFT TURN YIELD ON FLASHING RED ARROW AFTER STOP (R10–27) sign; however, a State DOT and an NCUTCD member opposed this new sign because they felt that road users should stop, rather than yield at a red signal. The FHWA disagrees and adopts the sign as proposed in the NPA, noting that the legend that begins with ''LEFT TURN YIELD * * *'' has been evaluated as the preferable text and it includes the words ''AFTER STOP.'' Another State DOT and a traffic engineering consultant suggested adding similar signs to alert road users to yield on flashing yellow arrows. The FHWA does not adopt this suggested addition,

[47] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 29, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[48] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendation I.H(4).

[49] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendations I.A(3) and I.I(3).

[50] Information on New York City's experience with the adopted R10–15 sign design can be obtained from the New York City Department of Transportation, Division of Traffic Planning, Room 928, 40 Worth Street, New York, NY 10013, telephone 212–442–6641.

because NCHRP Report 493 [51] found that a regulatory sign is not needed to instruct drivers to yield on flashing yellow arrows.

101. In Section 2B.55 Photo Enforced Signs and Plaques (Section 2B.46 in the 2003 MUTCD) and Figure 2B–3, the FHWA adds to the word message PHOTO ENFORCED (R10–19) plaque (as it existed in the 2003 MUTCD) the option to use a new symbol plaque for Photo Enforced. The FHWA retains the existing word message plaque as an alternate. In addition, the FHWA revises the design of the TRAFFIC LAWS PHOTO ENFORCED (R10–18) sign to add the symbolic camera. Although ATSSA and a local DOT supported the new camera symbol on the Photo Enforced signs and plaques, two NCUTCD members, two State DOTs, and two local DOTs opposed the addition of the new symbol because they did not think that road users would understand the symbol. The FHWA disagrees and adopts the new symbol based on road user understanding of the symbol documented in research results of the ''Evaluation of Selected Symbol Signs'' study [52] conducted by the Traffic Control Devices Pooled Fund Study. To address comments from two toll road operators and a State DOT, the FHWA also adds an OPTION and a GUIDANCE regarding the optional use of the Photo Enforced symbol or word message plaques at toll plazas to address situations where video enforcement is in use at toll plazas.

102. The FHWA adds a new section numbered and titled Section 2B.56 Ramp Metering Signs. In the NPA, the FHWA proposed to add a GUIDANCE statement describing the recommended use of new regulatory signs that should accompany ramp control signals. Based on comments from the NCUTCD and a State DOT, the FHWA adopts the language as an OPTION statement. This allows agencies to determine whether the use of the signs is appropriate for their conditions based on enforcement experience. The FHWA adds these new signs because ramp metering signals are used in several States, but there were no standard signs for them in the 2003 MUTCD, so States have developed a variety of signs, as documented by the Sign Synthesis Study.[53] In this new Section, the FHWA adopts two new signs, X VEHICLES PER GREEN and X VEHICLES PER GREEN EACH LANE. ATSSA and a local DOT supported these new signs. Another local agency expressed concerns that allowing more than one vehicle per green might cause driver confusion, especially if they are behind a large vehicle on a ramp. The FHWA adopts these signs based upon effective application in many States and to provide uniformity in ramp meter signing.

103. In Section 2B.60 Weigh Station Signs (Section 2B.50 of the 2003 MUTCD), the FHWA changes the text of the R13–1 sign to ''TRUCKS OVER XX TONS MUST ENTER WEIGH STATION—NEXT RIGHT'' to reflect that the message is regulatory, rather than guidance. A local DOT supported this change. Although three State DOTs and two NCUTCD members suggested that either the original language be retained, or other revisions be made to the sign text, the FHWA adopts the text of the sign as proposed in the NPA. The FHWA notes that a State at the time of its adoption of the MUTCD may include appropriate additional information in its supplement. In addition, in Figure 2B–30, the FHWA illustrates the customary regulatory sign color of a black legend on a white background, rather than the allowable option of the reverse color pattern, for the TRUCKS OVER XX TONS MUST ENTER WEIGH STATION—NEXT RIGHT sign. ATSSA supported this change in the illustration.

104. The FHWA adds a new section numbered and titled Section 2B.64 Headlight Use Signs, containing GUIDANCE, SUPPORT, and OPTION statements that describe the use of several new signs that may be used by States to require road users to turn on their vehicle headlights under certain conditions. ATSSA and a local DOT supported the new signs, as proposed in the NPA. An NCUTCD member opposed this new section because he felt that the installation of these types of signs is already covered in other sections in the MUTCD, and that since wording of the signs is based on laws that vary from State to State, it is not appropriate to standardize a series of signs in the MUTCD. The Sign Synthesis Study [54] found that there is a wide variation in the legends currently being used by States for this purpose and the FHWA adopts these new signs to provide increased uniformity of the messages for road users. Based on comments from two State DOTs and a traffic engineering consultant, the FHWA does not adopt the proposed TURN OFF HEADLIGHTS sign from this final rule, because commenters felt that it might communicate an inappropriate message to road users during nighttime conditions.

105. The FHWA adds a new section numbered and titled Section 2B.65 FENDER BENDER Sign. This new section contains an OPTION statement regarding the use of a new FENDER BENDER MOVE VEHICLES FROM TRAVEL LANES sign that agencies may use to inform road users of laws or ordinances that require them to move their vehicles from the travel lanes if they have been involved in a minor non-injury crash. As an integral part of active incident management programs in many urban areas, an increasing number of States and cities are using signs requiring drivers that have been involved in relatively minor ''fender bender'' or non-injury crashes to move their vehicles out of the travel lanes. A variety of sign messages are in use for this purpose, as documented by the Sign Synthesis Study.[55] Although ATSSA and a State and a local DOT supported the new sign, as proposed in the NPA, the NCUTCD and two of its members and three State DOTs provided comments about the sign design. Several of the commenters from Arizona suggested that the term ''Fender Bender'' be revised to reflect the wording of signs in their State. A few commenters suggested that the use of yellow and white backgrounds on the same sign is inappropriate, and many of the commenters opposed the symbol for fender bender, because they did not feel that it had been tested for road user comprehension. Based on the comments, the FHWA removes the symbol from the sign but is adopting the black on yellow header panel in the design, noting that the regulatory portion of the sign is a black legend and border on a white background. The FHWA adopts this sign because a standardized sign legend is needed.

106. In this final rule, the FHWA changes the number and title of Section

[51] NCHRP Report 493, ''Evaluation of Traffic Signal Displays for Protected/Permissive Left-Turn Control,'' 2003, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_493.pdf.*

[52] ''Design and Evaluation of Selected Symbol Signs,'' Final Report, May 2008, conducted by Bryan Katz, Gene Hawkins, Jason Kennedy, and Heather Rigdon Howard, for the Traffic Control Devices Pooled Fund Study, can be viewed at the following Internet Web site: *http://www.pooledfund.org/documents/TPF–5_065/symbol_sign_report_final.pdf.*

[53] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, pages 28–29, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[54] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 31, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[55] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 31, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

2B.54 Other Regulatory Signs, as it appeared in the 2003 MUTCD to Section 2B.66 Seat Belt Symbol. As discussed in item 54 above, the FHWA is relocating the OPTION statements that were in this section to Section 2B.02. In the NPA, the FHWA proposed to add a FENDER BENDER MOVE VEHICLES FROM TRAVEL LANES sign to this section and retitle the section to ''Miscellaneous Regulatory Signs''; however, as noted above, the FHWA adopts a new Section 2B.65 for the Fender Bender sign in this final rule and the only remaining text in Section 2B.66 discusses the Seat Belt Symbol. Therefore, the FHWA revises the section title to ''Seat Belt Symbol'' in this final rule.

107. In the NPA, the FHWA proposed to add a new chapter numbered and titled Chapter 2L Object Markers, Barricades, and Gates. In addition to containing information on object markers, this new chapter was to have contained information from Section 3F.01 of the 2003 MUTCD on barricades, without any significant changes. A State DOT, four local DOTs, and an NCUTCD member supported moving these items to Part 2. A State DOT opposed moving object markers and barricades to Part 2 because it felt that they are used to mark obstructions and help in guidance and delineation of the roadway, the same as pavement markings. The FHWA agrees that barricades and gates are more appropriately related to Chapter 2B, and places Section 2B.67 Barricades and Section 2B.68 Gates in this chapter.

108. The FHWA adds a new Section 2B.68 Gates (numbered 2L.06 in the NPA) that contains provisions regarding the design and use of gates for a variety for traffic control purposes beyond the most common use at highway-rail grade crossings. Two local DOTs supported this new section and several agencies provided comments. The NCUTCD, two State DOTs, and an NCUTCD member suggested that the FHWA provide clarification regarding whether one or both sides of gate arms and fences are to be reflectorized. The FHWA agrees and adds clarifying language in this final rule to indicate that both sides are to be reflectorized, with an option to reflectorize only the side facing moving traffic in the normal direction if used at ramps. Based on comments from the U.S. Department of Agriculture, a State DOT, two toll road operators, and an NCUTCD member, the FHWA removes the crashworthiness and mounting height requirements for gate arms to better serve their application. The FHWA adds a requirement that gates be designed so that the gate arms are securely locked in either the open position or closed position, based on a comment from the U.S. Department of Agriculture indicating that it is appropriate to lock gates securely in either of these positions. The FHWA adopts this new section in order to provide for enhanced uniformity of gates, as they are used in a wide variety of traffic control applications.

Discussion of Amendments Within Chapter 2C—General

109. In the NPA, the FHWA proposed to move object markers from Part 3 to a new chapter, titled Chapter 2L Object Markers. A State DOT, four local DOTs, and an NCUTCD member supported moving these items to Part 2. A State DOT opposed moving object markers to Part 2 because it felt that they are used to mark obstructions and help in guidance and delineation of the roadway, the same as pavement markings. The FHWA disagrees with retaining object markers in the chapter with pavement markings because, although these devices can provide some delineation, the primary function of object markers is as a warning sign. Due to the warning function that object markers serve, in this final rule the FHWA moves object markers to Chapter 2C and revises the title of Chapter 2C to include object markers.

110. As proposed in the NPA, the FHWA removes the following word message signs from the MUTCD, because comparable symbol signs have been in use for 35 years, thereby making these word signs obsolete: HILL Sign (W7–1b), DIVIDED HIGHWAY (W6–1a) and DIVIDED ROAD (W6–1b), DIVIDED HIGHWAY ENDS (W6–2a) and DIVIDED ROAD ENDS (W6–2b), STOP AHEAD (W3–1a), YIELD AHEAD (W3–2a), and SIGNAL AHEAD (W3–3a). A State DOT opposed eliminating the use of many of these word signs, because it felt that the word message signs were added to and included in previous editions of the MUTCD to enable agencies to use the optional signs for the benefit of better understanding of signs. The commenter also suggested that since the word messages are fulfilling the purpose for signs, it is difficult to justify the cost of replacing the signs. The FHWA disagrees with the commenter and notes that the symbol designs for many of these signs have been in use for more than 35 years and that symbol warning signs are more readily recognized and comprehended by drivers with fewer driver errors. In addition, existing word message signs in good condition may remain in service until such point in time that they are replaced as part of the agency's periodic sign maintenance program.

Discussion of Amendments Within Chapter 2C—Specific

111. In Section 2C.02 Application of Warning Signs, the FHWA proposed in the NPA to remove paragraph 01 requiring the use of engineering studies or judgment in determining the use of warning signs. A State DOT and two local DOTs opposed the removal of this STANDARD because they felt that engineering studies or judgment are necessary. The FHWA agrees and retains the requirement in this final rule and adds a reference to Section 1A.09 regarding engineering studies and engineering judgment.

112. In Section 2C.03 Design of Warning Signs, in place of the existing paragraph in the OPTION statement, the FHWA adds two new paragraphs that describe allowable changes in warning sign sizes and designs, as proposed in the NPA. The FHWA adopts these changes to provide agencies with flexibility in designing signs to meet field conditions. This includes allowing sign sizes larger than Oversized in Table 2C–2 to be rectangular or square and modifications to be made to the symbols shown on intersection warning signs in order to approximate the geometric configuration of the roadway. A State and two local DOTs supported these new paragraphs and offered an editorial change that the FHWA adopts in this final rule.

Additionally, in the NPA the FHWA proposed to change paragraph 05 to a GUIDANCE statement to recommend, rather than merely allow, a fluorescent yellow-green background for warning signs regarding conditions associated with pedestrians, bicyclists, and playgrounds. While ATSSA supported this change, the NCUTCD and one of its members, many State and local DOTs, and a traffic engineering consultant opposed changing the language to GUIDANCE, suggesting instead that it remain an OPTION. The commenters provided a variety of reasons, the most prominent being that some State and local DOTs reserve the use of the fluorescent yellow-green background for only school-related warning signs in order to add emphasis to those locations. A State and a local DOT, an NCUTCD member, a traffic engineering consultant, and a private citizen expressed concern about the lack of research supporting the effectiveness of the fluorescent yellow-green color that would justify elevating the provision to a recommendation, rather than an option. Some of the commenters suggested that an overuse of the fluorescent yellow-green would reduce the effectiveness of the color. In

addition, some commenters said that the color fades more quickly over time, and that it is significantly more expensive than yellow. Based on the comments, the FHWA decides to retain the language as an OPTION in this final rule, allowing the use of a fluorescent yellow-green background for warning signs regarding conditions associated with pedestrians, bicyclists, and playgrounds.

The FHWA also adopts a new STANDARD statement requiring that warning signs associated with schools and school buses have a fluorescent yellow-green background, as proposed in the NPA. The FHWA also revises similar wording in other sections in Chapter 2C and in Part 7. In the intervening years since the use of fluorescent yellow-green background color was introduced as an option in the MUTCD, most highway agencies have adopted policies to use this color for school warning signs. This predominant usage is because of the enhanced conspicuity provided by fluorescent yellow-green, particularly during dawn and twilight periods. ATSSA and two local DOTs supported this change, while a State DOT, a State association of counties, and a local DOT suggested that the school bus sign should not be included in the requirement. As discussed in the preceding paragraph, a State DOT, three local DOTs, and an NCUTCD member oppose any requirement to use fluorescent yellow-green. These commenters feel that there is not sufficient research demonstrating that the color modifies behavior and the high cost, along with the tendency to fade more quickly than yellow, does not justify requiring its use. The FHWA disagrees and notes that in-place evaluation of fluorescent yellow-green by State DOTs has identified acceptable durability and sheeting life and the FHWA also adopts this background color for school bus warning signs for consistency with the requirement for other school warning signs.

113. In Section 2C.04 Size of Warning Signs, the FHWA proposed in the NPA to add a STANDARD paragraph to establish a minimum size of 36 inches x 36 inches for all diamond-shaped warning signs facing traffic on multi-lane conventional roads. This is consistent with other changes adopted in Section 2A.13 and discussed previously in this preamble, concerning basing sign size dimensions on the letter sizes needed for a visual acuity of 20/40, which results in larger sign sizes. Although ATSSA and two local agencies supported the language as proposed, four State DOTs, six local DOTs, an NCUTCD member, and a traffic engineering consultant expressed concern about installing 36 inch x 36 inch signs on low-speed roads and on roads in urban areas where there is limited space for signs. Many of those commenters suggested that the larger size signs be optional for such roadways. Four additional local DOTs opposed the requirement for larger signs specifically because of insufficient space in urban areas. On multi-lane roads, increased legibility distances are needed because of the potential blockage of signs by other vehicles, but the FHWA agrees in part with the commenters and adopts revisions to this section in this final rule that are consistent with similar revisions to Section 2B.03 by adding two exceptions to the requirement to use the larger sign sizes on multi-lane conventional roads for: (a) The size of the left-hand side signs mounted in the median to supplement the right-hand side placement, and (b) multi-lane conventional roads with posted speed limits of 35 mph or less.

Finally, the FHWA adds a GUIDANCE statement that the minimum size for warning signs facing traffic on exit and entrance ramps should be the size identified in Table 2C–2 for the mainline roadway classification listed for each of the columns, in response to a comment from Utah DOT suggesting that this language be added for consistency with other sections of the MUTCD. This language is consistent with similar guidance that the FHWA adds in Section 2B.03 as discussed previously.

114. The FHWA revises Table 2C–2 Warning Sign and Plaque Sizes to incorporate additional sign series and to specify that, for several diamond-shaped signs, the minimum size required for signs facing traffic on multi-lane conventional roads is 36 inches x 36 inches. Based on comments from the NCUTCD (and to be consistent with a similar change in Table 2B–1), the FHWA adds a column to Table 2C–2 for multi-lane conventional roads in this final rule. The FHWA also adopts additional changes in Table 2C–2 to address comments from the NCUTCD and one of its members, and to provide consistency between the table and other changes within the chapter. These include adding additional sizes for signs and plaques, adding new signs while deleting signs no longer used, and clarifying the note at the bottom of the table regarding exceptions to the requirement to use the larger sign sizes on multi-lane conventional roads (as discussed above). The FHWA adopts the increases in sign sizes to provide signs on multi-lane approaches that are more legible to drivers with visual acuity of 20/40 and to be consistent with and incorporate other changes adopted in Chapter 2C.

115. As proposed in the NPA, the FHWA revises in Section 2C.05 Placement of Warning Signs the SUPPORT and GUIDANCE statements to refer to the use of Perception-Response Time (PRT), rather than Perception, Identification, Emotion, and Volition (PIEV) Time, in determining the placement of warning signs. The older terminology of PIEV Time has been replaced with PRT, which has come into common use and is the terminology used in the current policies of the AASHTO. The Traffic Control Devices Handbook [56] addresses both terms, but correctly identifies PRT as the terminology now in common use. Accordingly, it is appropriate to update the MUTCD using the common terminology PRT. The NCUTCD and a local DOT supported these changes.

In addition to the changes adopted in Section 2C.05, the FHWA is also revising the notes for Table 2C–4 by replacing ''PIEV time'' with ''PRT,'' as well as other changes in the notes and values in Table 2C–4 in order to provide adequate legibility of warning signs for 20/40 visual acuity. Two State DOTs, four local DOTs, two traffic engineering consultants, and an NCUTCD member commented about the values as well as the notes in Table 2C–4. As a result, in this final rule the FHWA further refines the notes in this final rule regarding the legibility distance for Condition A. The FHWA notes that increasing the minimum legend size to 6 inches causes the table values to change from those in the 2003 MUTCD, and that the distances and associated notes in the table are guidance, which by its nature allows flexibility.

116. The FHWA adds a new section numbered and titled Section 2C.06 Horizontal Alignment Warning Signs, containing SUPPORT, STANDARD, and OPTION statements regarding the use of the new Table 2C–5 Horizontal Alignment Sign Selection, in which the FHWA establishes a hierarchal approach to use of these signs and plaques and defines required, recommended, and optional warning signs. A State DOT and four local DOTs supported the overall intent of the proposed new section and associated table, but felt that FHWA should modify the language to allow the use of engineering judgment rather than

[56] The Traffic Control Devices Handbook, 2001, is available for purchase from the Institute of Transportation Engineers, at the following Internet Web site: *http://www.ite.org*. PIEV and PRT are discussed on pages 34 to 39.

require the use of Table 2C–5 and should clarify that actual prevailing speeds should be used when determining the need for horizontal alignment warning signs. Several of these agencies also commented in opposition to the requirement to place warning signs on arterials and collectors with average annual daily traffic (AADT) of over 1,000. To address some of the concerns, the FHWA revises the STANDARD statement in this final rule to clarify that alignment warning signs shall be used in accordance with Table 2C–5 based on the speed differential between the roadway's posted or statutory speed limit or 85th percentile speed, whichever is higher, and the horizontal curve's advisory speed. This change is consistent with the methodology on application of posted or statutory speed limit or 85th percentile speed is consistent with FHWA's ''Program Memorandum on Consideration and Implementation of Proven Safety Countermeasures,'' Measure #7, Yellow Change Intervals.[57] As part of this change, the FHWA also includes in the STANDARD statement the use of the prevailing speed in determining the speed differential to the horizontal curve's advisory speed along with posted and statutory speed and 85th percentile speed. Regarding the requirement to place warning signs on functionally classified arterials and collectors over 1,000 AADT, the FHWA believes that this is appropriate because these road classifications represent higher-volume roadways, which have a larger percentage of unfamiliar drivers, and have the potential to yield the largest safety benefits in reducing crashes resulting from road users' lack of awareness of a change in horizontal alignment, as documented in a recent NCHRP study.[58] The FHWA retains the option to use Horizontal Alignment Warning signs on other roadways or on arterial and collector roadways with less than 1,000 AADT based on engineering judgment.

Nine State DOTs, six local DOTs, two NCUTCD members, and a citizen opposed the inclusion of Table 2C–5 in the MUTCD, or suggested that the some or all of the values in the table be recommended, rather than required, because they felt that engineering experience and judgment are superior to prescribing values. The FHWA disagrees and notes that fatalities at horizontal curves account for 25 percent of all highway fatalities even though horizontal curves are only a small portion of the nation's highway mileage. The past and current basis of the application of engineering judgment for determination of horizontal curve signing has not sufficiently improved the safety performance of horizontal curves. Therefore, the FHWA adopts Table 2C–5 with revisions as a STANDARD statement to improve the safety performance of horizontal curves. Six State DOTs, five local DOTs, a State association of counties, and two traffic engineering consultants suggested that the row concerning Chevron signs should be deleted, that the wording be reverted to that used in the 2003 Edition of the MUTCD, and that the use of Chevron signs not be required. The FHWA disagrees and adopts in this final rule the Chevron signs and their values, as proposed in the NPA based upon research regarding their safety effectiveness[59] and because Chevron signs are a key element in the hierarchy of horizontal alignment warning signs in that Chevron signs provide positive guidance to a road user entering a curve as to alignment of the road and the sharpness of the curve. However, based on comments from the NCUTCD, five State DOTs, five local DOTs, a State association of counties, and a traffic engineering consultant expressing concerns that application of the speed differential in proposed Table 2C–5 to freeway ramps would have resulted in the placement of Truck Rollover warning signs on the majority of the loop ramps on the nation's highway system which would be a financial burden to highway agencies, the FHWA deletes the Truck Rollover warning sign from Table 2C–5. The incidence of truck rollover crashes is more specific to individual freeway ramp geometry than to speed differential.

117. In concert with the changes adopted in the previous item, the FHWA adopts several changes to Section 2C.07 Horizontal Alignment Signs (Section 2C.06 of the 2003 MUTCD) to incorporate the material in Table 2C–5 and to provide agencies with additional information on the appropriate use of horizontal alignment signs. In the NPA, the FHWA proposed to add a GUIDANCE statement recommending the use of a Turn (W1–1) sign instead of a Curve sign in advance of curves that have advisory speeds of 30 mph or less. A State DOT, two local DOTs, and a NCUTCD member suggested that the statement be changed to a STANDARD to promote uniformity. The FHWA agrees and adopts the requirement in this final rule. In the 2003 MUTCD, a GUIDANCE statement indicated that Table 2C–5 should be used, and Note 1 of the table stated that ''Engineering judgment should be used to determine whether the Turn or Curve Sign should be used.'' In the NPA the FHWA proposed to delete this table and its notes and replace it with a completely new Table 2C–5 referenced in the text in a STANDARD that the table shall be used. Inherent in new Table 2C–5 is a definitive choice, either required (STANDARD), or recommended (GUIDANCE), or Option (OPTION); an option to choose either the TURN or the CURVE for the same advisory speed and speed difference is no longer possible within the STANDARD statement. Hence, the addition of the STANDARD statement is consistent with the STANDARD in Table 2C–5 rather than carrying forward a note from the old table. The FHWA also revises the language regarding the use of the Winding Road sign to allow its use to be optional, rather than recommended, based on comments from the NCUTCD and a local DOT. The FHWA also adds Figure 2C–2 to illustrate an example of the use of warning signs for a turn, and modifies Figure 2C–3 (Figure 2C–7 in the 2003 MUTCD) to illustrate horizontal alignment signs for a sharp curve on an exit ramp.

118. As proposed in the NPA, the FHWA relocates Section 2C.46 of the 2003 MUTCD Advisory Speed Plaque so that it appears earlier in the Chapter as Section 2C.08 because of its predominant application with horizontal alignment warning signs. In addition, the FHWA adopts several revisions to the section to incorporate new Table 2C–5, and to require that Advisory Speed plaques be used where it is determined to be necessary on the basis of an engineering study that follows established traffic engineering practices. A State DOT and several local DOTs in that State supported using engineering judgment, rather than engineering studies, for determining advisory speeds. The FHWA disagrees, noting that the application of engineering judgment that is implicit in the determination of an appropriate advisory speed should be documented in writing as an engineering study. A State DOT, a local DOT, and a traffic

[57] FHWA's Program Memorandum on Consideration and Implementation of Proven Safety Countermeasures, dated July 10, 2008 can be viewed at the following Internet Web site: *http://safety.fhwa.dot.gov/policy/memo071008/.*

[58] NCHRP Report 500, Volume 7, ''A Guide for Reducing Collisions on Horizontal Curves,'' can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_500v7.pdf.*

[59] The FHWA Roadway Departure Crash Reduction Factors can be viewed at the following Internet Web site: *http://safety.fhwa.dot.gov/tools/crf/.*

engineering consultant suggested that eliminating references to ball-bank indicators, as proposed in the NPA, should be reconsidered, because it might cause agencies to unnecessarily believe that a more extensive engineering study is needed. The FHWA agrees and adopts in this final rule a SUPPORT statement identifying appropriate engineering practices for determining advisory speeds. This includes the use of an accelerometer, design speed evaluation, or a ball-bank indicator.

119. In Section 2C.09 Chevron Alignment Sign (Section 2C.10 of the 2003 MUTCD), the FHWA changes paragraph 01 to a STANDARD to require the use of the Chevron Alignment sign in accordance with the hierarchy of use as listed in Table 2C–5 and to be consistent with Section 2C.06. Similar to the discussion above in item 116, several commenters were opposed as they prefer to retain the choice to use Chevron Alignment signs based upon engineering judgment. The FHWA disagrees and adopts the STANDARD Table 2C–5 requiring the use of Chevron Alignment signs, because application of Chevron Alignment signs can reduce crashes on horizontal curves by 35 percent.[60] As proposed in the NPA, the FHWA also adds information to paragraph 04 regarding the minimum installation height of these signs. A local DOT and an NCUTCD member supported the minimum 4-foot mounting height, while two local DOTs suggested allowing even lower mounting heights, in part because they felt it would enable chevron signs to be better illuminated by headlights. The FHWA disagrees and adopts a minimum mounting height of 4 feet as an exception to the normal minimum mounting height for signs, consistent with provisions in Section 3F.04 for delineator placement. The FHWA also adds a reference in the GUIDANCE statement to Table 2C–6 Approximate Spacing of Chevron Alignment Signs on Horizontal Curves. The spacing criteria are based on research.[61]

The FHWA also adds a new STANDARD statement at the end of the section specifying the conditions when the Chevron Alignment sign shall not be used, as proposed in the NPA. Although a local DOT supported the revision, three State DOTs, a local DOT, and an NCUTCD member opposed the prohibition of Chevron Alignment signs at T-intersections to warn drivers that a through movement is not physically possible. The FHWA disagrees and adopts the prohibition on the use of the Chevron Alignment sign for this purpose, because this is the function of a Two-Direction (or One-Direction) Large Arrow sign. A State DOT supported the prohibition of Chevron Alignment signs to mark obstructions within or adjacent to the roadway, and the FHWA adopts in this final rule expanded text to also prohibit the use of the Chevron Alignment sign to mark the beginning of adjacent guard rail or barrier to address a comment from a local DOT. The FHWA adopts this text to preclude possible misinterpretations of the appropriate use of this sign.

120. In Section 2C.10 Combination Horizontal Alignment/Advisory Speed Signs (Section 2C.07 of the 2003 MUTCD), the FHWA amplifies the existing STANDARD statement in order to clarify how these signs are to be used. Although a local DOT supported the revised language, a State DOT, a local DOT, an NCUTCD member, and a traffic engineering consultant opposed the language. Some of the commenters felt that there are some locations where the combination Horizontal Alignment/Advisory Speed sign serves the purpose better than the other advance horizontal alignment warning signs, and therefore should be used alone, as a substitute for the advance horizontal alignment warning signs. The FHWA disagrees because it is inherent in the application of warning signs that they be located in advance of the hazard in order to provide the time and distance for a road user to reduce speed and act in a timely manner. The FHWA also notes that the combination Horizontal Alignment/Advisory Speed sign shall only be used to supplement advance horizontal alignment warning signs. Furthermore, the advance horizontal alignment warning signs are placed in advance of the curve and the combination Horizontal Alignment/Advisory Speed sign is placed at the beginning of the curve. The FHWA adopts the revisions with minor editorial changes in this final rule.

121. In Section 2C.12 One-Direction Large Arrow Sign (Section 2C.09 in the 2003 MUTCD), the FHWA adds a STANDARD statement as proposed in the NPA prohibiting the use of a One-Direction Large Arrow sign in the central island of a roundabout, as proposed in the NPA. A traffic engineering consultant supported this change, and the FHWA adopts this change in this final rule in conjunction with other changes in Chapters 2B and 2D to provide consistency in signing at roundabouts.

122. In Section 2C.13 Truck Rollover Warning Sign (Section 2C.11 of the 2003 MUTCD), the FHWA had proposed in the NPA to add a STANDARD statement requiring the use of the Truck Rollover Warning sign on freeway and expressway ramps in accordance with the new Table 2C–5. Two State DOTs, an association of local DOTs, and an NCUTCD member opposed the required use of Truck Rollover warning signs because of concerns as noted above in Section 2C.06. The FHWA agrees and removes in this final rule that requirement from this section, as well as from Table 2C–5, as the incidence of truck rollover crashes is more specific to individual freeway ramp geometry than to speed differential.

In this final rule, the FHWA reverts to the optional use of the Truck Rollover warning sign (as in the 2003 Edition of the MUTCD) and adds the use of an engineering study to determine the need for the sign. As part of this change, the FHWA adds a SUPPORT statement describing appropriate engineering practices for determining recommended curve speeds.

123. As proposed in the NPA, the FHWA relocates Section 2C.36 of the 2003 MUTCD so that it appears earlier in the chapter as new Section 2C.14 to consolidate all sections relating to horizontal alignment in one area of the chapter for ease of reference and consistency. In addition, the FHWA revises the title of the section to ''Advisory Exit and Ramp Speed Signs'' and revises the text to remove the optional Curve Speed sign, as proposed in the NPA. Although a local DOT supported deleting the Curve Speed Advisory sign, a citizen opposed its removal. The Curve Speed sign has had only limited usage and, with the new hierarchal approach to warning sign usage for horizontal curves, this sign is no longer needed. The FHWA believes it is desirable to broaden the consistent usage of a few signs providing better driver communications rather than adding potential driver confusion with a mixed application of several signing options.

124. For all of the changes in applications of warning signs and plaques for horizontal curves in Sections 2C.06 through 2C.14 and in Table 2C–5, the FHWA establishes a target compliance date of December 31, 2019 (approximately 10 years from the effective date of this final rule) for the installation of the additional signs and revisions in advisory speed values

[60] The FHWA Roadway Departure Crash Reduction Factors can be viewed at the following Internet Web site: *http://safety.fhwa.dot.gov/tools/crf/*.

[61] FHWA/TX–04/0–4052–1, ''Simplifying Delineator and Chevron Applications for Horizontal Curves,'' dated March 2004, can be viewed at the following Internet Web site: *http://tti.tamu.edu/documents/0-4052-1.pdf*.

required to achieve compliance with these provisions at existing locations. The FHWA establishes this target compliance date because of the demonstrated safety issues associated with run-off-the road crashes at horizontal curves. As noted above, fatalities at horizontal curves account for 25 percent of all highway fatalities, yet horizontal curves are only a small portion of the nation's highway mileage. The FHWA anticipates that installation of the required additional signs at existing locations will provide significant safety benefits to road users. State and local highway agencies and owners of private roads open to public travel can schedule the installation of the additional required signs in conjunction with their programs for maintaining and replacing other signs at existing locations that are worn out or damaged, thus minimizing any financial impacts.

125. The FHWA adds a new section numbered and titled Section 2C.15 Combination Horizontal Alignment/ Advisory Exit and Ramp Speed Signs. As proposed in the NPA, the FHWA incorporates these new signs for optional use where ramp or exit curvature is not apparent to drivers in the deceleration or exit lane or where the curvature needs to be specifically identified as being on the ramp rather than on the mainline. ATSSA, two local DOTs, an NCUTCD member, and a citizen supported these new signs. The FHWA adopts the design and the use of this sign based on the Sign Synthesis Study,[62] which found that at least four States have developed signs for this purpose, but with varying designs. The FHWA adopts a uniform design for this type of sign, to provide consistency for road users.

126. In the NPA, the FHWA proposed to relocate Section 2C.13 of the 2003 MUTCD Truck Escape Ramp Signs to Chapter 2F (Chapter 2I in this final rule), to reflect the proposed new classification and design of these signs as general service signs. As discussed in detail under Amendments to Chapter 2I, the FHWA retains Truck Escape Ramp signs as Section 2C.17 in this final rule. The FHWA also retains the warning sign designations for the associated signs, and retains the color of the background of these signs as yellow and the color of the legend, border, and arrows as black. The sign images for these signs are shown in Figure 2C–4 in this final rule.

127. In Section 2C.19 ROAD NARROWS Sign (Section 2C.15 in the 2003 MUTCD) the FHWA proposed in the NPA to revise the language describing the situations under which a ROAD NARROWS sign should be used. A local DOT and a State association of counties and several of its members suggested that the proposed language actually changed the intent of the section. As a result, the FHWA clarifies the language in this final rule to state that the ROAD NARROWS sign should be used in advance of a transition on two-lane roads where the pavement width is reduced abruptly to a width such that vehicles traveling in opposite directions cannot simultaneously travel through the narrow portion of the roadway without reducing speed. The FHWA also adds a SUPPORT statement to describe the optional use of this sign on low-volume local streets with speed limits of 30 mph or less.

128. In Section 2C.22 Divided Highway Sign (Section 2C.18 in the 2003 MUTCD), the FHWA adds a STANDARD that the Divided Highway (W6–1) sign shall not be used instead of a Keep Right (R4–7 series) sign in the median island, as proposed in the NPA. The FHWA adopts this change to reflect accepted signing practices and prevent misuse of the W6–1 sign.

129. In Section 2C.23 Divided Highway Ends Sign (Section 2C.19 of the 2003 MUTCD), as proposed in the NPA, the FHWA changes the OPTION statement to a GUIDANCE statement, recommending that the Two-Way Traffic (W6–3) sign should also be used to warn of the transition to a two-lane, two-way section. The FHWA adopts this change in this final rule in order to be consistent with the GUIDANCE in Section 2C.44 that the W6–3 sign should be used for this condition.

130. The FHWA adds a new section numbered and titled Section 2C.24 Freeway or Expressway Ends Signs (numbered Section 2C.23 in the NPA) containing OPTION and GUIDANCE statements regarding the use of these new signs. The FHWA adopts these new signs because there are many locations where a freeway or expressway ends by changing to an uncontrolled access highway, and it is important to warn drivers of the end of the freeway or expressway conditions. In other cases, the need for this type of warning might be generated by other conditions not readily apparent to the road user, such as the need for all traffic to exit the freeway or expressway on exit ramps. The Sign Synthesis Study[63] found that at least 21 States have developed their own standard warning signs for this purpose, but with varying legends and designs. The FHWA adopts uniform designs for these signs, to provide consistency for road users.

131. In the NPA, the FHWA proposed to change the title of Section 2C.31 (Section 2C.26 of the 2003 MUTCD) to ''Shoulder and Uneven Lanes Signs.'' The FHWA proposed to incorporate a new symbolic Shoulder Drop Off sign and a plaque, as well as a new UNEVEN LANES plaque, to warn road users of either a low shoulder or uneven lanes. The FHWA proposed these new signs and plaques as a result of the Sign Synthesis Study,[64] which found that symbol signs and/or different word messages are being used in at least 13 States to convey these or similar messages, with a wide variety of legends and symbol designs. The States are not consistent in how the symbol signs are used, with some being used for uneven lanes and some for low shoulder or shoulder drop-off conditions. The Canadian MUTCD prescribes a single standard symbol warning sign (TC–49) for use to warn of either a low shoulder or uneven lanes. The NCUTCD, one of its members, and a local DOT commented that an UNEVEN LANES word message warning sign is more appropriate than using a Shoulder Drop Off symbol with a supplemental UNEVEN LANES plaque to depict uneven lanes. The FHWA agrees that the proposed symbol sign tends to convey a meaning of shoulder drop off more than it does of uneven lanes and revises the language in this final rule to allow the use of an UNEVEN LANES word message sign to warn of a difference in elevation between lanes. Further, the FHWA relocates the text regarding the word message UNEVEN LANES sign to Section 2C.32 Surface Condition Signs in this final rule, because it is more appropriately located there. As part of this change, the FHWA does not adopt the UNEVEN LANES supplemental plaque, since the use of this plaque to supplement a Shoulder Drop Off symbol sign is not adopted. The FHWA retains the Shoulder Drop Off symbol sign to depict an unprotected shoulder drop-off, as stated in the 2003 Edition of the MUTCD.

In the NPA, the FHWA also proposed to add an optional use of the NO

[62] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 43, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf*.

[63] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, pages 43–44, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf*.

[64] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 37, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf*.

SHOULDER sign to allow agencies to use a sign of uniform legend that would warn road users that shoulders do not exist along the roadway. This sign and its design are based on the ''Sign Synthesis Study,'' [65] which found inconsistencies in the legends of signs currently in use by the States for this purpose. The NCUTCD suggested that road users would be better served by two signs, one indicating that there is no shoulder and another indicating that a shoulder ends. The FHWA agrees and adopts in this final rule two optional signs, the NO SHOULDER sign to warn of the lack of a shoulder on a short segment of a roadway without a shoulder, as proposed in the NPA, and a new SHOULDER ENDS sign to provide advance warning that a shoulder is ending. Although not proposed in the NPA, use of the new SHOULDER ENDS sign is optional, and the FHWA believes that some agencies may find it appropriate to use this sign.

132. The FHWA changes the title of Section 2C.32 to ''Surface Condition Signs'' (Section 2C.27 in the 2003 MUTCD) and incorporates several additional signs and supplemental plaques into this section, as proposed in the NPA. The FHWA adds information in the OPTION regarding the use of supplemental plaques with legends such as ICE, WHEN WET, STEEL DECK, and EXCESS OIL with the W8–5 sign to indicate the reason that the slippery conditions might be present.

The FHWA also adds information in the OPTION regarding the LOOSE GRAVEL and ROUGH ROAD word signs, as proposed in the NPA. These signs and plaques have been illustrated in the MUTCD and the SHSM book, but had not previously been discussed in the MUTCD text.

In addition, the FHWA incorporates the information from Section 2C.28 BRIDGE ICES BEFORE ROAD sign of the 2003 MUTCD into this section, as proposed in the NPA, in order to maintain cohesiveness of information.

Finally, in the NPA the FHWA proposed adding a new symbolic Falling Rocks sign and an educational plaque to this section to reflect common practice in many States to warn road users of the frequent possibility of rocks falling (or already fallen) onto the roadway. The Sign Synthesis Study [66] found a lack of consistency in the sign legends or symbols currently in use by States for this purpose. To provide consistency in sign design, the FHWA proposed to add a symbol sign (along with an educational plaque for use if needed) that may be used to warn road users of falling or fallen rocks, slides, or other similar situations. Although the most common sign currently used in the U.S. is a word sign, Canadian, Mexican, European, and international standards use symbols, all of which are very similar, for this message. The FHWA proposed to adopt the standard Mexican MUTCD symbol, because its design appeared to offer the best simplicity and legibility. Although ATSSA and a local DOT supported this new sign and plaque, the NCUTCD and one of its members opposed the symbol on the sign and the plaque because they felt that it would not be well understood by the travelling public and that a word sign would be more appropriate. The FHWA believes that additional human factors testing of alternative symbols for this message would be desirable prior to future consideration of adopting a symbol and therefore the FHWA does not adopt the symbol sign or plaque in this final rule. Instead, the FHWA adopts a FALLEN ROCKS word message sign.

133. As proposed in the NPA, the FHWA adds a new section numbered and titled Section 2C.33 Warning Signs and Plaques for Motorcyclists, that contains SUPPORT and OPTION statements regarding the use of two new warning signs and an associated symbolic plaque that may be specifically placed to warn motorcyclists of road surface conditions that would primarily affect them, such as grooved or brick pavement and metal bridge decks. The FHWA adds the new signs to promote needed sign uniformity, based on the results of the Sign Synthesis Study,[67] which found a variety of different messages in use by the States for these purposes. Subsequently, a study [68] evaluated several different motorcycle symbols and arrangements of such symbols both within the primary warning sign and as a supplemental plaque. The study found that the best legibility distance is provided by depicting a motorcycle on a supplementary plaque and that one particular style of motorcycle provides the best comprehension of the intended message. ATSSA, the Motorcycle Safety Foundation, a State DOT, a local DOT, and a citizen supported these new signs and plaques. As a result, the FHWA adopts word message signs with standardized legends of GROOVED PAVEMENT and METAL BRIDGE DECK and a new supplementary plaque featuring a side view of a motorcycle. Based on comments from three NCUTCD members, a traffic engineering consultant, and a citizen suggesting edits to the symbol and flexibility in the mounting of the plaque, the FHWA also clarifies the text and Figure 2C–6 in this final rule to show the motorcyclist on the plaque facing left and to allow the Motorcycle plaque to be mounted either above or below the sign if the warning is intended to be directed primarily to motorcyclists.

134. In the NPA, the FHWA proposed adding a new section numbered and titled Section 2C.34 NO CENTER STRIPE Sign. The FHWA adopts this new section based on a review of the 2003 MUTCD and 2004 SHSM book that revealed that the MUTCD did not contain language about this existing sign, which is illustrated in Figure 2C–6. However, in this final rule the FHWA revises the legend of the sign to NO CENTER LINE to reflect current terminology, and revises the title and text of Section 2C.34 accordingly.

135. As proposed in the NPA, the FHWA adds a new section numbered and titled Section 2C.35 Weather Condition Signs, containing OPTION and STANDARD statements regarding the use of four new signs to warn users of potential adverse weather conditions. The FHWA based the proposed signs on results of the Sign Synthesis Study [69] that showed that signs for various weather conditions were in very common use in many parts of the country, but with widely varying legends. In the NPA, the FHWA proposed to use the legend WATCH FOR FOG. Although ATSSA supported the proposed legend, the NCUTCD and one of its members and a local DOT suggested that ''WATCH FOR'' is unnecessary text on a warning sign. The FHWA agrees and adopts the legend FOG AREA in this final rule. ATSSA supported the GUSTY WINDS sign, while a State DOT, a local DOT, and an

[65] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 37, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[66] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, pages 37–38, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[67] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, pages 39–40, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[68] ''Design and Evaluation of Selected Symbol Signs,'' Final Report, May, 2008, conducted by Bryan Katz, Gene Hawkins, Jason Kennedy, and Heather Rigdon Howard, for the Traffic Control Devices Pooled Fund Study, can be viewed at the following Internet Web site: *http://www.pooledfund.org/documents/TPF-5_065/symbol_sign_report_final.pdf.*

[69] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, pages 38–39, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

NCUTCD member suggested alternate wording or questioned the need for the sign. The FHWA adopts the wording GUSTY WINDS, as proposed in the NPA as this message is simpler and clearer than any alternate wordings. ATSSA, a State DOT, a local DOT, and a citizen supported the new ROAD MAY FLOOD and Depth Gauge signs. The NCUTCD and a State DOT suggested revisions to clarify the placement of these optional signs to indicate the depth of the water at the deepest point on the roadway. The FHWA agrees with the suggested revisions and adopts them in this final rule because they provide clearer and less ambiguous information to road users. The FHWA adopts uniform designs for these signs to provide road users with consistent messages.

136. As proposed in the NPA, the FHWA adds a new section numbered and titled Section 2C.37 Advance Ramp Control Signal Signs, containing OPTION, GUIDANCE, and STANDARD statements regarding the use of two new signs. ATSSA and two local DOTs supported the addition of these signs to the MUTCD. The NCUTCD and a State DOT suggested clarifying the placement of the RAMP METERED WHEN FLASHING sign to allow flexibility in where it is placed. The FHWA agrees and revises the language accordingly in this final rule to clarify the GUIDANCE statement as to the placement of the sign in advance of the ramp control signal near the entrance to the ramp or on the arterial on the approach to the ramp. The FHWA also adopts the RAMP METER AHEAD and RAMP METERED WHEN FLASHING signs to provide uniformity of signing at ramp metering locations, especially because the practice of ramp metering continues to grow. The common existing use of these signs is documented in the Sign Synthesis Study [70] and is recommended in the FHWA's Ramp Management and Control Handbook.[71]

137. The FHWA changes the title of Section 2C.38 to ''Reduced Speed Limit Ahead Signs'' (Section 2C.30 of the 2003 MUTCD) to reflect the change of the sign name to be consistent with the Stop Ahead, Yield Ahead, and Signal Ahead warning sign names. A State DOT and a citizen supported the use of these signs.

As proposed in the NPA, and to correspond to changes adopted in Section 2B.13, the FHWA revises the GUIDANCE statement to recommend that a Reduced Speed Limit Ahead sign be used where the speed limit is being reduced by more than 10 mph, or where engineering judgment indicates the need for advance notice. A local DOT supported this revision. Two State DOTs suggested that it is infeasible to install reduced speed signs in advance of every 10 mph reduction in speed. The FHWA reiterates that the Reduced Speed Limit Ahead warning sign should be used for speed limit drops in excess of 10 mph and would remain only an option, rather than a recommendation, for a 10 mph difference in posted speed limits. The FHWA believes that reductions in speed limit of more than 10 mph are unexpected by road users and might require special actions to reduce speed before reaching the start of the lower speed zone, and thus justify the use of a warning sign. The FHWA adopts this change in order to provide consistency for determining where speed reduction signs should be placed.

138. The FHWA adds a new section numbered and titled Section 2C.39 DRAW BRIDGE Sign, as proposed in the NPA, that contains a STANDARD statement and a figure regarding the use of this sign. The FHWA adopts this new Section in this final rule because Section 4J.02 Design and Location of Moveable Bridge Signals and Gates (Section 4I.02 of the 2003 MUTCD) requires the use of the DRAW BRIDGE sign in advance of all drawbridges. Because the W3 series is used for advance warning signs and this sign is required in advance of the condition, it is appropriate to include the text and a figure in Chapter 2C, which covers Warning Signs. ATSSA supports the required use of this sign at drawbridges. Based on a comment from a local DOT, the FHWA revises the design of the W3–6 sign to be a two line legend warning sign with DRAW as the first line and BRIDGE as the second line, as Draw Bridge is two words rather than one in the dictionary and a two-line legend allows for larger letters that are more legible to road users, and deletes AHEAD from the legend, since the shape and color of the sign implies that the condition listed is ahead.

139. As proposed in the NPA, in Section 2C.40 Merge Signs (Section 2C.31 of the 2003 MUTCD), the FHWA adds an OPTION statement at the end of the section to incorporate the new NO MERGE AREA supplemental plaque that may be mounted below a Merge sign, an Entering Roadway Merge sign, a Yield Ahead sign, or a YIELD sign. The purpose of this plaque is to warn road users on an entering roadway or channelized right-turn movement that they will encounter an abrupt merging situation at the end of the ramp or turning roadway. ATSSA, two State DOTs, and a local DOT supported the new plaque. Two local DOTs opposed its use, suggesting that it might be misinterpreted. The FHWA believes that when there are only a few entrance ramps or channelized right turns in an area that do not have acceleration lanes, those few locations do not meet driver expectations. Therefore, the FHWA adopts this plaque in this final rule based on the results of the Sign Synthesis Study,[72] which indicated that some States routinely use this plaque to provide road users with important warning information for these conditions.

140. In Section 2C.42 Lane Ends Signs (Section 2C.33 of the 2003 MUTCD), the FHWA proposed in the NPA to allow the use of the W4–7 THRU TRAFFIC MERGE RIGHT (LEFT) sign, as a supplement to other signs, to warn road users in the right or left lane that their lane is about to become a mandatory turn or exit lane. ATSSA and the NCUTCD supported this new sign; however, a local DOT suggested that an additional sign is not needed, because the existing W9–1 and W9–2 Series signs already serve this purpose. The FHWA agrees and does not adopt the proposed use of this sign in this final rule. The FHWA believes this sign legend can be confusing when there are more than two through lanes. Instead, the FHWA adds a GUIDANCE statement in Section 2C.42 in this final rule to recommend the use of the RIGHT (LEFT) LANE ENDS (W9–1) adjacent to the Lane-Reduction Arrow pavement markings. The FHWA also clarifies the application of the W4–2, W9–1, and W9–2 warning signs in this final rule by adding a STANDARD statement prohibiting their use where a thru lane is designated as a mandatory turning lane approaching an intersection. The FHWA adopts these changes to be consistent with changes adopted in Sections 2B.20 and 3B .04. The FHWA retains the current use of the W4–7 sign for temporary conditions in Part 6.

141. The FHWA adds a new section numbered and titled Section 2C.43 RIGHT (LEFT) LANE EXIT ONLY AHEAD Sign. This section contains OPTION, STANDARD, GUIDANCE, and SUPPORT statements regarding the use

[70] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 34, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[71] ''Ramp Management and Control Handbook,'' FHWA, January 2006, page 5–29, can be viewed at the following Internet Web site: *http://ops.fhwa.dot.gov/publications/ramp_mgmt_handbook/manual/manual/pdf/rm_handbook.pdf.*

[72] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 34, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

of this new sign to provide advance warning of a freeway lane drop. ATSSA and two local DOTs supported this sign, while the NCUTCD and two of its members opposed the addition of this warning sign, because they felt that the sign should be a regulatory sign, since it is used when traffic is required to depart the roadway. The FHWA notes that this warning sign is for post-mounted application in advance of the RIGHT LANE MUST EXIT supplementary regulatory sign to the overhead guide sign EXIT ONLY where physical constraints prevent overhead signing of the EXIT ONLY sign. Several of the commenters suggested that the word ''AHEAD'' be deleted from the sign, because warning signs already imply that the condition is ahead. The FHWA retains the ''AHEAD'' legend in this final rule, because it warns of an exit requirement, which is different from many other warning signs. The FHWA adopts this sign based on the results of the Sign Synthesis Study [73] that showed several States use a similar warning sign for these conditions, particularly when overhead guide signs are not present on which to use EXIT ONLY plaques.

142. In the NPA, the FHWA proposed adding a new section numbered and titled Section 2C.46 Two-Way Traffic on a Three-Lane Roadway Sign. The proposed sign was a variant of the existing W6–1 two-way traffic warning sign. ATSSA and two local DOTs supported the sign; however, an NCUTCD member and a citizen expressed concern that the sign might convey inaccurate information to drivers if the sign rotated to an upside down position as the result of vandalism or sign damage. The FHWA agrees and does not adopt this section or the associated signs in this final rule.

143. As proposed in the NPA, the FHWA relocates the information from Section 2C.36 of the 2003 MUTCD Advisory Exit, Ramp, and Curve Speed Signs, to Section 2C.14 in order to place all horizontal alignment warning signs in the same area of Chapter 2C.

144. In Section 2C.46 Intersection Warning Signs (Section 2C.37 of the 2003 MUTCD), as proposed in the NPA, the FHWA adds an OPTION allowing an educational plaque with a legend such as TRAFFIC CIRCLE or ROUNDABOUT to be mounted below a Circular Intersection symbol sign. ATSSA and a local DOT supported this new plaque.

In the NPA, the FHWA proposed to delete from the GUIDANCE statement the recommendation that Circular Intersection symbol warning signs should be installed on the approaches to a YIELD sign controlled roundabout. Based on a comment from a traffic engineering consultant suggesting that advance notice of a circular intersection needs to be given on higher speed approaches, the FHWA decides not to delete the existing GUIDANCE statement in the 2003 MUTCD and instead retains the GUIDANCE statement with a modification that recommends installing the Circular Intersection (W2–6) symbol sign in advance of a roundabout if the approach has a statutory or posted speed limit of 40 mph or higher The FHWA also adds new Offset Side Roads and Double Side Roads symbols for use on Intersection Warning Signs to the GUIDANCE statement, as proposed in the NPA. ATSSA and a local DOT supported these symbol signs, while the NCUTCD and a traffic engineering consultant provided comments about the design of the Offset Side Road intersection warning sign. As a result, the FHWA adds two GUIDANCE statements providing recommendations that the Double Side Roads W2–8 symbol sign should be used instead of the Side Road symbol sign where two closely spaced side roads are on the same side of the highway, that no more than two side road symbols should be displayed on the same side of the highway on a W2–7 or W2–8 symbol sign, and no more than three side road symbols should be displayed on a W2–7 or W2–8 symbol sign. The FHWA adopts these new symbols to address the results of the Sign Synthesis Study,[74] which showed that variants of the W2–2 sign depicting offset side roads or two closely spaced side roads are used in many States, but the relative distance between the two side roads and the relative stroke widths of the roadways varies significantly. As a result, the FHWA adopts uniform designs in this final rule.

145. In Section 2C.47 Two-Direction Large Arrow Sign (Section 2C.38 of the 2003 MUTCD), the FHWA adopts the STANDARD statement as proposed in the NPA that the Two-Direction Large Arrow sign shall not be used in the central island of a roundabout. A traffic engineering consultant supported this restriction, while a local DOT suggested that this restriction was not needed, because no one would use the sign for that application. The FHWA notes that the Two Direction Large Arrow warning sign is frequently used inappropriately in the central island of a roundabout intersection. The FHWA adopts this change in this final rule in conjunction with other changes in Chapters 2B and 2D to provide consistency in signing at roundabouts.

146. In Section 2C.48 Traffic Signal Signs (Section 2C.39 of the 2003 MUTCD), as proposed in the NPA, the FHWA adopts text clarifying the STANDARD statement that W25–1 and W25–2 signs are to be vertical rectangles. Two local DOTs and an NCUTCD member opposed the existing provisions of requiring the use of the W25–1 and W25–2 signs to warn drivers of extended green signal indications in the opposite direction. The commenters felt that the sign text should be revised to improve the understanding of the legend, or should be eliminated. The FHWA notes that the provisions for their use are clearly indicated in the text referred to in Part 4, and that they are not required for all permissive left-turn applications, only for those few where a ''yellow trap'' signal sequence is operated.

147. In the NPA, the FHWA proposed adding a new Combined Bicycle/Pedestrian sign and TRAIL X–ING supplemental plaque in Section 2C.49 (Section 2C.40 of the 2003 MUTCD) Vehicular Traffic Warning Signs. With the increasing mileage of shared-use paths in the U.S., the number of places where shared-use paths, used by both bicyclists and pedestrians, cross a road or highway is also increasing. To provide advance warning of these crossings and to indicate the location of the crossing itself, the provisions of the STANDARD statements of the 2003 MUTCD made it necessary to use both the supplementary application of the W11–1 (bicycle) and W11–2 (pedestrian) crossing warning signs, mounted together on the same post at the crossing when used to supplement the advance warning placement, or sequentially along the road The Sign Synthesis Study [75] revealed that several States have developed combination signs to simplify and improve the signing for shared-use path crossings, using either a single sign with combined bicycle and pedestrian symbols or a word message sign with a variety of different legends. As a result, the FHWA proposed in the NPA a new Combined

[73] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 35, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[74] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 33, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[75] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 42, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

Bicycle/Pedestrian sign and TRAIL X–ING supplemental plaque. ATSSA, a State DOT, and three local DOTs supported the Combined Bicycle/Pedestrian sign application and the design of the sign as proposed in the NPA. The NCUTCD and three of its members, four State DOTs, three local DOTs, an association representing local DOTs, five associations representing bicyclists and/or pedestrians, and three citizens supported the use of the Combined Bicycle/Pedestrian sign, but suggested that the design proposed in the NPA was confusing, tested poorly in research studies, or was unclear. As a result of those comments, the FHWA revises the sign design adopted in this final rule to show a bicycle symbol at the top of the sign and a pedestrian symbol at the bottom, as suggested by the NCUTCD. The FHWA also adds a TRAIL CROSSING word message alternative sign in this final rule because it agrees with a comment from the NCUTCD that such a sign might be needed in locations where the recreational path includes equestrians or snowmobiles.

ATSSA, a State DOT, two NCUTCD members and a traffic engineering consultant commented that the color of the Combined Bicycle/Pedestrian sign and TRAIL X–ING plaque shown in Figure 2C–10 should be changed to reflect that the standard background color is yellow, and that the fluorescent yellow-green color is optional. The FHWA agrees and revises the sign illustrations in this final rule accordingly, consistent with adopted revisions in Section 2A.10.

Although not proposed in the NPA, the FHWA adds an OPTION statement that the Combination Pedestrian/Bicycle symbol sign and TRAIL CROSSING word message sign may be supplemented with plaques with the legend AHEAD, XX FEET, or NEXT XX MILES when used in advance of a pedestrian and bicycle crossing. The FHWA adds this language in this final rule to provide consistency with other sections in the MUTCD involving the use of plaques with Vehicular Traffic Warning signs.

In addition, the FHWA adds a STANDARD to clarify that post-mounted Bicycle (W11–1), Golf Cart (W11–11), Combined Pedestrian/Bicycle (W11–15), and TRAIL CROSSING (W11–15a) signs shall be supplemented with a diagonal downward pointing arrow (W16–7P) plaque when used at a crossing. Although not proposed in the NPA, the FHWA adds this requirement to be consistent with the current STANDARD in the 2003 MUTCD (included in Section 2C.51 in this final rule) that requires the use of the W16–7P plaque at crossings.

148. In Section 2C.50 Non-Vehicular Warning Signs (Section 2C.41 of the 2003 MUTCD) the FHWA changes the 2nd OPTION statement in the 2003 Edition of the MUTCD to a GUIDANCE statement. Although not proposed in the NPA, the FHWA adopts this change to recommend the use of warning signs supplemented with plaques with the AHEAD or XX FEET legend when they are used with or in advance of a pedestrian, snowmobile, or equestrian crossing to inform road users that they are approaching a point where crossing activity might occur. The FHWA adopts this change in this final rule to be consistent with the use of these plaques at crossings, as required throughout the MUTCD. Application of the Non-Vehicular Warning signs without the plaques stating distance or AHEAD or downward sloping arrow at the crossing can be confusing to road users as to the location of the crossing. FHWA notes the serious consequences to a pedestrian or wheel chair bound user if the operator of a much heavier vehicle operator is confused as to the location where to expect them to enter the highway.

The FHWA also revises the existing STANDARD in paragraph 04 to clarify that the placement of a supplemental downward pointing arrow plaque shall be below post-mounted Non-Vehicular Warning signs, and to prohibit the use of the diagonal downward pointing arrow on overhead-mounted Non-Vehicular Warning signs. Although not proposed in the NPA, the FHWA adopts these clarifications in response to a comment from a State DOT suggesting that an arrow on an overhead sign would not be pointing to the appropriate location. The resulting STANDARD in this final rule specifies that the diagonal downward sloping arrow (W16–7P) plaque shall not be used with an overhead mounting of the W11–6, W11–7 or W11–9 Non-Vehicular Warning symbol signs. This is necessary so that the application of the W16–7 downward sloping arrow uniquely identifies the location of the crossing.

The FHWA adds STANDARD and OPTION statements regarding the combination use of the Yield Here To (Stop Here For) Pedestrian sign in the vicinity of the Pedestrian Crossing (W11–2) sign in this final rule that restricts blocking the view of the W11–2 sign, or placing it on the same post as a R1–5 series sign. These additional statements are necessary for consistency with the STANDARD and OPTION statements in Sections 2B.11 and 2B.12. The FHWA also adopts the OPTION statement to allow Pedestrian Crossing signs to be mounted overhead where Yield Here To (Stop Here For) signs have been installed in advance of the crosswalk. The FHWA also allows the use of advance Pedestrian Crossing (W11–2) signs on the approach with AHEAD or distance plaques at the crosswalk where Yield Here To (Stop Here For) Pedestrian signs have been installed. The FHWA adopts this new language to be consistent with similar language that is adopted in Part 7, which is based on FHWA's Official Interpretation # 2–566.[76]

In the NPA, the FHWA proposed to add a STANDARD statement that required school signs and their related supplemental plaques to have a fluorescent yellow-green background with a black legend and border to be consistent with changes in Chapter 2A and in Part 7. In this final rule, the FHWA relocates this statement to Section 2A.10 Sign Colors, based on comments from an NCUTCD member, a State DOT, a local DOT, and a traffic engineering consultant, suggesting that Section 2A.10 is a more appropriate location for the information, since that section discusses the color of signs.

In the NPA, the FHWA proposed to change paragraph 09 to a GUIDANCE statement to recommend, rather than merely permit, the use of fluorescent yellow-green for pedestrian, bicycle, and playground Non-Vehicular Warning signs and their supplemental plaques. The NCUTCD and two of its members, three State DOTs, and two local DOTs opposed including the Bicycle (W11–1) warning sign in this statement that elevates the use of the fluorescent yellow-green background to a recommendation (rather than an option as in the 2003 MUTCD), because Bicycle warning signs are not always school related. Because bicycles are defined as vehicles, the Bicycle W11–1 warning sign is a Vehicular Traffic Warning sign, and therefore the FHWA moves it to Section 2C.49 in this final rule. As discussed above in 2C.49, the use of fluorescent yellow-green is an option for Vehicular Traffic Warning signs, including the W11–1 sign. To be consistent with changes adopted in Section 2C.03 and discussed therein, in this final rule the FHWA adopts an OPTION to use fluorescent yellow-green for non-school Non-Vehicular Warning signs and their associated plaques.

[76] FHWA's Official Interpretation #2–566(I), July 27, 2005, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/2_566.htm.*

149. In both Section 2C.49 Vehicular Traffic Warning Signs and Section 2C.50 Non-Vehicular Warning Signs (Sections 2C.40 and 2C.41 of the 2003 MUTCD), in the NPA the FHWA proposed to add OPTION statements regarding the use of Warning Beacons and supplemental WHEN FLASHING plaques to indicate specific periods when the condition or activity is present or is likely to be present. A local DOT supported this additional information; however, an NCUTCD member suggested that the language was confusing. The FHWA revises the language in this final rule to clarify the application of a supplemental WHEN FLASHING (W16–13P) plaque. The FHWA adopts these changes to clarify the allowable use of this plaque, for consistency with provisions regarding warning beacons contained in Part 4 of the 2003 MUTCD and in the adopted 2009 MUTCD.

150. In Figure 2C–11 (Figure 2C–12 in the NPA) Non-Vehicular Warning Signs, the FHWA adds images of new symbolic warning signs for moose, elk/antelope/caribou, wild horses (horse without a rider), burros/donkeys, sheep, bighorn sheep, and bears, as proposed in the NPA. The 2003 MUTCD included only three signs to warn of the possible crossings of large animals—deer crossing (W11–3), cattle crossing (W11–4), and equestrian crossing (horse with rider, W11–7). The prevalence of other types of large animals that might cross roads (and which might cause significant damage or injury if struck by a vehicle) has caused at least 16 States to develop signs (usually symbolic) for warning of one or more different animal crossings, as documented in the Sign Synthesis Study.[77] ATSSA supported the new large animal symbol signs, however a State DOT and a local DOT suggested that there is not sufficient research to show that the existing animal warning signs are effective, so there is no reason to add considerably more animal symbol warning signs. The NCUTCD and two of its members provided comments about the design of the bear, sheep, elk, moose, and wild horse symbols. Based on those comments, the FHWA revises the moose symbol in this final rule to show the animal with its head up and removes the grass from beneath the elk's feet. The FHWA adopts the new signs because the new animal symbols look significantly different from the three animal symbols in the 2003 MUTCD and the standard signs do not provide accurate meaning and adequate warning. The FHWA also adopts the uniform symbol designs to address the lack of consistency in the signs currently being used for this purpose by the States.

151. The FHWA adds a new section numbered and titled Section 2C.52 NEW TRAFFIC PATTERN AHEAD Sign, containing OPTION and GUIDANCE statements regarding the use of this sign to provide advance warning of a change in traffic patterns, such as revised lane usage, roadway geometry, or intersection control. ATSSA, an NCUTCD member, and a local DOT supported this sign as presented in the NPA. A State DOT, an NCUTCD member, two local DOTs, a traffic engineering consultant, and a citizen either opposed the message because they felt that it was not clear or suggested that alternate legends be added for this sign. A State DOT suggested deleting the sign and allowing agencies to develop a specific sign to indicate what is different. A State DOT, two local DOTs, and an NCUTCD member suggested that the background of the sign be orange, since it represents a temporary situation, and that the sign should be in Part 6, rather than in Part 2. The FHWA declines removing the proposed sign from Part 2 because it is a warning sign for a change in conditions that may not be associated with temporary traffic control. However, the FHWA also adds this sign in this final rule (with an orange background) in Chapter 6F. The FHWA understands that some agencies are using different legends; however, the FHWA declines adding additional legends to the MUTCD in order to establish a uniform design and most importantly a uniform meaning to road users. The FHWA adopts in this final rule the legend as shown in the NPA to reflect existing practices in many States and numerous local jurisdictions as documented in the Sign Synthesis Study[78] and to provide a uniform legend for this purpose, consistent with similar adopted changes in Part 6.

152. In Section 2C.58 Advance Street Name Plaque (Section 2C.49 of the 2003 MUTCD), as proposed in the NPA, the FHWA adds a requirement that the lettering on Advance Street Name plaques shall be composed of a combination of lower-case letters with initial upper-case letters. ATSSA and a citizen supported this change. Two State DOTs, two local DOTs, and an NCUTCD member supported the use of mixed-case letters, but suggested that their use not be mandatory. The commenters felt that there is not enough evidence to support the change to mandate the use of mixed-case letters and that the cost of replacing the signs is disproportionate to the benefit to be received by changing the letters. The FHWA disagrees that there are significant cost impacts, as existing Advance Street Name plaques in good condition may remain in service until such point in time that they are replaced as part of the agency's periodic sign maintenance program. The FHWA retains the requirement for mixed-use letters based on published research[79] that demonstrates the improved recognition and legibility distances for place names and destinations that are comprised of an upper-case first letter followed by lower-case lettering.

Consistent with the current design requirements in Chapter 2D for the application of directional arrows to Street Name signs and Advance Street Name signs, the FHWA adds a requirement that directional arrows be used adjacent to street names when two street names are used on the Advance Street Name plaque. The FHWA adopts this requirement in this final rule based on a comment from the NCUTCD suggesting the need to account for side roads that have different names, and to provide consistency for road users. The added text reflects common practice by highway agencies and MUTCD principles for arrows on guide signs.

The FHWA adds a GUIDANCE statement, and an accompanying figure, that recommends the order in which street names should be displayed on an Advance Street Name plaque, as proposed in the NPA. ATSSA and a local DOT supported this recommendation.

153. In Section 2C.59 CROSS TRAFFIC DOES NOT STOP Plaque (Section 2C.50 of the 2003 MUTCD), the FHWA adds a GUIDANCE statement as proposed in the NPA that plaques with appropriate alternative messages, such as TRAFFIC FROM LEFT DOES NOT STOP, be used at intersections where STOP signs control all but one approach to the intersection. ATSSA and a local DOT supported the plaques. Similar to comments about Chapter 2B proposals regarding ALL-WAY plaques with STOP signs, two local DOTs opposed using

[77] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, pages 41–42, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[78] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 33, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[79] Research on this topic is cited and discussed in ''Highway Design Handbook for Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–103, May 2001, which can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01103/coverfront.htm.*

these plaques because they feel that the existing plaques are effective. The FHWA disagrees that the meaning and understanding of these types of supplemental plaques by road users has confused drivers facing a STOP sign as to which other approaches are required to stop. The FHWA believes to the contrary, that these plaques are helpful for informing and warning road users, and the FHWA adopts these plaques in this final rule to be consistent with changes adopted in Chapter 2B.

154. In Section 2C.60 SHARE THE ROAD Plaque (Section 2C.51 of the 2003 MUTCD), the FHWA adds a new STANDARD statement that requires that the SHARE THE ROAD plaque be used only as a supplement to a Vehicular Traffic or Non-Vehicular sign. ATSSA and a State DOT supported this standard, while a local DOT suggested that prohibiting the use of this plaque alone is not justified. The FHWA disagrees because road users need more clarity on the type of vehicle or nonvehicle that might be present, and because plaques are not intended for independent use. The FHWA adopts this change in this final rule as proposed in the NPA. The FHWA proposed in the NPA to require the use of fluorescent yellow-green background for all school, pedestrian, and bicycle applications. As discussed above in Section 2C.03, in this final rule the FHWA revised Section 2C.03 to make the mandatory application of fluorescent yellow-green apply only to School area signs and adopted an OPTION statement that the background color of Non-Vehicular Warning signs may be either yellow or fluorescent yellow-green consistent with Table 2A–5. Based on a comment from a State DOT, a local DOT, two NCUTCD members, and a traffic engineering consultant suggesting the need for consistency with Section 2C.03, FHWA adds a STANDARD statement to Section 2C.60 to provide for the consistent application of the appropriate background color to the SHARE THE ROAD plaque.

155. In Section 2C.61 Photo Enforced Plaque (Section 2C.53 of the 2003 MUTCD), the FHWA replaces the ''PHOTO ENFORCED'' word message plaque with a new symbol plaque depicting a camera and designated as W16–10P, as proposed in the NPA. The existing word message plaque is retained as an alternate to the new symbol plaque and its sign designation reassigned as W16–10aP. ATSSA supported the addition of the symbol sign, while a State DOT, a local DOT, and two NCUTCD members opposed the symbol sign, primarily because they felt that its meaning was not clear. The FHWA disagrees and adopts the new symbol sign in this final rule, noting that the results of the ''Design and Evaluation of Symbol Signs'' study [80] found that subjects in a human factors study demonstrated excellent correct understanding of the symbol when displayed with a Signal Ahead warning sign as meaning a warning of Red Light Enforcement Cameras.

156. In the NPA, the FHWA proposed to add a section numbered and titled Section 2C.66 METRIC Plaque. The FHWA does not adopt this section in this final rule, reflecting the removal of metric signs from the MUTCD.

157. The FHWA adds a new section numbered and titled Section 2C.62 NEW Plaque (numbered Section 2C.67 in the NPA) that describes the use of this optional plaque that may be mounted above a regulatory sign when a new traffic regulation takes effect or above an advance warning sign for a new traffic control condition. ATSSA, the NCUTCD, a State DOT, a local DOT, and a traffic engineering consultant supported the plaque and its design as proposed in the NPA. Two local DOTs and two NCUTCD members suggested that the design of the plaque be changed to a black legend on a yellow background. A State DOT, two local DOTs, and an NCUTCD member opposed the new plaque because of its design and the fact that Section 2A.15 addresses other ways to enhance sign conspicuity. The FHWA revises the design of the plaque in this final rule to be the black legend ''NEW'' and a black border on a yellow background without the black and white sunburst graphic. Although not opposed to the plaque, a local DOT expressed concern that that the addition of this supplemental plaque to the MUTCD might result in overuse of the plaques by agencies being pressured to ''do more by adding this plaque to many signs'' for a particular situation, regardless of whether the plaque's effectiveness is demonstrated. The FHWA understands this concern, and notes that in response to a comment from the NCUTCD, the FHWA adopts language in this final rule restricting the use of the NEW plaque so that it cannot be used alone. The FHWA adopts this new plaque based on the Sign Synthesis Study,[81] which showed that some States and Canadian provinces are using similar plaques and signs for this purpose, and to provide a uniform plaque design for consistency.

In the NPA, the FHWA also proposed in a GUIDANCE statement that the use of this plaque be limited to the first 6 months after the traffic regulation has been in effect. A State and a local DOT supported this time limitation, while another local DOT suggested that its use be limited to 3 months. To address a comment from the State DOT suggesting that if the plaque remains in place for a long time (possibly years) it would degrade the effect of the same sign at a location that has a new restriction, the FHWA revises the statement to a STANDARD in this final rule, thereby limiting its use to a maximum 6-month time period. The FHWA believes that timely removal of this plaque is essential, warranting mandatory language.

158. In Section 2C.63 Object Marker Design and Placement Height (Section 3C.01 of the 2003 MUTCD, numbered Section 2L.01 of the NPA), the FHWA adopts several revisions in this final rule based on comments submitted by the NCUTCD suggesting the need to clarify the design of object markers due to their relocation into Part 2 signs to avoid inconsistencies with existing and proposed revisions to the MUTCD. The resulting changes clarify existing standards that object markers do not have a border in their design, that Type I object markers are diamond shaped, that retroreflectors are in fact retroreflective devices, and providing information regarding the design of the Type 4 object marker that is used to mark the end of a roadway. These revisions will not have a significant impact on agencies; rather they provide clarification and combine similar information all in one location, which the FHWA believes will be beneficial to practitioners.

159. In Section 2C.64 Object Markers for Obstructions Within the Roadway (Section 3C.02 of the 2003 MUTCD, Section 2L.02 of the NPA), the FHWA proposed in the NPA adding an OPTION statement regarding the placement of Type 1 or Type 3 markers on the nose of a median island. The NCUTCD, a State DOT, and a local DOT, supported the concept, but suggested editorial changes that the FHWA adopts in this final rule. A local DOT suggested including the option to install Type 2

[80] ''Design and Evaluation of Selected Symbol Signs,'' Final Report, May, 2008, conducted by Bryan Katz, Gene Hawkins, Jason Kennedy, and Heather Rigdon Howard, for the Traffic Control Devices Pooled Fund Study, can be viewed at the following Internet Web site: *http://www.pooledfund.org/documents/TPF-5_065/symbol_sign_report_final.pdf.*

[81] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 33, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

markers in the same manner; however the FHWA disagrees because the approach end of a median island is in the roadway, not adjacent to the roadway, therefore only Type 1 and 3 markers are appropriate.

160. In Section 2C.65 Object Markers for Obstructions Adjacent to the Roadway (Section 3C.03 of the 2003 MUTCD, Section 2L.03 of the NPA), as proposed in the NPA, the FHWA adds to the STANDARD statement to specify that Type 1 and Type 4 object markers shall not be used to mark obstructions adjacent to the roadway. The FHWA relocates the STANDARD statement from Section 2C.64 Object Markers for Obstructions Within the Roadway to Section 2C.65 Object Markers for Obstructions Adjacent to the Roadway, because the STANDARD statement applies to objects adjacent to the roadway. In this final rule the FHWA also revises the STANDARD statement to clarify the application of Type 3 object markers to the approach ends of guardrail and other roadside appurtenances to address a comment from a State DOT suggesting the need to address the required size where the ends of the guardrail or roadside appurtenances are of a size other than 12 inches x 36 inches, for consistency with existing STANDARD requirements for Type 3 Object Markers. The FHWA adopts this clarification to provide for the predominant practice by highway agencies.

161. In Section 2C.66 Object Markers for Ends of Roadways (Section 3C.04 of the 2003 MUTCD, Section 2L.04 of the NPA), the FHWA adds a STANDARD statement as proposed in the NPA, to require that if an object marker is used to mark the end of a roadway, a Type 4 object marker shall be used. The FHWA adopts this change to provide clarity that the Type 4 object marker is the only type of object marker to be used to mark the end of a roadway.

To address a comment from the NCUTCD to place design information for all types of object markers in the same section, the FHWA relocates the information regarding the design of the Type 4 marker to Section 2C.63 in this final rule.

Discussion of Amendments Within Chapter 2D—General

162. As proposed in the NPA, in Section 2D.30 Junction Assembly (Section 2D.28 of the 2003 MUTCD), Section 2D.31 Advance Route Turn Assembly (Section 2D.29 of the 2003 MUTCD), and Section 2D.40 Location of Destination Signs (Section 2D.35 of the 2003 MUTCD), the FHWA revises the requirements and recommendations for the locations of these signs. In Section 2D.30, the FHWA proposed to change the sign placement distances in advance of an intersection from STANDARD to GUIDANCE, to recommend, rather than require, that the signs be installed at the distances stated therein. In Sections 2D.31 and 2D.40, the FHWA proposed to add new recommendations regarding the distances between signs to provide consistency with the sign placement distances included in Section 2D.30. In this final rule the FHWA adopts these changes as proposed in the NPA, in order to provide more flexibility for the placement of these various signs, particularly as it relates to rural areas, and to indicate that the dimensions shown on Figure 2D–7 are recommendations.

Discussion of Amendments Within Chapter 2D—Specific

163. In Section 2D.04 Size of Signs, the FHWA adds a requirement, as proposed in the NPA, that the sizes of conventional road guide signs that have standardized designs shall be as shown in Table 2D–1, except as noted in Section 2A.11. Although a local DOT supported this change, two State DOTs and an NCUTCD member opposed this change, suggesting that States needed to have flexibility in sign size when the need arises, and to exercise engineering judgment, rather than needing to follow requirements at all times. The FHWA disagrees that signs with standard legends need not conform in overall size and believes that non-conformance to the standard sign sizes results in smaller letter sizes that cannot be read at distances adequate to react to the message. Signs listed in Table 2D–1 that have legends that might vary in length are adequately addressed by the footnote allowing for an appropriate adjustment in size for an atypical sign. The FHWA adopts the proposed language in this final rule.

164. In Section 2D.05 Lettering Style, the FHWA proposed a requirement in the NPA to use a combination of lower-case letters with initial upper-case letters for names of places, streets, and highways on conventional road guide signs. A transportation research institute, a traffic engineering consultant, and a citizen all supported this requirement, while two State DOTs, a local DOT, and an NCUTCD member suggested that the use of a combination of lower-case letters with initial upper-case letters be a recommendation, and that all upper-case letters be allowed as well. The commenters suggested that there is not enough convincing evidence to support making the change to upper-case and lower-case letters as a mandatory condition. The FHWA disagrees because the change to mixed-case alphabets is based directly on the outcome of a research study [82] that demonstrated improved recognition of familiar destinations on guide signs when displayed using mixed-case lettering. In this final rule the FHWA revises the language in this section from what was proposed in the NPA to clarify that the nominal loop height of the lower-case letters shall be three-quarters the height of the initial upper-case letter. The FHWA also adds clarifying language to help users of the MUTCD determine the appropriate letter height when a mixed-case legend letter height is specified referring only to the initial upper-case letter or when only to a lower-case letter is referred to. The FHWA adopts this language in this final rule to address comments in several sections of the NPA from various commenters suggesting that more information was needed to determine the appropriate letter heights for mixed-case legends.

The FHWA also adds a STANDARD at the end of this section in this final rule to clarify that the distortion of unique letter forms of the Standard Alphabet series is prohibited, and provides a reference to the provisions in Section 2D.04 regarding the prescribed methods to modify the length of a word for a given letter height and series. Although the referenced provisions exist in Section 2D.04 of the 2003 MUTCD, and state that the letter designs shall be as detailed in the ''Standard Highway Signs'' book, the FHWA has noticed that with the advancement and use of electronic technologies for sign design and fabrication, such distortion of letter forms to fit word legends on signs has become increasingly prevalent. The FHWA believes that this distortion compromises legibility, and adds this specific requirement in this final rule as a reiteration of the existing provision.

165. In Section 2D.07 Amount of Legend, the FHWA proposed in the NPA to revise the GUIDANCE statement to clarify that guide signs should be limited to no more than three lines of destinations and that action and distance information should be provided on guide signs in addition to the destinations, where appropriate. ATSSA and an NCUTCD member supported this change, whereas two State DOTs suggested that the language allow for more flexibility, such as when

[82] Research on this topic is cited and discussed in ''Highway Design Handbook for Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–103, May 2001, which can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01103/coverfront.htm.*

a destination name occupies more than one line, or at a location where four destinations are needed, such as a ramp terminal. The FHWA disagrees with this suggestion due to concerns about increasing the cognitive load imposed on a driver and adopts in this final rule the language as proposed in the NPA, with the addition of language to refer to exceptions noted elsewhere (such as in Section 2D.37 Destination Signs), that provide information on how to accommodate four destinations where necessary. FHWA adopts this language to reduce confusion regarding the number of lines on a guide sign and to address the results of recent NCHRP research on driver information overload.[83]

In the NPA, the FHWA proposed to revise the OPTION regarding the use of pictographs on guide signs. Because the information contained in this OPTION provides general provisions and applies to all cases in which pictographs are allowed, the FHWA relocates the information to Chapter 2A in this final rule, as discussed previously in this preamble.

In the NPA, the FHWA proposed to add a STANDARD statement specifying the maximum dimension of a pictograph on a guide sign. The proposed language stated that a pictograph shall not exceed the size of the route shield on the guide sign, and that if the guide sign does not include a route shield, the maximum size of the pictograph shall not exceed two times the letter height of the destination legend. ATSSA, a local DOT, and a toll road operator supported this language. A State DOT and two toll road operators suggested exempting ETC system pictographs from adhering to the width dimension requirements, because ETC pictographs are often rectangular, rather than square, in shape. Two toll road operators suggested that there be no limit on the size of ETC pictographs. The FHWA understands that there is a need for some flexibility with regard to ETC system pictographs because of their unique designs and the critical information conveyed by their use, unlike other pictographs that only complement and not replace an associated word legend. As a result, the FHWA adopts specific provisions on the size of ETC-system pictographs in Chapter 2F. In addition, the FHWA relocates specific provisions on pictographs to the relevant Sections where a pictograph is allowed to better group related information. The FHWA adopts these changes in order to incorporate information regarding pictographs in the MUTCD, to reflect FHWA's Official Interpretation number 2–646(I)[84] and to provide information on the maximum size of certain pictographs so that they do not detract from the primary legend of the signs.

166. In Section 2D.08 Arrows, the FHWA proposed in the NPA to make several revisions to this section to clarify the use and design of arrows on guide signs. The first STANDARD statement required that down arrows on overhead signs shall always be vertical and positioned directly over the approximate center of the applicable lane. ATSSA and a local DOT supported this language; however three State DOTs opposed it, stating that the location of arrows on the sign should be GUIDANCE, not a STANDARD statement. The FHWA disagrees with the opposing commenters and retains the language in this final rule in order to reduce uncertainty and confusion by providing positive guidance in sign legends. The FHWA also proposed to add a requirement that no more than one down arrow shall point to a lane on a single overhead sign (or on multiple overhead signs on the same sign structure). ATSSA, a State DOT, and a local DOT supported this requirement, while three State DOTs opposed it because their States use multiple down arrows to point to a single lane. The FHWA believes that allowing one more arrow than the number of lanes present creates conflicting information for the road user to process and that adopting this language will substantially increase positive guidance and eliminate driver confusion and late lane changes, thereby improving highway safety. The FHWA adopts the language as proposed in the NPA in this final rule.

In the NPA, the FHWA proposed to add an OPTION permitting the use of diagonal arrows pointing diagonally downward on overhead guide signs only if each arrow is located directly over the center of the lane and only for the purpose of emphasizing a separation of diverging roadways. ATSSA and a local DOT supported this new OPTION, while one State DOT, an NCUTCD member and a citizen opposed this use of diagonally pointing arrows. The commenters believe that the arrows are unlikely to convey meaningful and consistent information to the driver, as there are no guidelines identifying the circumstances that would justify placing the arrows at an angle, and that there is a likely potential for inconsistent application, an implication of a lane change, and an overall practice that is not consistent with the use of upward-pointing arrows at similar locations. The FHWA agrees with the commenters and does not adopt this OPTION for overhead signs in this final rule.

The FHWA adopts the proposed OPTION statement to permit the use of curved-stem arrows that represent the intended driver paths to destinations involving left-turn movements on guide signs on approaches to roundabouts or circular intersections. ATSSA and an NCUTCD member supported this new OPTION. The FHWA clarifies through a STANDARD that the use of a curved-stem arrow on any sign not associated with a circular intersection is prohibited, because such use would be confusing and is not the intended use of this type of arrow. The FHWA adds this statement to clarify application of curved-stem arrows on guide signs.

In the NPA, the FHWA proposed adding GUIDANCE and OPTION statements regarding the use of various arrow types, including curved-stem and Types A through D arrows. ATSSA, a local DOT, and an NCUTCD member supported including this information; however, one of the commenters felt that the level of detail included in the GUIDANCE and the following OPTION was too much and that a reference to the SHSM book would suffice. Two State DOTs and another NCUTCD member suggested that some of the information regarding specific arrow types be deleted, or changed from a GUIDANCE to an OPTION, because their State was using a different arrow type. The FHWA disagrees and adopts in this final rule the statements as proposed in the NPA, because the selection of the arrow type and placement are critical to the overall appearance and legibility of the sign. A local DOT supported the NPA language recommending that the arrowheads for the Types A, B, and C directional arrows should be 1.5 to 1.75 times the height of the largest letter on the sign, while a State DOT opposed the revision because it felt that there was no value in providing that information. The FHWA disagrees and adopts the recommendation in the MUTCD because the GUIDANCE on arrow size ensures that the arrow is kept in relative proportion to the entire legend, preserving legibility.

167. In Section 2D.11 Design of Route Signs, the FHWA proposed in the NPA to change paragraph 07 to a GUIDANCE statement to recommend, rather than just allow, the use of a white square or

[83] NCHRP Report 488, ''Additional Investigations on Driver Information Overload'' 2006, page 65, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_488c.pdf.*

[84] This official interpretation can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/2_646.htm.*

rectangle behind the Off-Interstate Business Route sign when it is used on a green guide sign. The FHWA proposed this change to enhance the conspicuity of the Off-Interstate Business Route sign in this usage, since the green route sign alone blends into the green guide sign background. ATSSA supported the proposed change; however, two State DOTs, two NCUTCD members, and a citizen opposed this change or suggested modifications. Many of the commenters suggested that if there is a problem with conspicuity of Off-Interstate Business Route signs, then they should be redesigned. The FHWA agrees with the commenters and does not adopt the proposed revision in this final rule, retaining the use of a white-square or rectangle as an option rather than as a recommendation. To address concerns with conspicuity of the route sign when used on a guide sign, the FHWA might consider modifications to the sign to enhance its conspicuity in a future rulemaking and/or a revision to ''Standard Highway Signs and Markings'' book.

Although not proposed in the NPA, the FHWA relocates a paragraph from Section 2D.14 to this section regarding the use of U.S. or State Route signs as components of guide signs. The FHWA adopts this change in this final rule to place similar information together in the same location.

168. In Section 2D.12 Design of Route Sign Auxiliaries, the FHWA in this final rule revises paragraph 02 by deleting the first sentence related to the size of auxiliary signs carrying word messages and mounted with 30 inch x 24 inch Interstate Route signs. Although not proposed in the NPA, the FHWA deletes the sentence in this final rule to reflect the consistent practice of determining the size of the auxiliary sign based on the height of the route sign rather than its width, maintaining a consistent letter height for the auxiliary message as it relates to the numeral height within the route sign.

In the NPA, the FHWA proposed to add a GUIDANCE statement and corresponding STANDARD statement to clarify that if a route sign and its auxiliary signs are combined in a single sign, the background color of the sign should be green. Along with this GUIDANCE, the FHWA proposed adding a corresponding STANDARD that on such a sign the auxiliary messages shall be white legends placed directly on the green background and that auxiliary signs shall not be mounted directly to a guide sign. The FHWA proposed these changes to provide consistency for background colors, because the background colors currently in use for this application are not consistent across the country. Green is the appropriate background color for a directional guide sign, and the FHWA's intent is to preclude the incorrect use of auxiliary signs on green guide signs. ATSSA and a local DOT supported the STANDARD language as proposed in the NPA; however, an NCUTCD member suggested that the proposal in the NPA was too restrictive, because it implied that green backgrounds would be required for the signs. FHWA disagrees with the comment because the GUIDANCE statement specifically addresses the combination of route and auxiliary signs to form a guide sign as provided in the preceding OPTION and the prescribed background color of a guide sign is green. To address the specific concern raised by the NCUTCD member, the FHWA instead revises the STANDARD statement in paragraph 06 in this final rule to clarify that the intent is to apply an auxiliary message directly to the sign background, rather than display it as an auxiliary sign panel mounted to another sign when route signs and auxiliary messages are used as legend components on signs other than guide signs. Additionally, to provide consistency with Sections 2D.10 and 2D.29 and clarification regarding independently mounted route sign assemblies, in this final rule the FHWA also adds a GUIDANCE statement to indicate that the background, legend, and border of a route sign auxiliary should have the same colors as those of the route sign with which the auxiliary is mounted in a route sign assembly.

169. In Section 2D.13 Junction Auxiliary Sign, the FHWA revises this STANDARD to clarify that placement of the Junction (M2–1) auxiliary sign above a Cardinal Direction auxiliary sign where access is available only to one direction of the intersected route is one of the possible mounting locations. Although not proposed in the NPA, the FHWA includes this revision in this final rule to clarify the existing provision, which was overly restrictive in that it required the display of misleading information to the road user in such situations.

170. In Section 2D.14 Combination Junction Sign, as proposed in the NPA, the FHWA deletes the second paragraph of the OPTION statement that permitted the use of other designs to accommodate State and county route signs, implying that the basic requirements for the sign, such as legend and background colors, were appropriate. In concert with this change, in the NPA the FHWA proposed to revise the first paragraph of the GUIDANCE to clarify that only the unique outline of the official route marker should be used on guide signs and not the contrasting rectangular backplate for independent mounting in a directional assembly. Rather than include this design-related information in this section, in this final rule the FHWA relocates this information to Section 2D.11, incorporating comments from an NCUTCD member to clarify the intent, providing a reference accordingly in Section 2D.14.

171. As proposed in the NPA, the FHWA adds a new section numbered and titled Section 2D.23 BEGIN Auxiliary Sign, containing OPTION, STANDARD, and GUIDANCE statements regarding the use of this new sign where a numbered route begins. The FHWA proposed this sign in the NPA based on the Sign Synthesis Study [85] that revealed that several States use an auxiliary BEGIN sign above the confirming route marker at the start of a route to provide additional helpful information to road users. To address comments from the New York State DOT, the FHWA revises the language in this final rule to allow the use of the BEGIN auxiliary sign in any route assembly, rather than just for numbered routes as proposed in the NPA.

172. In Section 2D.26 Advance Turn Arrow Auxiliary Signs (Section 2D.28 of the NPA), the FHWA adds a paragraph to the STANDARD statement and adds a corresponding GUIDANCE to reflect that the use of the curved-stem Advance Turn Arrow auxiliary (M5–3) sign on the approach to a circular intersection would be appropriate when curved-stem arrows are used on corresponding regulatory lane-use signs, Destination signs, and pavement markings. Although not proposed in the NPA, the FHWA adds this information in this final rule to provide consistency with similar provisions in Section 2D.38 that are also added in this final rule to address a comment from a State DOT suggesting if the curved-stem arrows are used, they should be used consistently for a particular destination or movement. This language will ensure consistent use of the curved-stem arrow, when used.

173. The FHWA adds a new section numbered and titled Section 2D.27 Lane Designation Auxiliary Signs (numbered Section 2D.33 in the NPA). In the NPA, the proposed section contained an OPTION statement regarding the use of these optional signs that may be used as a method to tell road users which lane

[85] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 52, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf*.

to use to access a particular numbered route and direction. In this final rule, the FHWA adds a STANDARD statement to clarify that these Lane Designation auxiliary signs shall be used only where the designated lane is a mandatory movement lane, due to road user confusion exhibited when such a message is used at locations where a lane is not a mandatory movement lane, causing unnecessary lane changes. The FHWA adopts these new signs based on the results of the Sign Synthesis Study,[86] which found that at least seven States use M6 auxiliary signs stating ''Left Lane,'' ''Center Lane,'' or ''Right Lane'' below route signs in route sign assemblies. This can be an effective, economical alternative to one or more guide signs in certain situations. The FHWA also adds an additional illustration in Figure 2D–5 to illustrate the use of these auxiliary signs.

174. In Section 2D.28 Directional Arrow Auxiliary Signs (Section 2D.26 of the 2003 MUTCD), the FHWA proposed in the NPA to add a STANDARD statement indicating that a Directional Arrow auxiliary sign that displays a double-headed arrow shall not be mounted below a route sign in advance of or at a circular intersection. The FHWA proposed this change to eliminate any possible confusion that would be created by the use of this sign in the proximity of a circular intersection, where direct left turns are not allowed. The NCUTCD and a traffic engineering consultant supported this revision. To further clarify the language, in this final rule the FHWA adopts language to indicate that a Directional Arrow auxiliary sign that displays a double-headed arrow shall not be mounted in a directional assembly in advance of or at a circular intersection.

Although not proposed in the NPA, the FHWA adds an OPTION and corresponding STANDARD to describe the optional use of the downward pointing diagonal arrow auxiliary (M6–2a) sign. The FHWA adds this language in this final rule for consistency with provisions adopted in Section 2D.46 Freeway Entrance signs.

175. In Section 2D.32 Directional Assembly (2D.34 in the NPA), the FHWA deletes the requirement that the end of a route shall be marked by a Directional assembly with an END auxiliary sign. Although not proposed in the NPA, the FHWA adopts this change in this final rule to remove a conflict with Section 2D.22, as suggested by a State DOT. In this final rule the FHWA also revises the language of Item C (numbered Item D(1) in the 2003 MUTCD) of the STANDARD statement to clarify the application of Directional assemblies where the intersected route is designated on both legs of the crossroad and adds a new item D to clarify the use of Directional assemblies where the intersected route is designated only on one of the legs. Although not proposed in the NPA, the FHWA adds this information to reduce the possibility of conflicting information being displayed to road users.

176. The FHWA adds a new section numbered and titled Section 2D.33 Combination Lane Use/Destination Overhead Guide Sign (Section 2D.35 in the NPA). In the NPA the FHWA proposed OPTION and GUIDANCE statements, as well as a figure, describing the use of these optional signs for dedicated lanes at complex intersection approaches involving multiple turn lanes and destinations. The FHWA proposed this new section, and the associated signs, based on the Sign Synthesis Study.[87] At complex intersections involving multiple turn lanes, multiple destinations, service roads, and/or various constraints often found in urban areas that can limit the ability to use a series of advance signs, many States have found it necessary to combine regulatory lane use information with destination information onto a single guide sign or sign assembly, especially to assist unfamiliar drivers in determining which lane or lanes to use for a particular destination. However, there is no consistency or uniformity in the colors used, the sign design layouts, or other aspects of these signs. A State DOT and a citizen supported this new section, while two other State DOTs and a local DOT opposed the proposed language. One of the commenters felt that the Combination Lane Use/Destination (D15–1) overhead guide sign is too large for retrofitting on span wires, and suggested a smaller sign. The FHWA disagrees with the commenters' proposed smaller sign, because it would be too small for viewing at a distance. The FHWA revises the proposed GUIDANCE statement regarding the design of the sign to a STANDARD in this final rule, to preclude conflict with other provisions for the design of guide signs and because the basic principles of guide sign design do not provide for flexibility in the sign design elements. In this final rule, the FHWA also adds that the Combination Lane Use/Destination (D15–1) overhead guide sign shall be used only where the designated lane is a mandatory movement lane (as illustrated in the corresponding figure), and shall not be used for lanes with optional movements, because such use would not be possible given the design criteria and would present a confusing message to road users. The FHWA notes that this sign is optional and adopts a uniform design for this type of sign, to provide consistency for road users.

177. Although not proposed in the NPA, in Section 2D.34 Confirming or Reassurance Assemblies (Section 2D.31 of the 2003 MUTCD), the FHWA adds to the STANDARD statement that where the Confirming or Reassurance assembly is for an alternative route, the appropriate auxiliary sign for an alternative route shall also be included in the assembly. Though not explicitly stated, this method is the only way in which to provide a correct message to a road user. The FHWA adds this requirement in this final rule to be consistent with the existing provisions of Section 2D.16.

178. In Section 2D.35 Trailblazer Assembly (Section 2D.32 of the 2003 MUTCD), the FHWA adds to the STANDARD statement that where the Trailblazer assembly is for an alternative route, the appropriate auxiliary sign for an alternative route shall also be included in the assembly. Although not proposed in the NPA, the FHWA adds this requirement in this final rule to be consistent with the existing provisions of Section 2D.16 and with the adopted changes in Section 2D.34.

In the NPA, the FHWA proposed to add a GUIDANCE statement to recommend that if shields or other similar signs are used to provide route guidance in following an auto tour route, they should be designed in accordance with the sizes and other design principles for route signs, such as those described in Sections 2D.10 through 2D.12. Although a local DOT and an NCUTCD member supported this language, another NCUTCD member suggested that this information is better suited for Section 2H.07 Auto Tour Route Signs. The FHWA agrees and in this final rule adopts and relocates this recommendation to Section 2H.07.

179. In Section 2D.36 Destination and Distance Signs (Section 2D.33 of the 2003 MUTCD), the FHWA clarifies the GUIDANCE statement to recommend a minimum height of a Route shield when used on Destination signs should be at least two times the height of the upper-case letters of the principal legend and

[86] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 53, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[87] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, pages 45–46, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

not less than 18 inches. Although not proposed in the NPA, the FHWA adopts this change, as suggested by two State DOTs, in this final rule to provide consistency with existing related provisions in Chapters 2D and 2E.

180. The FHWA adds a new section numbered and titled Section 2D.38 Destination Signs at Circular Intersections (Section 2D.40 in the NPA). In the NPA the proposed section contained STANDARD, OPTION, and SUPPORT statements, as well as figures, regarding the use of destination signs at circular intersections. In particular, the Section included information regarding Exit destination signs, and associated arrows and diagrammatic signs for roundabouts. The NCUTCD and one of its members, a State DOT, a local DOT, and a traffic engineering consultant supported this section. The State DOT suggested that the difference between the arrows used on the junction assembly and the destination signs may be confusing. To address this comment and reflect the use of the optional curved-stem arrow on destination signs, the FHWA adds a GUIDANCE statement in this final rule recommending that if they are used, they should also be used on corresponding regulatory lane-use signs, Directional assemblies, and pavement markings for a particular destination or movement. The FHWA adds this information in this final rule to facilitate consistent use of the optional curved-stem arrow, when used.

The FHWA also adds a STANDARD statement in this final rule prohibiting diagrammatic signs for circular intersections from depicting the number of lanes within the intersection circulatory roadway, or on its approaches or exits. Although not proposed in the NPA, the FHWA adds this statement in this final rule to reflect the provisions illustrated in the accompanying figures and to provide clarification due to the restoration in this final rule in Chapter 2E of the provisions for freeway and expressway diagrammatic signs (proposed for deletion in the NPA), on which the number of lanes is depicted.

181. In Section 2D.43 Street Name Signs (Section 2D.38 of the 2003 MUTCD), the FHWA proposed in the NPA to add a new OPTION statement to allow the use of a route shield on Street Name signs to assist road users who might not otherwise be able to associate the name of the street with the route number. Two State DOTs supported this new language. The FHWA adopts the OPTION for the use of these signs based on the results of the Sign Synthesis Study,[88] which showed that several agencies incorporate route shields into Street Name signs on streets that are part of a U.S., State, or county numbered route. Typically, route sign assemblies are only provided on intersecting roads that are also numbered routes, and on some very major unnumbered streets within cities. Including a route shield within the Street Name sign provides additional information for traffic on the cross streets that intersect the numbered route.

As proposed in the NPA, the FHWA adopts in this final rule a STANDARD requiring lettering for names of streets and highways on Street Name signs to composed of a combination of lower-case letters with initial upper-case letters. This requirement is consistent with the requirements adopted in Section 2A.13. As described above in the discussion of Section 2A.13 comments, several State and local DOTs opposed this requirement, while ATSSA and a citizen supported this requirement. As proposed in the NPA, the FHWA adopts in this final rule revisions to paragraphs 04 through 07 to clarify the letter heights for Street Name signs, based on the adopted use of mixed-case letters. These letter heights are based on the legibility index of 1 inch of letter height for 30 feet of viewing distance as discussed above in the General amendments to the MUTCD. While the requirement for the format and display of lettering is changed, the letter heights are unchanged from the 2003 MUTCD. ATSSA and several local DOTs supported this language, while other State and local DOTs opposed the language because they felt the letters were too large. The FHWA notes that the letter heights are based on the legibility distance for older drivers and that agencies may use narrower letter series for longer names and use reduced letter heights for auxiliary destinations (such as ''Pkwy'') to manage sign sizes.

In the NPA, the FHWA proposed to revise paragraph 13 to recommend that a pictograph used on a Street Name sign to identify a governmental jurisdiction or other government-approved institution should be positioned to the right, rather than the left, of the street name. The FHWA proposed this change because the name of the street is the primary message on the sign and the pictograph is secondary, and the primary message should be read first by being on the left. The NCUTCD, two State DOTs, three local DOTs, a transportation research institute, and a traffic engineering consultant opposed the revision and two State DOTs suggested that the pictograph should be allowed to be positioned to either the left or the right of the street name. The commenters cited the cost of replacing the signs and lack of research regarding the proposed change in pictograph location as their reasons for opposing the change. The FHWA agrees and does not adopt the proposal in this final rule, retaining the placement of the pictograph to the left of the street name, consistent with the 2003 MUTCD. Two State DOTs opposed using pictographs on Street Name signs; however, the FHWA allows their use based on the existing provisions of the 2003 MUTCD.

In the NPA, the FHWA proposed adding new OPTION, STANDARD, and GUIDANCE statements regarding the use of alternative background colors for Street Name signs where a highway agency determines that this is necessary to assist road users in determining jurisdictional orientation for roads. The FHWA proposed these new statements because, even though the background color for guide signs in general is specified as green, the MUTCD has contained a GUIDANCE statement that the background color ''should'' be green and the text has not explicitly limited the alternate colors for Street Name sign backgrounds, and as a result, there is wide variation in practice among jurisdictions. Sometimes inappropriate colors are being used that are reserved for other traffic control device messages, or the colors used have poor contrast ratio between legend and background. In the NPA, the FHWA proposed that the only acceptable alternative background colors for Street Name (D3–1 or D3–1a) signs are blue, brown, or black. To address a comment from ATSSA, a State DOT, and a traffic control device vendor, the FHWA eliminates the reference to black backgrounds in this final rule, because as a non-retroreflective background color, it is not as visible at night, especially to older drivers. ATSSA suggested that blue and brown not be allowed as background colors, because no minimum maintained levels of retroreflectivity have been established for these colors. The FHWA disagrees and allows the use of blue and brown backgrounds, as these colors are currently allowed for certain classes of guide signs and the FHWA anticipates that a future rulemaking process will propose the establishment of minimum maintained retroreflectivity levels for these colors. The FHWA adds the color

[88] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 47, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

white as a permissible background color when used with a black legend in this final rule. The FHWA adopts these revisions in this final rule to address comments from four State DOTs, four local DOTs, and a citizen that more flexibility in Street Name sign backgrounds is needed. The FHWA also adopts the OPTION that the border may be omitted on Street Name signs, as proposed in the NPA. A local DOT supported this change, while another local DOT felt that the border helps recognition and legibility. The language in the 2003 MUTCD Edition of this section implies, but does not specifically state, that the border may be omitted. The FHWA believes that the practice of eliminating the border on Street Name signs can minimize the crowding of the legend resulting from reduced edge spacing and that the recognition of the sign under nighttime conditions is accomplished primarily by the combination of the contrasting background color and legend color of the signs and their typical and expected placement at intersections. As part of the revision in this final rule that allows the use of the color white as an alternative background color on Street Name signs, the FHWA adds to the STANDARD that the legend (and border, if used) shall be black, for consistency with other provisions regarding sign legends.

182. In the NPA the FHWA proposed to add a new table numbered and titled, ''Table 2D–2 Recommended Minimum Letter Heights on Street Name Signs'' that contains information regarding the letter sizes to be used on Street Name signs based on the mounting type, road classification, and speed limit. A State DOT and two local DOTs opposed the new table, either providing comments on the specific letter heights or suggesting it be deleted in its entirety. The comments were commensurate with those related to larger letter heights and/or the use of mixed-case legends, which are discussed elsewhere. The FHWA adopts Table 2D–2 in this final rule, reflecting existing and adopted provisions in the text of Section 2D.43 and providing additional clarification by distinguishing between letter heights for the name of the street and for any supplemental lettering or auxiliary designations, such as ''Ave'' and ''St,'' consistent with the OPTION in Section 2D.43.

183. In Section 2D.44 Advance Street Name Signs (Section 2D.39 of the 2003 MUTCD), the FHWA proposed in the NPA to add a GUIDANCE statement at the end of the section recommending the order in which street names should be displayed on an Advance Street Name plaque. A State DOT and two local DOTs supported this text; however, the State DOT suggested that the language and figure illustrating the full assembly should be in Chapter 2C. The FHWA deletes this information from this Section in this final rule, as the same information is provided in Chapter 2C. Instead, the FHWA adds a SUPPORT statement providing the appropriate reference to Section 2C.58.

184. As proposed in the NPA, the FHWA relocates the information from Section 2E.49 of the 2003 MUTCD to Chapter 2D as a new section numbered and titled Section 2D.45 Signing on Conventional Roads on Approaches to Interchanges. The FHWA adopts this proposed change in this final rule because the information in this section, and the associated figures, are about guide signing on conventional road approaches to a freeway, rather than signing on the freeway itself.

In the relocated section, the FHWA also proposed to add a STANDARD statement to require, rather than merely recommend, that on multi-lane conventional road approaches to a freeway interchange, guide signs shall be provided to identify which direction of turn is to be made for ramp access and/or which specific lane to use to enter each direction of the freeway. This information is critical for drivers on a multi-lane approach to an interchange because it allows drivers to choose the proper lane in advance and reduces the need to make last-second lane changes close to the entrance ramp. ATSSA and a local DOT supported this change. A State DOT and an NCUTCD member suggested that the language be retained as a recommendation, rather than a requirement. The FHWA adopts this statement as a STANDARD because the FHWA believes that the GUIDANCE statements in the 2003 MUTCD are not strong enough for this very important need and that this signing needs to be mandatory. To address comments from the NCUTCD and three local DOTs, in this final rule the FHWA adds a SUPPORT statement referring to existing figures in which overhead signs for this purpose are illustrated.

Although not proposed in the NPA, the FHWA adds SUPPORT and STANDARD at the end of the section to describe the appropriate optional use of Advance Entrance Direction diagrammatic guide signs. The FHWA adds this information in response to a comment from a State DOT recommending that consistency in signing of freeway entrance ramps in proximity to the intersection of a frontage roadway is needed. The FHWA agrees that consistency in use of this optional sign is critical to deterring wrong-way movements at freeway entrance ramps and assisting road users in safely making any lane changes needed to enter the freeway in the correct direction.

185. In the NPA, the FHWA proposed to relocate the information from Section 2E.50 of the 2003 MUTCD to Chapter 2D as a new section numbered and titled Section 2D.46 Freeway Entrance Signs. A local DOT supported this change. The FHWA adopts this change in this final rule so that all guide signing on conventional roads at and in advance of interchanges with freeways is located in the same chapter of the Manual.

Although not proposed in the NPA, in this final rule the FHWA adds two paragraphs to the OPTION statement to describe the permitted use of alternate legends, such as PARKWAY, in place of FREEWAY and the optional use of Directional assemblies at the corner of an intersection with a freeway or expressway entrance ramp. The FHWA adopts these paragraphs to provide consistency with provisions in Sections 2D.28 and 2D.32 and flexibility in signing the immediate point of entry to a freeway or expressway to discourage wrong-way entries on adjacent exit ramps at the same intersection.

186. In Section 2D.47 Parking Area Guide Sign (Section 2D.40 of the 2003 MUTCD) the FHWA proposed in the NPA to add a new sign to be an alternative to the Parking Area directional sign. This sign incorporated a white letter P in a blue circle symbol at the top of the sign. Although the proposed sign was consistent with the widespread use of the blue background and white P as a parking wayfinding symbol throughout Europe and at many airports and institutional sites in the United States, and was supported by MISA and an NCUTCD member, the NCUTCD opposed the use of the color blue, because they were concerned that it would be confused with ''police'' signs. Because of this potential inconsistency, FHWA does not adopt this proposal in this final rule.

187. As proposed in the NPA, the FHWA relocates Sections 2D.42 Rest Area Signs, 2D.43 Scenic Area Signs, and 2D.45 General Service Signs of the 2003 MUTCD to a new chapter titled Chapter 2I General Service Signs, in order to combine information regarding similar type signs in to one chapter of the Manual. The FHWA received no substantive comments on this proposal.

188. As proposed in the NPA, the FHWA relocates Sections 2D.46 Reference Location Signs and Intermediate Reference Location Signs, 2D.47 Traffic Signal Speed Sign, 2D.48

General Information Signs, the first four paragraphs of 2D.49 Signing of Named Highways, and 2D.50 Trail Signs of the 2003 MUTCD to a new chapter titled Chapter 2H General Information Signs. The FHWA received no substantive comments on this proposal.

189. The FHWA adds a new section numbered and titled Section 2D.50 Community Wayfinding Signs (numbered Section 2D.52 in the NPA). Although the FHWA proposed adding this section in the NPA, in this final rule the FHWA reorganizes and revises its content to reflect comments from ATSSA, six State DOTs, two local DOTs, a research institute, and two citizens. The general comments about this new section included both support for the NPA proposal as written or with minor changes and opposition to community wayfinding signs in general. Commenters expressed concerns that the NPA proposal was too restrictive or that it was not detailed enough. Some commenters suggested that the information was so exhaustive that it justified a separate rulemaking activity or that community wayfinding signs need not be governed by the MUTCD. The FHWA adopts this new section with SUPPORT, STANDARD, GUIDANCE, and OPTION statements, as well as new figures illustrating typical usage, to provide practitioners with information regarding the use of community wayfinding guide signs to direct tourists and other road users to key civic, cultural, visitor, and recreational attractions and other destinations within a city or a local urbanized or downtown area.

The FHWA notes that many of the cities currently using community wayfinding signs are using different colors, design layouts, fonts, and arrows, and many of these signs are not well designed to properly serve road users. The FHWA believes that providing criteria for community wayfinding guide signing is important to address issues of legibility, placement, and excessive amounts of information displayed, and because of the extreme lack of uniformity among and proliferation of such signs. Many of the non-conforming installations have occurred without official experimentation as required by Section 1A.10. The following paragraphs in this item describe the significant differences between the proposed language in the NPA and the language adopted in this final rule.

In the NPA, the FHWA proposed recommending in a GUIDANCE statement that wayfinding signs be used only on conventional roads. Various agencies commented that community wayfinding signs are not appropriate for freeways and expressways due to the cognitive overload of information that can be displayed on this type of sign. To address these comments, the FHWA changes the proposed statement to a STANDARD in this final rule to clarify that community wayfinding guide signs shall be limited to conventional roads and not installed on freeway or expressway mainlines or ramps. For similar reasons, the FHWA also adds to the STANDARD that community wayfinding guide signs shall not be overhead-mounted. These changes are consistent with the experience gained in official experimentations that FHWA has approved to date, on which the MUTCD provisions are based, and which have only included conventional roads and post-mounted signs.

The FHWA adds a GUIDANCE statement in this final rule recommending that if used, a community wayfinding guide sign system should be established on a local, municipal, or equivalent jurisdictional level or for an urbanized area of adjoining municipalities, or equivalent, that form an identifiable geographic entity conducive to a cohesive and continuous system of signs. The FHWA adopts this recommendation because community wayfinding guide signs are not appropriate for use on a regional or statewide basis where infrequent or sparse placement does not contribute to a continuous or coordinated system of signing that is readily identifiable as such to the road user. In such cases, existing MUTCD provisions indicate that Destination or other guide signs should be used to direct road users to an identifiable area.

Although not proposed in the NPA, the FHWA adds SUPPORT and corresponding GUIDANCE statements to clarify that the provisions contained in this section apply to vehicular community wayfinding guide signs, not pedestrian wayfinding guide signs, and to provide recommendations regarding the placement of pedestrian wayfinding signs. The FHWA adopts these statements in this final rule because many jurisdictions use pedestrian wayfinding guide signs, and it is important that they not be confused with signing for vehicles because of the high potential for vehicles to reduce speed or stop unexpectedly to read signs that are not adequately sized for roadway applications and the potential to direct a motorist the wrong way on a one-way street when the message is actually intended only for pedestrians or other users of a sidewalk or roadside area.

In this final rule the FHWA revises the adopted language to clarify that color-coding of community wayfinding is an option, rather than a requirement, as implied in the NPA, and that only one boundary sign is used at each boundary crossing.

Although not proposed in the NPA, the FHWA adds information regarding the use of pictographs of the identification enhancement marker to paragraph 15, since many jurisdictions use pictographs and need regulations regarding their use. As part of this STANDARD, the FHWA expands the language adopted in this final rule to provide additional detail about the placement of color coded panels on the face of informational guide signs.

As proposed in the NPA, the FHWA adopts a prohibition on the use of red, orange, and yellow as background colors on wayfinding signs. In addition, FHWA also prohibits the use of fluorescent yellow-green and fluorescent pink as background colors for community wayfinding signs in this final rule to be consistent with existing MUTCD provisions that reserve these colors for critical Non-Vehicular Warning signs and for incident management signs.

Additionally, as proposed in the NPA the FHWA adds a GUIDANCE statement recommending that community wayfinding guide signs be rectangular in shape to prevent unusual shapes of wayfinding signs. The FHWA notes that only the identification enhancement marker may form a non-rectangular shape.

In the NPA, the FHWA proposed to allow the use of white or black horizontal lines to separate destinations from each other. In this final rule, the FHWA adopts more flexibility to the color of the separator line by allowing it to be of a contrasting color that meets the minimum contrast requirements, rather than limiting it to just black or white. As part of this change, the FHWA changes the use of this horizontal separator line from an OPTION to a GUIDANCE to encourage the use of the line to separate between groups of destinations by direction, consistent with the GUIDANCE provisions for a multi-line destination sign elsewhere in Chapter 2D.

In this final rule the FHWA adopts revised fifth STANDARDS in paragraphs 27 through 30 to provide more specificity as to the height, spacing, and style, of lettering on community wayfinding guide signs than was proposed in the NPA, consistent with official experimentations approved to date and with other changes adopted in Chapter 2D for general provisions for guide signs.

The FHWA also clarifies the STANDARD in paragraph 32 of this final rule so that the provision allowing the use of Internet and e-mail addresses applies to bicyclists that are stopped or parked out of the traffic flow, since bicyclists in the flow of traffic have the same legibility and comprehension issues as other vehicle operators. This change also is consistent with existing and adopted provisions in Section 2A.06.

Because arrows on existing wayfinding signs are often not appropriately located, the FHWA revises the language in this final rule to require, rather than recommend, arrow location and priority order of destinations, as well as arrow designs to follow specific provisions in the MUTCD. This change is consistent with official experimentations that have been approved to date and eliminates a conflict with general provisions for guide signs in Chapters 2D and 2E.

Finally, the FHWA adds a GUIDANCE in paragraph 42 at the end of the section to clarify that the area of the identification enhancement marker shall not exceed one-fifth of the area of the community wayfinding guide sign with which it is mounted in the same sign assembly. This revision is consistent with experimentation experience with this type of sign and provides consistency with general guide sign design principles and assures that the non-critical enhancement message does not overpower the more important destination messages.

The FHWA adopts this section to provide a uniform set of provisions for the designs and locations of these signs based on accepted sign design principles, to achieve consistency for road users.

190. As proposed in the NPA, the FHWA adopts in this final rule two new sections numbered and titled Section 2D.51 Truck, Passing, or Climbing Lane Signs, and Section 2D.52 Slow Vehicle Turn-Out Sign. The FHWA adopts Section 2D.51 to be consistent with the elimination of regulatory truck lane signs from Section 2B.39 (Section 2B.32 of the 2003 MUTCD). These types of signs convey guidance information, rather than regulation. The FHWA adds Section 2D.52 based on the results of the Sign Synthesis Study,[89] which found that these signs are being used by a number of States. A State DOT suggested that the Slow Vehicle Turn-Out signs should be regulatory, rather than guide signs. The FHWA disagrees (see discussion under Chapter 2B above) and adopts these signs as guide signs, as proposed in the NPA. The FHWA also adds a new Figure 2D–21 to illustrate these signs.

Discussion of Amendments Within Chapter 2E—General

191. Although not proposed in the NPA, the FHWA revises the terminology to separate ''Overhead Arrow-per-Lane'' guide signs from traditional ''diagrammatic'' guide signs to better describe the type of guide sign being used. The NCUTCD, a State DOT, a toll road operator, and a toll road operator association recommended the change and the FHWA agrees. The FHWA makes this same terminology change wherever it appears throughout the MUTCD.

Discussion of Amendments Within Chapter 2E—Specific

192. As proposed in the NPA, the FHWA adopts in this final rule a new section, numbered and titled Section 2E.09 Signing of Named Highways, with a SUPPORT statement to refer to new Sections 2D.53 and 2M.10 where appropriate information is provided about the use of highway names on signing of unnumbered highways and memorial signing of routes, bridges, or highway components.

193. In Section 2E.10 (Section 2E.09 in the 2003 MUTCD) Amount of Legend on Guide Signs, the FHWA proposed in the NPA to revise the GUIDANCE statement to state that sign legends should not exceed three lines of copy, including route numbers and exit instructions. The NCUTCD, four State DOTs, a toll agency, and an NCUTCD member opposed the use of the word ''including'' that was proposed in the NPA. The FHWA agrees that this was an inadvertent error and replaces the word ''including'' with ''excluding'' in the section adopted in this final rule, which is consistent with the provisions of Section 2D.07. The GUIDANCE statement now states that sign legends should not exceed three lines of copy, *excluding* route numbers and exit instructions.

In the NPA, the FHWA proposed new OPTION and STANDARD statements regarding the use and maximum dimensions of pictographs on freeway and expressway signs. The NCUTCD, two State DOTs, and a toll agency agreed with the use of pictographs ATSSA agreed with the proposed maximum dimensions, while two State DOTs and three toll road operators opposed the restrictions on the dimensions of the pictograph. The FHWA relocates the provisions related to pictographs to the specific sections of the Manual to which they apply in this final rule, the provisions of which are based on Official Ruling No. 2–646(I)[90]. Further, to address the comments, the FHWA provides an exception and further guidance on the size of pictographs for electronic toll collection systems whose display does not accompany a duplicate word message and relocates the statement to Section 2F.04.

194. In Section 2E.11 (Section 2E.10 in the 2003 MUTCD) Number of Signs at an Overhead Installation and Sign Spreading, a State DOT recommended modifying the existing GUIDANCE to place an Advance Guide sign on the overcrossing structure when the crossroad goes over the mainline. Although this was not proposed in the NPA, the FHWA agrees that added flexibility is needed by highway agencies and adopts in this final rule an expanded paragraph 04 to also recommend placing the Advance Guide sign directly in front of the overcrossing structure on an independent support as an alternative to placing the sign directly on the overcrossing structure.

195. In Section 2E.14 (Section 2E.13 in the 2003 MUTCD) Size and Style of Letters and Signs, the FHWA proposed in the NPA a new STANDARD which requires freeway and expressway guide signs that have standardized designs to match the sizes shown in Table 2E–1, except as noted in Section 2A.11. A State DOT and an NCUTCD member opposed the change because it prohibits the use of at least one of the State DOT's standard sizes for guide signs. The FHWA disagrees because standard signs will, by virtue of a standard design, have predictable dimensions. The FHWA adopts this section in this final rule as proposed in the NPA. The FHWA also removes the sentence in GUIDANCE paragraph 08 regarding loop height of lower-case letters and adds a comparable sentence in STANDARD paragraph 04 for consistency with requirements adopted in Section 2D.05 and to eliminate the conflict between sections 2A.13 and 2D.05.

196. In Table 2E–1 Freeway or Expressway Guide Sign and Plaque Sizes, the FHWA proposed in the NPA minimum sizes for a variety of guide signs and plaques. Based on comments from two State DOTs, the FHWA in this final rule does not adopt the proposed entries for the Interchange Advance and

[89] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 46, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[90] This Official Interpretation can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/pdf/2_646.pdf.*

Exit Direction signs because, due to the variation in the amount, size, and length of allowable legends, the sizes will vary and it is not practical to standardize this information in the table. The FHWA notes further that the information will be covered as standardized guide sign layout in the ''Standard Highway Signs and Markings'' book.

The FHWA received an anonymous comment that the information about the use of fractions on guide signs is contradictory and does not provide highway agencies with sufficient criteria for proper use, resulting in reduced legibility of sign messages. The FHWA agrees and clarifies criteria for the proper display of fractions on guide signs in this final rule and places this information in Section 2A.13 (see discussion above under that section).

197. In Section 2E.17 (Section 2E.16 in the 2003 MUTCD) Abbreviations, the FHWA adopts new GUIDANCE as proposed in the NPA, which states that periods, apostrophes, question marks, ampersands, or other punctuation or characters that are not letter or numerals should not be used on signs. A State DOT agreed with the change. Another State DOT opposed the restriction of ampersands because they are a way to shorten messages and reduce the cost of signs. As previously discussed in Section 2A.13, the FHWA disagrees and notes that ampersands are frequently confused with the numeral ''8'' and are less conspicuous than the use of the word ''AND.''

Although not proposed in the NPA, the FHWA adopts in the first GUIDANCE statement a recommendation that longer commonly used words that are not a part of a proper name and are readily recognizable should be abbreviated, to reduce the amount of information displayed on the sign and expedite recognition and processing time. The FHWA also adds a new GUIDANCE statement that a solidus is reserved for fractions only and should not be used to separate words on the same line of a legend. The FHWA makes these changes for consistency with existing recommendations on limiting the amount of legend on signs and to reflect current practice.

198. In Section 2E.19 (Section 2E.18 in the 2003 MUTCD) Arrows for Interchange Guide Signs, in the NPA the FHWA proposed to revise existing STANDARD and OPTION statements as well as add new OPTION and STANDARD statements to this section to clarify the style and placement of arrows on guide signs. Comments regarding the proposed language and the resulting language adopted in this final rule are described in the following paragraphs.

The FHWA proposed a new STANDARD in the NPA requiring down arrows on overhead signs to be positioned approximately over the center of the lane. The NCUTCD, four State DOTs, a toll road operator, a city, and a toll road operators association opposed the proposed requirements and recommended that the statements be GUIDANCE or OPTION. The FHWA disagrees and notes that non-conforming designs have been ineffectively employed in field applications, which demonstrates the need for the requirement. The FHWA adopts the new STANDARD in this final rule with editorial revisions to further clarify the new provision.

The FHWA also proposed a new STANDARD to explicitly prohibit the use of more than one down arrow on an overhead sign structure pointing to the same lane. Four State DOTs opposed the change and recommended allowing more flexibility in the application of the down arrows where an option lane is present. The FHWA disagrees with these comments because there had not been a provision in the MUTCD allowing such use and because this practice has been demonstrated to cause uncertainty to motorists on the approach to a decision point when the number of arrows displayed is greater than the number of lanes present. The Overhead Arrow-per-Lane signs adopted in Section 2E.21 have been shown to be a clearer, positive method of conveying lane use where an option lane is present at a decision point. Therefore, the FHWA adopts this new STANDARD in this final rule. Based on a comment from a State DOT, the FHWA provides a reference to the appropriate provisions for addressing the geometric conditions of an option lane.

In the NPA, the FWHA proposed the OPTION of using a directional arrow to point diagonally downward to emphasize the departure of diverging roadways. One State DOT, an NCUTCD member, and a citizen opposed this revision because of the potential for inconsistent application, the implication of a lane change, and because it would be an overall practice that is not consistent with the use of upward-pointing arrows at similar locations. The FHWA agrees and does not adopt this provision for overhead guide signs.

199. In the NPA, the FHWA proposed significant changes to Section 2E.19 of the 2003 MUTCD regarding Diagrammatic Signs. The changes proposed in the NPA included requiring a specific design for diagrammatic signs (now called the Overhead Arrow-per-Lane sign) for multi-lane exits that have an optional exit lane that also carries the through road, and for splits that include an optional lane. Several State DOTs expressed a concern that the proposed requirements were not practical in urban areas with closely spaced interchanges. The FHWA agrees and as a result adopts new and revised sections in this final rule to address provisions related to interchange signing with optional exit lanes. The resulting sections are: Section 2E.20 Signing for Splits and Multi-Lane Exits with an Option Lane, Section 2E.21 Design of Overhead Arrow-Per-Lane Guide Signs, Section 2E.22 Design of Freeway and Expressway Diagrammatic Guide Signs, and Section 2E.23 Signing for Intermediate and Minor Interchange Multi-Lane Exits with an Option Lane. These sections are discussed in the following items.

200. Section 2E.20 Signing for Option Lanes at Splits and Multi-Lane Exits, as adopted in this final rule, contains SUPPORT, STANDARD, and GUIDANCE statements regarding signing for freeway and expressway splits or multi-lane exit interchanges where an interior option lane serves two movements in which traffic can either leave the route or remain on the route, or choose either destination at a split, from the same lane. The FHWA is adopting this separate section in this final rule to provide an overview of the types of signing to be used for interchanges with optional lanes. The NPA would have required Overhead Arrow-per-Lane signs for all locations with an interior option lane. The adopted Section 2E.20 distinguishes that there are two types of signs, ''Overhead Arrow-per-Lane'' signs and ''Diagrammatic'' signs, and provides the general provisions that apply to the three Sections that follow, all of which provide for more flexibility in the signing of locations with interior option lanes. As part of this change, the FHWA relocates a STANDARD statement from Section 2E.21 as proposed in the NPA to Section 2E.20, where it is more appropriately located.

201. In Section 2E.21 Design of Overhead Arrow-per-Lane Guide Signs for Option Lanes (numbered and titled Section 2E.20 Diagrammatic Signs in the NPA), the FHWA adopts provisions for Overhead Arrow-per-Lane signs. As proposed in the NPA, the Overhead Arrow-per-Lane design features an upward arrow for each lane and is consistent with the recommendations of

the Older Driver handbook [91] and a recent study [92] that confirmed that the up arrow for each lane diagrammatic design is significantly superior to the existing diagrammatic design or enhancements thereto in terms of providing a longer decision sight distance and higher rates of road user comprehension. The FHWA believes that the Overhead Arrow-per-Lane style, including the appropriate use of EXIT ONLY sign panels, is the clearest and most effective method of displaying to road users the essential information about the proper and allowable lanes to use to reach their destinations where an ''option lane'' is used for at an exit. The existing diagrammatic sign design that attempts to illustrate optional lane use via dotted lane lines on a single arrow shaft is too subtle to be easily recognized and understood by many road users, especially older drivers. A State DOT, a city, and a citizen agreed with the sign designs as proposed in the NPA, although the State DOT questioned the required size of the arrows on the signs. The NCUTCD, 13 State DOTs, 5 toll road operators, an NCUTCD member, and a citizen opposed the required use of the Overhead Arrow-per-Lane sign and argued for the continued allowable use of the diagrammatic signs recommended in the 2003 MUTCD. Several of the commenters also recommended changing the design of the existing diagrammatic signs if retained in the MUTCD. In this final rule the FHWA adopts the new style of Overhead Arrow-per-Lane signs proposed in the NPA and also decides to retain the provisions for the existing diagrammatic sign design as an alternative to the Overhead Arrow-per-Lane signs. The FHWA also adopts a SUPPORT statement at the beginning of the section to state that the Overhead Arrow-per-Lane design has been shown to be superior to diagrammatic signs and to encourage the use of that design. The FHWA also adopts modified figures within the section to illustrate the use of both the Overhead Arrow-per-Lane and existing diagrammatic signs.

[91] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendation II.A(3).

[92] ''Evaluation of Diagrammatic Freeway Guide Signs,'' Final Report, May, 2008, conducted by Gary Golembiewski and Bryan Katz for the Traffic Control Devices Pooled Fund Study, can be viewed at the following Internet Web site: *http://www.pooledfund.org/documents/TPF-5_065/Diagrammatic_Freeway_Guide_Sign_Design_rev4_final.pdf.*

The NCUTCD, a State DOT, and a city recommended additional changes to the proposed list of design criteria in the STANDARD statement for Overhead Arrow-per-Lane signs. The FHWA agrees that additional clarification will provide uniformity in sign design and, based on the comments, the FHWA adds items G, H, and I in this final rule to clarify the design and placement of distance messages on signs, the number of lanes displayed on signs, and the use of exit plaques.

202. The FHWA adopts a new section in this final rule numbered and titled Section 2E.22 Design of Freeway and Expressway Diagrammatic Guide Signs for Option Lanes, to describe the criteria under which diagrammatic signs are allowed to be used. The FHWA adopts a SUPPORT statement at the beginning of the section recognizing that diagrammatic signs have been shown to be less effective than conventional or Overhead Arrow-per-Lane guide signs at conveying the destination or direction(s) that each approach lane serves, whether dedicated or option lanes are present. However, based on comments submitted on the NPA, the FHWA recognizes that in some cases a diagrammatic sign is most practical, and therefore adopts in this final rule criteria for their use and design based on the 2003 MUTCD provisions for diagrammatic signs.

203. The FHWA adopts a new section in this final rule numbered and titled Section 2E.23 Signing for Intermediate and Minor Interchange Multi-Lane Exits with an Option Lane, to provide recommendations on the types of signing to be used at intermediate and minor multi-lane exits where there is an operational need for the presence of an option lane for only the peak period, during which excessive queues might otherwise develop if the option lane were not present. The text proposed in the NPA (in Section 2E.19) would have required diagrammatic (now called Overhead Arrow-per-Lane) signs for these locations in a STANDARD statement and the 2003 MUTCD recommended diagrammatic signs for these locations in a GUIDANCE statement. The FHWA understands, based on past experience and comments on Section 2E.19 of the NPA, that in such cases, the Overhead Arrow-per-Lane or Diagrammatic guide signing described for option lanes in Sections 2E.21 and 2E.22 might not be practicable, depending on the need for and level of use of the option lane and the spacing of nearby interchanges, particularly in non-rural areas. The adopted provision provides flexibility and guidance on the signing for such locations where the Overhead Arrow-per-Lane or diagrammatic signs are not practicable due to various considerations.

204. In Section 2E.24 Signing for Interchange Lane Drops (Section 2E.21 of the 2003 MUTCD), the FHWA proposed in the NPA to require the use of the EXIT ONLY (down arrow) sign panel on signing of lane drops on all overhead advance guide signs for exits that do not have an ''option lane,'' and to provide design requirements for the bottom portion of Exit Direction signs. A citizen agreed with the proposed changes. Four State DOTs opposed the proposed requirements and requested that the STANDARD statements be changed to GUIDANCE or OPTION. The FHWA disagrees and notes that existing GUIDANCE has resulted in improper and ineffective methods of signing of option lanes. The FHWA believes that, for freeway splits and other interchange configurations that include a lane drop but do not involve ''option lanes,'' the use of down arrows and EXIT ONLY sign panels over each lane on the advance guide signs provide the clearest and most effective method of displaying to road users the essential information about the lane drop and about the proper lane(s) to use to reach their destinations. The FHWA also believes that the use of upward diagonal black arrows within an EXIT ONLY panel at the bottom of the Exit Direction signs for such interchanges more clearly reinforces the lane drop while still providing upward diagonal arrows in the direction of the exit. The NCUTCD, two State DOTs, a toll road operator, a toll road operators association, and a city agreed with the section, but recommended text changes. The FHWA adopts the language as proposed in the NPA in this final rule with revisions based on adopted changes to Sections 2E.22 and 2E.23 concerning the continued use of diagrammatic signs and the new Overhead Arrow-per-Lane signs.

A toll road operator opposed the proposed GUIDANCE that recommended the use of the Advance Guide sign with a distance message where the dropped lane is an auxiliary lane between successive entrance and exit ramps and the distance is less than 1 mile. The FHWA adopts a revision to paragraph 08 to clarify that the provision recommends displaying the distance in addition to the EXIT ONLY message.

205. Although not proposed in the NPA, the FHWA adopts a new section in this final rule numbered and titled Section 2E.28 Eisenhower Interstate System Signs. This section contains OPTION, GUIDANCE, and STANDARD

statements regarding the use of Eisenhower Interstate System (M1–10 and M1–10a) signs that may be used on Interstate highways at periodic intervals and in rest areas, scenic overlooks, or other similar roadside facilities on the Interstate system. This sign was adopted in an August 11, 1993 memorandum, subject ''Eisenhower Interstate System Sign,'' from the FHWA Executive Director to the Regional Federal Highway Administrators and the Federal Lands Highway Program Administrator. The sign was contained in the 2003 MUTCD by being included in a figure illustrating various guide signs and the sign design has also been in the Standard Highway Signs and Markings Book. However, there was no text in the 2003 MUTCD describing the sign or its intended use. The FHWA adds this section in this final rule to incorporate language regarding the optional use of this sign and, if used, GUIDANCE on where it should be located and a STANDARD on where it shall not be used. These provisions are consistent with adopted provisions for signing of Auto Tour Routes in Section 2H.07 and are necessary to assure that highway agencies that elect to use the sign do so properly in accordance with the 1993 FHWA direction and with adopted provisions for similar types of signs.

206. In Section 2E.31 (Section 2E.28 in the 2003 MUTCD) Interchange Exit Numbering, the FHWA proposed in the NPA to revise paragraph 02 to clarify an existing provision that if suffix letters are used for exit numbering at a multi-exit interchange, the suffix letter shall be included on the exit number plaque and shall be separated from the exit number by a space having a width of at least half of the height of the suffix letter. This will enhance the legibility of the exit number and help avoid confusion, especially between the letter ''B'' and the numeral ''8.'' This provision was included in the 2003 MUTCD requiring a space between the number and the suffix, but the width of the space was not specified, implying that the space is equal to the letter height. Three State DOTs, a city, and an NCUTCD member opposed the revision because research has not been performed to justify the new requirement and because of concerns that adding the space between the suffix letter and exit number will cause confusion, increase the size of the signs, and add expenses to agencies because of the increased wind load. The FHWA disagrees because the new provision actually modifies an existing requirement and reduces the amount of space required between the number and letter. In this final rule the FHWA adopts the provision and specifies a space width of one-half to three-quarters of the letter height. This revision should have a minimal impact on agencies because Exit Number plaque widths are commonly standardized rather than customized fit to the exact legend, therefore the revision does not introduce a new requirement that did not exist in the 2003 MUTCD. Further, a Narrow Exit Gore sign is adopted in Section 2E.37 that will ameliorate issues regarding extra sign width for the space between the exit number and the suffix on Exit Gore signs. The FHWA adopts this change in this final rule in order to provide practitioners with clearer direction on the space between the exit number and the suffix than was previously provided in the MUTCD or the Standard Highway Signs and Markings book.

In addition, the FHWA proposed in the NPA a new STANDARD to make it clear that if suffix letters are used for exit numbering, an exit of the same number without a suffix letter cannot be used. The NCUTCD, two State DOTs, a toll road operator, a local DOT, a toll road operator association, and a citizen agreed with the proposal and suggested clarifying for situations where an interchange has multiple exits in one direction, but only a single exit in the opposite direction, suggesting that the provision should allow the use of an exit number without a suffix in the direction with only one exit. The FHWA agrees and adopts the proposal in this final rule with the suggested revision.

As proposed in the NPA, the FHWA replaces an OPTION with a STANDARD stating that interchange exit numbering shall use the reference location exit numbering method and that the consecutive exit numbering method shall not be used. The FHWA adopts this change because only 8 of the 50 States still use consecutive exit numbering and, based on past public comment and inquiries, the vast majority of road users now expect reference location exit numbering. The FHWA believes that road users will be better served by nationwide uniformity of exit numbering using the reference location method. Two local agencies and ATSSA agreed. Two State DOTs, a local DOT, and a county opposed the revision and suggested reducing the statement to GUIDANCE since their experience has shown consecutive exit numbering has not compromised safety or convenience. The commenters also had concerns about a potentially large cost associated with replacing all signs along the freeway with minimal benefit. The FHWA disagrees because uniform exit numbering is important for road user navigation and for the reporting of incidents to facilitate expedient and accurate emergency response and warrants consistency across the United States. It is expected that the conversion to reference-location based exit numbering would be accomplished on a systematic route-by-route basis, as has been done in many other States that have undergone such conversions over the past several decades.

The FHWA also proposed in the NPA to change a GUIDANCE statement in the 2003 MUTCD to a STANDARD statement to require that a left exit number (E1–5bP) plaque be used at the top left edge of the sign for numbered exits to the left to alert road users that the exit is to the left, which is often not expected. This change also required that the ''LEFT'' portion of the message be black on a yellow background. A State DOT agreed with the change. Another State DOT also agreed and suggested adding an example of an optional left exit scenario with a black on yellow LEFT LANE plaque below the parent guide sign. The FHWA disagrees, as the message display suggested by that State DOT is frequently misinterpreted as an indication of a dedicated lane with a mandatory exit movement and does not promote consistency of the message for similar situations. Two State DOTs, a city, and two NCUTCD members opposed the revision because they believe that the new provisions will not add a significant improvement from the provisions for diagrammatic signs in the 2003 MUTCD and suggested reducing the statement to GUIDANCE. The FHWA disagrees because the direction of the exit is better communicated by the positive sign legend and placement of the sign over the roadway. The FHWA adopts the proposed changes in this final rule for consistency of message to drivers and for consistency with other parts of the manual regarding left-side exits.

In the NPA, the FHWA proposed a target compliance period of 10 years for the implementation of LEFT (E1–5aP) and Left Exit Number (E1–5bP) plaques at left-side exits. In this final rule the FHWA adopts a target compliance date December 31, 2014 (approximately 5 years from the effective date of this final rule) for the requirements in Sections 2E.31, 2E.33, and 2E.36 to install LEFT (E1–5aP) or Left Exit Number (E1–5bP) plaques at all existing numbered and non-numbered left exits on freeways and expressways. The FHWA adopts this target compliance date to address a recent recommendation (Safety Recommendation H–08–7) by the

National Transportation Safety Board (NTSB).[93] The NTSB developed this recommendation as a result of an imminent safety concern exhibited with left-side freeway exits. The FHWA believes that the installation of these plaques at all existing left-side exits within 5 years is necessary to achieve critical safety improvements at left-side exits and that reliance on the systematic upgrade provisions of Section 655.603(d)(1) of title 23, Code of Federal Regulations is not appropriate in this case. The installation of these plaques would generally not require replacement of the existing sign or sign supports and this change affects relatively few locations throughout the country. The FHWA anticipates that installation of the required plaques at existing locations will provide significant safety benefits to road users.

207. In Section 2E.33 (Section 2E.30 in the 2003 MUTCD) Advance Guide Signs and in Section 2E.36 (Section 2E.32 in the 2003 MUTCD) Exit Direction Signs, the FHWA proposed in the NPA to add a STANDARD statement to require that a left exit number (E1–5bP) plaque be used at the top left edge of the sign for numbered exits to the left and that a LEFT (E1–5aP) plaque be added to the top left edge of the sign for non-numbered exits to the left. In this final rule the FHWA adopts this proposed statement to be consistent with the changes in Section 2E.31. A State DOT suggested reducing the statement to GUIDANCE because they believe it is not necessary to have the LEFT plaque in all cases. The FHWA disagrees because the suggestion would not provide a consistent, uniform message to road users. An NCUTCD member suggested changing the plaque message to LEFT EXIT instead of LEFT. The FHWA disagrees as non-numbered exits contain the word EXIT within the distance message and the word EXIT on the plaque would be redundant. As noted above in item 206, the FHWA also adopts a target compliance date of December 31, 2014 for the requirements for E1–5aP and E1–5bP plaques at left-side exits.

The NCUTCD, a State DOT, a toll road operator, and a toll road operator association suggested deleting paragraph 06 regarding the use of Advance Guide signs for multi-lane exits because the information is contained in other locations in Chapter 2E. The FHWA disagrees because the provision pertains specifically to Advance Guide signs. A State DOT suggested changing the statement to GUIDANCE. Another State DOT opposed the revision because Section 2E.33 states that diagrammatic signs can serve as Advance Guide signs. The FHWA disagrees with the commenters because uniformity in the display of messages regarding multi-lane exits is critical and the FHWA adopts the language as proposed in the NPA in this final rule.

208. The FHWA relocates the OPTION and STANDARD statements regarding the use of pictographs as proposed in Section 2E.10 of the NPA to Section 2E.35 (Section 2E.32 in the 2003 MUTCD) Other Supplemental Guide Signs in this final rule. As part of this change, the FHWA clarifies the provisions for the display of pictographs in this final rule. See Section 2E.10 discussion above for additional information.

209. In Section 2E.36 (Section 2E.33 in the 2003 MUTCD) Exit Direction Signs, the FHWA proposed in the NPA to revise the second STANDARD statement to clarify the appropriate signing for exits where a through lane is being terminated and for multi-lane exits having an optional exit lane that also carries the through route or for a split with an option lane. The NCUTCD suggested replacing Figures 2E–5, 2E–6, and 2E–8 through 2E–10 with alternate Figures provided in their comment and updating the corresponding references in this section. A State DOT suggested deleting references to Figures 2E–5 and 2E–6 because the Overhead Arrow-per-Lane signs must be placed at the point of divergence of the outside lane and not at the theoretical gore. Another State DOT also suggested revising the text to require Exit Direction signs overhead at the theoretical gore where there is a through lane being terminated and to require a diagrammatic sign near the point where the outside edge of the dropped lane begins to diverge from the mainline where there is a multi-lane exit with an optional exit lane. A State DOT and a toll road operator suggested changing the STANDARD statements to GUIDANCE. A State DOT opposed the revisions. The FHWA agrees with the comment regarding the inaccurate reference to the figures and references the appropriate figures in this final rule. The FHWA disagrees with changing the STANDARD statements to GUIDANCE and adopts the provisions as proposed in the NPA to promote uniformity in the application of signing at similar locations and to be consistent with other changes in the Manual regarding Overhead Arrow-per-Lane diagrammatic signs and plaques for exits.

A State DOT suggested changing paragraph 10 regarding the use of the LEFT plaque at non-numbered exits from STANDARD to GUIDANCE. The FHWA disagrees with the comment because it would conflict with similar provisions adopted in Section 2E.31 requiring the use of the left exit number plaque and is necessary for consistency in sign legends. In this final rule the FHWA adopts the requirements for E1–5aP or E1–5bP plaques at left-side exits. As noted above in item 206, the FHWA also adopts a target compliance date of December 31, 2014 for the requirements for E1–5aP and E1–5bP plaques at left-side exits.

Finally, the FHWA adopts the OPTION, as proposed in the NPA, to permit the use of an EXIT XX MPH (E13–2) sign panel at the bottom of the Exit Direction sign to supplement, but not to replace, the exit or ramp advisory speed warning signs where extra emphasis of an especially low advisory ramp speed is needed. This may be done by adding an EXIT XX MPH (E13–2) sign panel to the face of the Exit Direction sign near the bottom of the sign or by making the EXIT XX MPH message a part of the Exit Direction sign. The Sign Synthesis Study[94] found that at least four States have found it necessary to use similar advisory speed panels with Exit Direction signs to provide even more advance notice and emphasis of a very low ramp speed, typically because of curvature. The NCUTCD, a State DOT, a toll road operator, and a toll road operator association agreed and suggested text revisions to eliminate repetitive wording. The FHWA agrees with the suggested revision and rewords the provision to simplify and eliminate redundant language.

210. In Section 2E.37 (Section 2E.34 in the 2003 MUTCD) Exit Gore Signs, the FHWA adopts the revision to the STANDARD statement, as proposed in the NPA, to clarify that the space between the exit number and the suffix letter on an Exit Gore Sign shall be the width of one-half to three-quarters of the height of the suffix letter. This change correlates to a similar change in Section 2E.31 Interchange Exit Numbering.

The FHWA also adopts an additional paragraph in the OPTION statement, as proposed in the NPA, allowing the use of Type 1 object markers on sign supports below the Exit Gore sign to improve the visibility of the gore for exiting drivers. The FHWA adopts this

[93] NTSB Safety Recommendation H–08–7 is contained within NTSB's letter dated August 18, 2008, which can be viewed at the following Internet Web site: *http://www.ntsb.gov/recs/letters/2008/H08_3_7.pdf.*

[94] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 51, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

based on recommendations from the Older Driver handbook.[95] A city and ATSSA agreed. A toll road operator opposed the revision because they believe that the object marker will not serve a useful purpose and will add to sign clutter. The FHWA disagrees because the object markers serve to visually tie the sign to the ground, which enhances nighttime visibility and depth perception of the physical gore.

Finally, as proposed in the NPA, the FHWA adopts an OPTION paragraph allowing the use of a vertical rectangular shaped Exit Gore sign for certain narrow gore areas an OPTION paragraph allowing the use of an Exit Number (E5–1bP) plaque above existing Exit Gore (E5–1) signs only when non-numbered exits are converted to numbered exits, and a STANDARD paragraph requiring the use of the Exit Gore (E5–1a) sign for a numbered exit when replacement of existing assemblies of the E5–1 and E5–1bP signs becomes necessary. The FHWA adopts these changes in this final rule to provide for more uniform design of Exit Gore signs. An NCUTCD member noted that the E5–1a sign is prohibited based on text elsewhere in Chapter 2E and Table 2E–1. The FHWA disagrees because an OPTION is provided in this Section for a vertically arranged Exit Gore sign and the FHWA adds the standard sizes for these signs into Table 2E–1 in this final rule for clarification. A State DOT suggested allowing a narrow version of the E5–1a sign at non-numbered exits. The FHWA disagrees because the E5–1a unnumbered Exit Gore signs are 6 feet wide, which should fit in most narrow gore situations and because in this final rule the FHWA also provides an OPTION allowing the mounting height of any Exit Gore sign to be 14 feet or more to address narrow gore situations.

211. In Section 2E.40 (Section 2E.37 in the 2003 MUTCD) Interchange Sequence Signs, a toll road operator opposed the proposed revisions to the STANDARD in the NPA regarding the LEFT EXIT or LEFT sign panel use where the exit direction is to the left. The commenter was concerned that left exits create driver expectancy issues and should therefore warrant individual guide sign panels from the one mile advanced sign through the exit direction assembly. The FHWA disagrees because the LEFT or LEFT EXIT message addresses the expectancy issues raised by the commenter. The FHWA adopts a revised provision in this final rule to retain the LEFT sign panel, but does not adopt the LEFT EXIT sign panel, because the intended use of both sign panels is identical and allowing two different messages for the same purpose does not promote uniformity in sign legends.

212. In Section 2E.44 (Section 2E.41 in the 2003 MUTCD) Freeway-to-Freeway Interchange, the FHWA proposed to add a STANDARD statement in the NPA requiring the use of the left exit number plaque at splits where the off-route movement is to the left. The NCUTCD, two State DOTs, a local DOT, and two toll road operators supported this requirement, while two State DOTs opposed it. One of the State DOTs stated that there is not enough justification for doing so, and that the practice of installing exit panels left justified for left exits and right justified for right exits is meant to orient motorists to the lane they will use to exit. The FHWA disagrees with the comment because left-side exits continue to violate driver expectancy and just placing the exit number plaques on the left is too subtle and does not convey a positive message to the motorist. The FHWA also adopts provisions in this section requiring the use the use of Overhead Arrow-per-Lane or diagrammatic signs for freeway splits with an option lane and for multi-lane freeway-to-freeway exits having an option lane, consistent with provisions adopted for Sections 2E.20 through 2E.22. The NCUTCD, a State DOT, and two agencies that operate toll facilities felt that this requirement duplicates language elsewhere in Chapter 2E and therefore should be removed from this section. The FHWA disagrees with the comment and includes the language in this section because the provision applies to the specific geometric condition and interchange type described in this section. A local DOT supported this requirement, while two State DOTs felt that the use of diagrammatic signs should be a recommendation, rather than a requirement. The FHWA disagrees and adopts the proposed changes to be consistent with other adopted changes in the Manual regarding signing for option lanes.

213. In Section 2E.48 (Section 2E.45 in the 2003 MUTCD) Diamond Interchange, the FHWA adopts the proposed removal of the second sentence of the first STANDARD statement regarding the prohibition of cardinal initials on exit numbers. This sentence is not applicable for a diamond interchange, because it has a single exit ramp. Section 2E.31 Interchange Exit Numbering already contains a prohibition on the use of cardinal directions as the suffix of exit numbers. The FHWA also rewords the STANDARD statement to clarify that the singular message EXIT shall be used as a part of either the distance message or the exit number plaque on the Advance Guide signs for non-numbered exits. This revision is made to clarify the specific application of the existing STANDARD.

214. As proposed in the NPA, the FHWA moves the information from Section 2E.52 (Section 2E.49 in the 2003 MUTCD) Signing on Conventional Road Approaches and Connecting Roadways to Section 2D.45 in this final rule, and leaves a SUPPORT statement to refer readers to the appropriate section. The FHWA adopts this change because the section and figures are about guide signing on conventional road approaches to a freeway, and therefore, are more appropriate for Chapter 2D.

215. The FHWA moves a majority of the information from Section 2E.53 (Section 2E.50 in the 2003 MUTCD) Wrong-Way Traffic Control at Interchange Ramps to Section 2B.41, as proposed in the NPA, and leaves a SUPPORT statement to refer readers to the appropriate section. The FHWA adopts this change in this final rule because the section and figure relate more to regulatory signs than guide signs, and therefore, are more appropriate for Chapter 2B.

The FHWA also adds a reference in this final rule to Section 2D.46 on the use of guide signs and Directional assemblies to mark the point of entry to a freeway or expressway. Although not proposed in the NPA, the FHWA adds this reference in this final rule to assist users of the Manual by providing additional information related to freeway and expressway entrance ramp signing.

216. As proposed in the NPA, the FHWA relocates Sections 2E.51 General Service Signs, 2E.52 Rest and Scenic Area Signs, 2E.53 Tourist Information and Welcome Center Signs, 2E.56 Radio Information Signing, and 2E.57 Carpool and Rideshare Signing (as numbered in the 2003 MUTCD) to a new Chapter in this final rule titled Chapter 2I General Service Signs (numbered 2F in the NPA).

217. As proposed in the NPA, the FHWA relocates Sections 2E.54 Reference Location Signs and Enhanced Reference Location Signs and 2E.55 Miscellaneous Guide Signs (as numbered in the 2003 MUTCD) to a new Chapter in this final rule titled Chapter 2H General Information Signs (numbered 2I in the NPA).

[95] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendation II.A(4b).

Discussion of Amendments Within Chapter 2F—Toll Road Signs—General

218. In this final rule, the FHWA adopts a new chapter numbered and titled, Chapter 2F Toll Road Signs. Although not proposed as a separate chapter in the NPA, this new chapter consolidates information proposed in the NPA related to toll road signing to address comments from practitioners that a separate chapter on toll road signing would be helpful.

219. In several sections of the NPA, the FHWA proposed adding a new symbol to denote that a toll facility's ETC payment system is nationally interoperable with all other ETC payment systems. The NCUTCD and a State DOT opposed this new symbol, because they felt that it is premature to address interoperability, especially with an untested symbol. Since efforts to achieve this interoperability have not made as much progress as previously anticipated, the FHWA does not adopt in this final rule the proposed interoperable symbol or requirements for its use.

Discussion of Amendments Within Chapter 2F—Toll Road Signs—Specific

220. In this final rule the FHWA adopts a new section, Section 2F.01 Scope, to respond to comments suggesting that toll road and managed lane signing be separated in the MUTCD. This new section includes a SUPPORT statement that clarifies that Chapter 2F applies to a route or facility on which all lanes are tolled, while Chapter 2G applies to the signing of managed lanes within an otherwise non-toll facility that employs tolling or pricing as an operational strategy to manage congestion levels, and to explain the scope of Chapter 2F in relation to other signing provisions elsewhere in Part 2. In this section, the FHWA also includes a STANDARD statement that, except where specifically indicated in this chapter, the provisions of other chapters in Part 2 shall apply to toll roads. The FHWA adopts this STANDARD to reflect the relocation of this material from Chapter 2E, as suggested by commenters who wanted a separate chapter for toll roads.

221. In Section 2F.02 Sizes of Toll Road Signs, the FHWA adopts STANDARD, SUPPORT, and OPTION statements referring to Section 2A.11 and Table 2F–1 in the MUTCD for information on sign sizes. Although not proposed as a separate section in the NPA, the FHWA adopts this consolidation of information from Chapters 2B, 2C, 2D, and 2E of the NPA into one section to provide uniformity in sign sizes.

222. The FHWA adds a new section in this final rule numbered and titled Section 2F.03 Use of Purple Backgrounds and Underlay Panels with ETC Account Pictographs. The FHWA adds this STANDARD and SUPPORT information to assure consistency with adopted requirements regarding the use of the color purple on signs as contained in Sections 1A.12, 2A.10, 2F.12, and 2F.16.

223. The FHWA adds a new section in this final rule numbered and titled Section 2F.04 Size of ETC Pictographs. The FHWA adds this STANDARD and GUIDANCE information to assure consistency with adopted requirements and recommendations regarding pictographs in Chapter 2A and in Section 2F.15 and to provide for adequate conspicuity and legibility of ETC pictographs on the approaches to toll plazas, where this information is critical.

224. The FHWA adopts in this final rule a new section numbered and titled Section 2F.05 Regulatory Signs for Toll Plazas. In the NPA, the FHWA proposed to number this Section 2B.31; however, the section number changes due to the reorganization of information in this final rule. The FHWA adopts this section to provide consistency and uniformity in signing practices for these types of facilities, which are becoming increasingly common and for which uniform signing provisions were not provided in the 2003 MUTCD.

In the NPA, the FHWA proposed GUIDANCE and OPTION statements regarding the recommended placement of optional Toll Rate Schedule signs in the vicinity of toll plazas. A local DOT suggested that the name of the sign be changed to ''Toll Rate sign,'' omitting the word ''schedule,'' because some toll road operators vary the toll amount by time of day. The FHWA agrees and revises the name of the sign to ''Toll Rate sign'' in this final rule. Three State DOTs and five toll road operators opposed the recommended sign placement (100 to 200 feet in advance of the toll plaza), suggesting that toll road operators need more flexibility to place the signs in a location where they can be easily read and understood by road users. One commenter suggested that the site characteristics of toll plazas vary so widely that a universal distance requirement for this sign may create unnecessary complications for some toll facilities, and could lead to the sign being placed in a less than desirable location. To address these comments, the FHWA adopts revised GUIDANCE in this final rule to recommend that the signs be placed between the toll plaza and the first advance sign informing traffic of the toll plaza. This revised language allows the information to be outside the immediate influence of the toll plaza area, at which driver attention is more appropriately focused on signs designating the appropriate lanes based on payment method, and there is often little space available for additional signing. In the NPA, the FHWA proposed recommending that the Toll Rate sign be limited to three lines of text. Three State DOTs and three toll road operators opposed the recommended limit of three lines of text because there are several methods that a toll agency can use in assessing rates, and that often requires more than three lines of text. The FHWA adopts the recommended limit of three lines of text in this final rule because it is consistent with existing provisions in the MUTCD regarding the number of lines of legend that are based on the maximum information load that a road user approaching a sign can read and process. To address the need to provide more detailed information, the FHWA also adds an OPTION in this final rule allowing the use of a more detailed toll rate schedule at attended toll booths where vehicles must stop to pay the toll.

225. The FHWA adopts in this final rule a new section numbered and titled Section 2F.06 Pay Toll Advance Warning Sign (numbered and titled in the NPA as Section 2C.44 Stop Ahead Pay Toll Sign). The FHWA revises the title of the section in this final rule to reflect the revised sign legend, based on comments as discussed herein. ATSSA, a toll road operator, and a local DOT supported the signs and their design, as proposed in the NPA. The NCUTCD, a State DOT, and nine toll road operators suggested that the proposed wording be changed to delete the words ''STOP AHEAD'' from the sign and its application, because the message ''Stop Ahead'' is not appropriate in advance of locations with ETC capabilities and because these advance signs are located at 1 mile and ½ mile in advance of the location where some or all lanes are required to stop at a toll plaza. The commenters also suggested that there be more flexibility in the wording of the sign. The FHWA agrees that STOP AHEAD is not appropriate on these advance signs that are so far from the condition requiring traffic to stop and modifies the design of the sign and the text in the section adopted in this final rule to reflect that this is a Pay Toll Advance Warning sign. However, as discussed below under Sections 2F.08 and 2F.09, the FHWA adopts similar

signs and plaques that do bear the words ''STOP AHEAD'', for use closer to the toll plaza than ½ mile.

Except for suggesting the words ''STOP AHEAD'' be removed, as discussed above, the NCUTCD supported the W9–6 sign as proposed in the NPA and shown in proposed Figure 2C–9, but suggested that the W9–6P plaque be removed. A State DOT suggested that the signs and plaques be black text on a white background instead of on a yellow background, because payment is a requirement and is enforceable on toll facilities. The FHWA disagrees with both commenters, retaining the W9–6P plaque (and adopting a new Section 2F.07 in this final rule describing its use) and the yellow background color of the signs and plaques as proposed in the NPA, but reflecting the change of the sign text and plaque to Pay Toll Advance Warning. These signs and plaques are in advance of the toll collection point and are therefore warning, not regulatory. Three toll road operators commented on the proposed recommendations for advance placement of the signs. Although one of the commenters supported the proposed language, the other two suggested that there needed to be more flexibility, based on volumes of traffic and whether or not the lanes accepted cash payment. The FHWA notes that the placement of the signs is GUIDANCE, which allows adjustment in the location placement. The FHWA adopts this section regarding the use of these new signs on toll facilities to provide for consistency and uniformity of signing for messages and to implement the signing portions of FHWA's ''Toll Plaza Traffic Control Devices Policy.'' [96]

226. The FHWA adopts a new section numbered and titled Section 2F.07 Pay Toll Advance Warning Plaque (numbered and titled in the NPA as Section 2C.69 Stop Ahead Pay Toll Plaque). The FHWA revises the title of the section it adopts in this final rule to reflect a revised plaque legend, adopted in response to comments, as discussed above under Section 2F.06. In the NPA, the FHWA proposed including ''Stop Ahead'' on the Pay Toll plaque, however, similar to Section 2F.06, the FHWA removes ''Stop Ahead'' in this final rule to address comments from two toll road operators and a State DOT who suggested that message ''Stop Ahead'' is not appropriate in advance of locations with ETC capabilities.

Although not proposed in the NPA, the FHWA adds a requirement that the legend PAY TOLL be replaced with a suitable legend such as TAKE TICKET for toll plazas where road users entering a toll-ticket facility are issued a toll ticket. The FHWA adopts this change in this final rule based on comments from toll road operators on the need to provide an appropriate sign legend that will accommodate toll-ticket facilities.

Finally, the FHWA adopts an OPTION at the end of the section allowing the toll for passenger or 2-axle vehicles to be omitted from the W9–6P plaque if the toll information is displayed on the guide sign that the plaque accompanies. Although not proposed in the NPA, the FHWA adds this OPTION to address a comment from a toll road operator suggesting that incorporating a changeable message element into the W9–6P plaque should not be required if the information can be displayed on the accompanying guide sign. The FHWA adopts the use of this plaque to provide for consistency and uniformity of signing for these messages and to implement the signing portions of FHWA's ''Toll Plaza Traffic Control Devices Policy.'' [97]

227. The FHWA adopts in this final rule two new sections numbered and titled Section 2F.08 Stop Ahead Pay Toll Warning Sign, and Section 2F.09 Stop Ahead Pay Toll Warning Plaque. As discussed above under Section 2F.06, the FHWA adopts this sign and plaque for use at locations less than ½ mile in advance of mainline toll plazas, and adopts these new sections to clarify their use.

228. The FHWA adopts a new section numbered and titled Section 2F.10 LAST EXIT BEFORE TOLL Warning Plaque (numbered section 2C.68 in the NPA). This section describes the use of this new plaque, as proposed in the NPA. ATSSA and a toll road operator supported this new plaque. Two State DOTs, a toll road operator, and an NCUTCD member suggested that alternate messages, such as LAST FREE EXIT be allowed on the sign. The FHWA declines to change the message on the plaque, because the message LAST FREE EXIT could be misinterpreted to mean that the limited access roadway was ending or that it is the last exit off the route. To maintain uniformity in the messages, the FHWA adopts the plaque as proposed in the NPA, in this final rule.

229. The FHWA adopts a new section numbered and titled Section 2F.11 Toll Auxiliary Sign (Section 2D.25 in the NPA) to require the use of this sign above the route sign of a numbered toll facility, in any route sign assembly providing directions from a non-toll highway to the toll facility or to a segment of a highway on which the payment of a toll is required. The Signs Synthesis Study [98] found that some States are using these signs to provide road users useful information that a numbered route is a toll facility. The proposed section was supported in concept by most commenters, but the NCUTCD and some toll facility operators suggested that provision should be included to allow the continued use of unique toll facility route shield designs that incorporate the word ''TOLL'' into the route shield itself, rather than as an auxiliary sign, and that pictographs be allowed in the TOLL auxiliary sign. The FHWA disagrees because a very wide variety of unique toll route shield designs are currently in use, and many do not conform to basic principles of sign design. Further, the TOLL sign is an auxiliary sign, not a route marker, and therefore the incorporation of a pictograph is not appropriate. The FHWA believes that uniformity in the display of similar messages is important for directional guidance and adopts a uniform provision for notifying road users of a toll route.

In the NPA, the M4–15 sign was proposed with black legend on a white background, similar to other auxiliary signs, such as cardinal directions, JCT, BYPASS, etc., that are used with route signs. Because this particular auxiliary sign is different in function from others, in that it also serves to provide a warning to road users that the route is a toll road, the FHWA believes that a black legend on a yellow background is appropriate for this sign. The FHWA received comments from several toll road operators expressing concerns that a white background is needed to make this a regulatory sign in order to enforce the requirement to pay the toll. The FHWA disagrees with those comments in relation to this particular auxiliary sign because there are many other signs associated with toll payment on a toll road that are designed as black-on-white regulatory signs or plaques and thereby enable enforcement. The FHWA adopts in this final rule this auxiliary sign with

[96] ''Policy on Traffic Control Strategies for Toll Plazas,'' dated October 12, 2006 can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/policy/tcstollmemo/tcstoll_policy.htm.*

[97] ''Toll Plaza Traffic Control Devices Policy,'' dated September 8, 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/policy/tcstollmemo/tcstoll_policy.htm.*

[98] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 52, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

a yellow background and includes comparable text on this sign in Section 2F.13.

In the NPA, the FHWA also proposed to require the use of the TOLL (M4–15) auxiliary sign above all route signs of a numbered toll facility when a parallel or nearby free facility has the same route number. However, it was not the FHWA's intent to endorse the practice of duplicate route numbering for non-toll and toll routes, because it could not be consistently applied as an alternate route. The FHWA does not believe that such a non-uniform practice is helpful in road user guidance and navigation. As a result, the FHWA does not adopt this requirement in this final rule. This is different from the practice of assigning alternative routes, such as business, truck, or bypass designations on different alignments where there is always a primary numbered route, which is acceptable.

230. The FHWA adopts a new section numbered and titled Section 2F.12 Electronic Toll Collection (ETC) Account-Only Auxiliary Signs (Section 2D.26 in the NPA). The FHWA proposed these auxiliary signs in the NPA to complement and be consistent with signs in this chapter and in Chapter 2G that inform road users that a highway is restricted to use only by vehicles having a registered ETC payment account. Two toll road operators supported this new section. The NCUTCD and a State DOT suggested that the word ONLY be omitted when an ETC facility accepts multiple ETC payment systems. The FHWA disagrees, because the intent is to notify road users that only vehicles that have registered toll accounts can use the highway, and includes the word ONLY in the section adopted in this final rule.

As proposed in the NPA, the FHWA adopts in this final rule an option to use the NO CASH auxiliary sign in a route sign assembly directly below the ETC Account-Only auxiliary sign. The NCUTCD opposed this option because of confusion that can result at toll plazas where lanes are segregated by different payment methods; however, the FHWA retains the OPTION in this final rule because the application of this sign is not for toll plazas and the FHWA believes that the option of a NO CASH message might be helpful at the entry point to a toll road to inform road users in areas where ETC is not well established.

231. The FHWA adopts a new section numbered and titled Section 2F.13 Toll Facility and Toll Plaza Guide Signs—General (Section 2E.55 in the NPA). In the NPA, the FHWA proposed to adopt new symbols to denote exact change and attended lanes and proposed to require their use in toll plaza signing. The FHWA believed that symbols for these messages would help road users to more quickly identify the proper lane(s) to choose for the type of toll payment they will use. The proposed symbols were similar to those already in use for these purposes on some toll facilities in the U.S. The NCUTCD, two State DOTs, a local DOT, and four toll road operators opposed the requirement to use the proposed symbols because of their belief that the symbols had not been adequately tested and would not convey a clear, simple message at freeway speed. The FHWA adopts the symbols in this final rule, but agrees that the use of these symbols should not be required at this time, and therefore adopts an OPTION to use the symbols. As part of this change in this final rule, the FHWA adopts requirements to use word messages such as FULL SERVICE, CASH, CHANGE, or RECEIPTS on signs for attended lanes at toll plazas, and to use the word message EXACT CHANGE and the amount of the toll for passenger vehicles on signs for Exact Change lanes at toll plazas. The FHWA refines the designs and enlarges the minimum size of the symbols to enhance their legibility when used with accompanying word legends, and adds clarifying language in this final rule to indicate that these symbols are to be used only as panels within guide signs that accompany the required word messages, not as an independent sign or within a sign assembly.

ATSSA and a toll road operator supported the standardization of placement of signing for ETC facilities. Three State DOTs and nine toll road operators opposed some of the details that FHWA proposed in the NPA, particularly those related to the proposed ETC (pictograph) ONLY—NO CASH (R3–16) regulatory lane-use sign. Most of the commenters opposed the use of the term ''NO CASH'' because they felt that it might be misinterpreted to mean that payment may be made by other means, such as credit card, ticket, or video. To address these comments, in this final rule the FHWA revises the sign design, deleting the NO CASH text, and adopts this sign as a guide sign, rather than a regulatory sign.

In the NPA, the FHWA proposed requirements for the design of signs to be used on lanes or facilities that are open only to use by ETC device-equipped vehicles. Two State DOTs and two toll road operators opposed the language. One State DOT opposed the requirement to use a purple background, while the other commenters opposed using the word ''ONLY,'' unless there is only one accepted ETC system. The FHWA adopts the use of the color purple, because the intent is to use purple as an identifier of a requirement for vehicles to have a registered ETC account. However, to address the concerns of the commenter, the FHWA revises the requirements in this final rule to accommodate ETC pictographs whose predominant background color is purple. The FHWA retains the word ONLY because the word is intended to identify that the facility excludes vehicles without registered ETC accounts. To address the concerns expressed by the commenters, the FHWA adopts an OPTION allowing agencies to display information on a separate sign notifying road users that the facility will accept payments from other systems' transponders or devices in addition to its primary ETC-device payment system.

Although not proposed in the NPA, the FHWA adopts a STANDARD at the end of the section requiring signing to conform to the provisions of paragraphs 04 and 05 of this section for entrances to toll highways where ETC is employed only through license plate character recognition, such that road users are not required to establish a registered toll account, and thus any vehicle can use the facility without restriction. The FHWA adds this requirement to assure that the color purple and the provisions associated with signing where a registered ETC account is required are limited to facilities that are not unrestricted and are not misused on toll facilities where any vehicle can use the facility, consistent with adopted STANDARDS regarding the color purple in Section 1A.12 and 2F.03.

232. As proposed in the NPA, the FHWA adopts a new section numbered and titled Section 2F.14 Advance Signs for Conventional Toll Plazas (Section 2E.56 in the NPA) as proposed in the NPA. The NCUTCD and three toll road operators supported the NPA language. One toll road operator suggested changing the proposed text in this section from GUIDANCE to OPTION. The FHWA disagrees, and adopts the text as GUIDANCE because there is sufficient flexibility in the GUIDANCE statements to address special situations. Another toll road operator suggested that the proposed recommended use of overhead signs is most pertinent to mainline toll plazas, and that additional language was needed regarding signing for ramps. The FHWA disagrees that additional information is needed, because signing for ramps is already included in the provision, as proposed in the NPA. Three toll road operators

opposed the language regarding placement distances for guide signs with lane information for the toll payment types, suggesting that the recommended distances were not appropriate. The FHWA disagrees because a minimum distance is given and is adequately qualified as being related to the approach geometry and visibility of the toll plaza canopy signs. The FHWA adopts the language in this final rule, as proposed in the NPA.

233. The FHWA adopts a new section numbered and titled Section 2F.15 Advance Signs for Toll Plazas on Diverging Alignments from Open-Road ETC Account-Only Lanes (Section 2E.57 in the NPA). Three toll road operators supported the intent of the guidance language in this section; however, they provided comments reflecting their own experience. The significant comments are discussed herein. In the NPA, the FHWA proposed to recommend that the ETC (pictograph) ONLY—NO CASH (R3–16) regulatory sign with a downward pointing arrow over the center of each lane that will become an Open-Road ETC lane be installed 1 mile and 0.5 miles in advance of the point where a separate alignment leading to the toll plaza diverges from mainline-aligned Open-Road ETC Account-Only lanes. Two toll road operators suggested that down arrows may be inappropriate at the one mile location depending on lane arrangement and traffic volume. In addition, they suggested that down arrows convey a more forceful and definitive message that action should be taken by the driver at that location. The commenters felt that one mile may be too far in advance of the plaza to begin traffic separation by payment method. The FHWA disagrees, because positive communication of lane use information is necessary for efficient segregation of traffic on the approach to an Open-Road ETC/toll plaza bifurcation, just as it is for any other major bifurcation or split. Since these provisions are recommendations, there is sufficient flexibility to use diagrammatic signing (as one toll road operator suggested) or Arrow-per-Lane signs as adopted in Chapter 2E, and there is no restriction on posting a distance message to convey the distance over which the lane changes can be made. As a result, the FHWA adopts in this final rule the language as proposed in the NPA.

In the NPA, the FHWA proposed recommending an additional set of overhead advance signs with lane information for the toll payment types 800 feet in advance of the toll plaza. Two toll road operators opposed this recommendation because the provisions already include three sets of guide signs in advance of the plaza, and locating a fourth set close to the plaza would interfere with the visibility of canopy signing. The FHWA disagrees because the mainline signing typically has far fewer lanes in which to display lane-specific information as it relates to the toll plaza lanes. Because this provision is guidance, deviations based on geometric constraints in which the distance specified is not available can be made. The FHWA adopts the provision in this final rule as proposed in the NPA. The FHWA notes that the recommendation suggests that these signs be placed at a location that avoids or minimizes any obstruction of the toll plaza canopy signs and lane-use control signals, as proposed in the NPA.

234. The FHWA adopts a new section numbered and titled Section 2F.16 Toll Plaza Canopy Signs (numbered Section 2E.58 in the NPA). This section contains STANDARD, OPTION, and SUPPORT statements regarding signs over the center of the lanes on the toll canopy, display of the toll fee, and lane-use control signals. A toll road operator supported the provisions as proposed in the NPA. Several other toll road operators submitted comments opposed to the language or recommending specific changes.

In the NPA, the FHWA proposed a requirement to provide a sign above the center of each lane that is not an Open-Road ETC Account-Only lane, mounted on or suspended from the toll plaza canopy, or on a separate structure immediately in advance of the plaza, indicating the payment type(s) accepted in the lane and any restrictions or prohibitions of certain types of vehicles that apply to the lane. A State DOT suggested that requiring a sign above the center of each lane that is not an Open-Road ETC Account-Only lane was excessive, and that their experience showed that signs on the columns over ETC lanes have been very successful. The FHWA disagrees, because signs on the columns or booths alone do not adequately relate this critical information to individual travel lanes approaching and through the toll plaza. The NCUTCD and a State DOT suggested clarifying these signing requirements to more clearly indicate that Open-Road ETC Account-Only lanes are excluded from the requirement. The FHWA believes that the language, as proposed in the NPA, clearly indicates that Open-Road ETC Account-Only lanes are excluded, however the FHWA clarifies the provision in this final rule to require the overhead signing, when mounted on a structure rather than the canopy, be located such that each sign be clearly associated with an individual toll lane. In the NPA, the FHWA proposed including a requirement that the toll fee for passenger or 2-axle vehicles be included on the canopy sign or on a separate sign mounted on the upstream side of the toll booth. The NCUTCD, two State DOTs, and a toll road operator opposed this requirement for ticketed systems. The FHWA agrees and excludes toll-ticket systems from this requirement in this final rule.

In the NPA, the FHWA proposed an OPTION and associated STANDARD regarding the optional use of supplementary flashing yellow beacons at ETC Account-Only canopy lanes. The NCUTCD and two toll road operators opposed this language, because they felt that the beacons would interfere with or detract from the lane-use control signals. The FHWA disagrees because the beacons are optional, but their placement, if used, needs to be a STANDARD to assure that they are not inappropriately located so close to lane-use signals that they would be confusing. In the NPA, the FHWA proposed prohibiting the use of lane-use control signals to call attention to a lane for a specific toll payment type such as ETC Account-Only lanes. A State DOT and a toll road operator suggested that the flashing of a standard circular yellow signal indication within a lane-use control signal face has become widely recognized as an indicator of an open ETC Account-Only lane, and its use should be continued. The FHWA disagrees with the use of a standard circular traffic signal or beacon indications to display lane status, since red X and downward green arrow lane-use control signals are the appropriate displays for this use.

In the NPA, the FHWA proposed to allow the use of lane-use control signals above the center of Open-Road ETC Only lanes to indicate the open or closed status of the lane. Similar text was proposed in Part 4, and is adopted there in Section 4K.02 this final rule with revisions based on comments. The FHWA does not adopt the text in Section 2F.16 regarding lane-use signals with Open-Road ETC Only lanes and instead adds a reference to Section 4K.02 in this final rule.

In Section 2C.08 of the NPA, the FHWA proposed to add paragraphs describing the use of Advisory Speed plaques at toll plazas. The NCUTCD, three State DOTs, two local DOTs, and two NCUTCD members suggested changes to the wording to clarify the use of Advisory Speed plaques in relation to other signs at toll plazas. The FHWA decides to not allow the use of Advisory Speed Plaques at toll plazas

independent of other warning signs. Instead, the FHWA adopts text in Section 2F.16 describing the allowable display of an advisory speed within a horizontal rectangular panel with a black legend and yellow background within the bottom portion of a canopy sign for an ETC Account-Only toll plaza lane in which a regulatory speed limit is not posted and in which vehicles are not required to stop.

235. The FHWA adopts a new section numbered and titled 2F.17 Guide Signs for Entrances to ETC Account-Only Facilities (Section 2E.59 in the NPA). This section contains SUPPORT and STANDARD statements regarding the use of guide signs at entrances to facilities that are restricted to use only by vehicles with a registered ETC account. In the NPA, the FHWA proposed to include managed lanes in the provisions; however, in this final rule the FHWA removes the provisions for managed lanes from this section because FHWA adopts a new Chapter 2G in this final rule with provisions for managed lanes. A toll road operator supported the language as proposed in the NPA. The NCUTCD, two State DOTs and two toll road operators suggested removing specific references to ''transponder,'' as proposed in the NPA, and changing the language to account for other devices. The FHWA agrees and adopts revised language in this final rule to clarify that the section is intended to apply to a variety of electronic toll collection systems.

236. The FHWA adopts a new section numbered and titled Section 2F.18 ETC Program Information Signs (Section 2E.60 in the NPA). In the NPA, the FHWA proposed allowing signs that inform road users of telephone numbers, Internet addresses, and e-mail addresses for enrolling in an ETC program of a toll facility or managed lane, obtaining an ETC transponder, and/or obtaining ETC program information, but only in rest areas, in parking areas, or on low speed roadways. The NCUTCD, two State DOTs, and several toll road operators suggested that the proposed prohibition of signs in areas other than rest areas, parking areas, and low speed roadways was excessive and that some mechanism should be allowed to display this information in other areas. The FHWA understands that road users benefit from knowing how to obtain information about ETC programs, and as a result adopts an OPTION statement in this final rule allowing the use of ETC Program Information signs with telephone numbers of four or fewer numerals in certain other areas under certain specific conditions.

237. In the NPA, the FHWA proposed to add a section numbered and titled Section 2C.43 Toll Road Begins Signs, which, if adopted as a part of the consolidation of toll-related signing information into a separate chapter, would be located in Chapter 2F. Although ATSSA, a local DOT, and two toll road operators supported the sign, the NCUTCD, two other toll road operators, and a State DOT opposed the section and its associated signs because there is no consensus on whether the beginning of a toll road should be designated with a regulatory, warning, or guide sign because of variations in State laws. The FHWA believes that the signing before the toll road begins addresses this issue (see Sections 2F.10, 2F.11 and 2F.13) and adequately address notification to road users of the last exit before entering a toll facility and the entrance to a toll facility. As a result, the FHWA does not adopt this proposed section and the associated signs in this final rule.

Discussion of Amendments to Chapter 2G—Preferential and Managed Lane Signs

238. The FHWA adopts a new chapter numbered and titled Chapter 2G Preferential and Managed Lane Signs. Although not proposed as a separate chapter in the NPA, the FHWA adopts a separate chapter with 18 sections in this final rule to consolidate information that was proposed in other sections in the NPA related to preferential and managed lanes. As discussed previously in this preamble under General Amendments to the MUTCD, the FHWA creates this separate chapter to address comments from practitioners that a separate chapter would be helpful.

239. In Section 2G.01 Scope, the FHWA adopts relocated SUPPORT information from 2003 MUTCD Sections 2B.26 and 2B.27 describing operational considerations for preferential and managed lanes and additional SUPPORT text providing cross-references to other pertinent information in the MUTCD.

240. In Section 2G.02 Sizes of Preferential and Managed Lane Signs, the FHWA includes STANDARD, SUPPORT, and OPTION statements referring to other sections in the MUTCD for information on sign sizes, consistent with similar provisions in the chapters from which the provisions of this new chapter were relocated. The FHWA adopts this section to provide uniformity in Preferential and Managed Lane Sign sizes.

241. In the NPA, the FHWA proposed to edit and relocate paragraphs within and between existing Sections 2B.26 through 2B.28, and to reorganize the text into five sections (Sections 2B.26 through 2B.30) to improve the consistency and flow of information and improve its usability by readers. As adopted in this final rule, the FHWA relocates those proposed sections to new Chapter 2G, since they are related to preferential and managed lanes. The sections are numbered and titled Section 2G.03 Regulatory Signs for Preferential Lanes—General, Section 2G.04 Preferential Lane Vehicle Occupancy Definition Regulatory Signs, Section 2G.05 Preferential Lane Periods of Operation Regulatory Signs, Section 2G.06 Preferential Lane Advance Regulatory Signs, and Section 2G.07 Preferential Lane Ends Regulatory Signs.

242. The FHWA in this final rule adopts Section 2G.03 Regulatory Signs for Preferential Lanes—General (Section 2B.26 proposed in the NPA). Two toll road operators expressed concern that the proposed language would now classify toll plaza lanes that segregate traffic by payment method as preferential lanes and that there is a lack of research or justification for applicability to non-HOV preferential lanes, such as toll plaza lanes. The operators suggested that text regarding non-HOV preferential lanes should be limited to OPTION conditions until further research on safety and applicability is available. The FHWA disagrees with the suggested revision as an OPTION and adopts the language proposed in the NPA in this section but provides clarification in Section 2G.01 to address these concerns, explicitly stating that lanes that segregate traffic based on payment method are not considered to be preferential lanes.

In the NPA, the FHWA proposed to add GUIDANCE and OPTION statements regarding the installation of a post-mounted regulatory sign applicable only to a preferential lane on a median barrier where lateral clearance is limited. Based on comments from the NCUTCD, a State DOT, and a toll road operator expressing concerns that wider signs are not legible when installed at a skew relative to the approaching traffic and to resolve a conflict with an existing STANDARD statement in Section 2A.18, the FHWA revises the GUIDANCE statement in this final rule regarding signs mounted on median barriers. As part of this change, in this final rule, the FHWA adds a new STANDARD statement requiring that where lateral clearance is limited, Preferential Lane regulatory signs that are post-mounted on a median barrier and that are wider than 72 inches shall be mounted with a vertical clearance that complies with the provisions of Section 2A.18 for

overhead mounting. This revision is also consistent with identical provisions in Sections 2G.08 and 2G.10.

In this final rule, the FHWA adopts a STANDARD statement that is relocated from Section 2B.32 as proposed in the NPA. This STANDARD is in regard to applying provisions for regulatory signs for preferential lanes to non-priced managed lanes that are operated by varying vehicle occupancy requirements (HOV) or by using vehicle type restrictions as a congestion management strategy. This includes provisions for the use of changeable message elements when certain types of vehicles are prohibited from using a managed lane or when a managed lane is restricted to use by only certain types of vehicles during certain operational strategies, and when the vehicle occupancy required for use of an HOV lane is varied as a part of a managed lane operational strategy.

243. The FHWA in this final rule adopts Section 2G.04 Preferential Lane Vehicle Occupancy Definition Regulatory Signs (Section 2B.27 proposed in the NPA). This section contains STANDARD, GUIDANCE, SUPPORT, and OPTION statements regarding the use of regulatory signs.

The FHWA adopts a revised STANDARD statement in paragraph 07 to clarify that the requirement for an overhead Vehicle Occupancy Definition sign in advance of the beginning of or the initial entry point to HOV lanes is applicable only to barrier- and buffer-separated or contiguous preferential lanes, where access between the preferential and general-purpose lanes is restricted to designated locations. The FHWA adopts this clarification to address comments from a State DOT and two toll road operators that correctly pointed out that the statement as proposed in the NPA was too broad and needed to be limited to only certain conditions. The FHWA agrees and adopts the revised STANDARD in this final rule.

244. The FHWA in this final rule adopts Section 2G.05 Preferential Lane Periods of Operation Regulatory Signs (Section 2B.28 proposed in the NPA). Although not proposed in the NPA, the FHWA adopts a STANDARD statement in this final rule requiring that for preferential lanes on which regulations are in effect on a full-time basis, either the full-time Periods of Operation (R3–11b and R3–14b) signs shall be used, or the legends of the part-time Periods of Operations (R3–11, R3–11a, R3–14, R3–14a) signs shall be modified to display the legend 24 HOURS. In addition this STANDARD prohibits the use of a full-time Periods of Operation (R3–14b) sign where the preferential lane is in effect only on a part-time basis. The FHWA adopts these changes in this final rule to provide clarification of an existing requirement, based on comments from the NCUTCD, three State DOTs, and three toll road operators.

Finally, the FHWA in the final rule adopts a GUIDANCE statement recommending that overhead (R3–14 series) or post-mounted (R3–11 series) Periods of Operation signs should be installed at periodic intervals along the length of a contiguous or buffer-separated preferential lane where continuous access with the adjoining general-purpose lanes is provided. Although not proposed in the NPA, the FHWA adopts this recommendation in this final rule to provide more flexibility in the placement of these signs by clarifying that signs need not be installed at periodic intervals on facilities where access is restricted to designated locations and is not continuous with the adjoining general-purpose lanes.

245. The FHWA adds a new section numbered and titled Section 2G.06 Preferential Lane Advance Regulatory Signs (Section 2B.29 in the NPA). This section contains GUIDANCE and OPTION statements regarding the use of these regulatory signs, as proposed in the NPA.

246. The FHWA adds a new section numbered and titled Section 2G.07 Preferential Lane Ends Regulatory Signs (Section 2B.30 in the NPA). This section contains STANDARD and OPTION statements regarding the use of these regulatory signs, as proposed in the NPA.

247. The FHWA adopts in this final rule a new section numbered and titled Section 2G.08 Warning Signs on Median Barriers for Preferential Lanes (Section 2C.55 as proposed in the NPA). This section contains OPTION, STANDARD, and GUIDANCE statements regarding the use of warning signs applicable only to preferential lanes on median barriers. In the NPA, the FHWA proposed GUIDANCE and OPTION statements regarding the installation of a post-mounted warning sign applicable only to a preferential lane on a median barrier where lateral clearance is limited. Based on comments from the NCUTCD, a State DOT, and a toll road operator expressing concerns that wider signs are not legible when installed at a skew relative to the approaching traffic and to resolve a conflict with an existing STANDARD statement in Section 2A.18, the FHWA adopts a revised GUIDANCE statement in this final rule regarding signs mounted on median barriers. As part of this change, the FHWA adopts a new STANDARD statement requiring that where lateral clearance is limited, Preferential Lane warning signs that are post-mounted on a median barrier and that are wider than 72 inches shall be mounted with a vertical clearance that complies with the provisions of Section 2A.18 for overhead mounting. This revision is also consistent with identical provisions in Sections 2G.03 and 2G.10.

248. In this final rule, the FHWA relocates an existing provision to Chapter 2G in Section 2G.09 High-Occupancy Vehicle (HOV) Plaque (Section 2C.64 proposed in the NPA). This section contains OPTION and SUPPORT statements from the 2003 MUTCD regarding the use of these plaques and there are no substantive changes to the information.

249. As proposed in the NPA, the FHWA adopts four sections in this final rule that include the existing material in Section 2E.59 of the 2003 MUTCD and substantially edits the contents to improve consistency and understanding by grouping similar material together. The resulting sections are numbered and titled Section 2G.10 Preferential Lane Guide Signs—General, Section 2G.11 Guide Signs for Initial Entry Points to Preferential Lanes, Section 2G.12 Guide Signs for Intermediate Entry Points to Preferential Lanes, and Section 2G.13 Guide Signs for Egress from Preferential Lanes to General-Purpose Lanes. These four sections were proposed in the NPA as Sections 2E.51 through 2E.54 respectively. In conjunction with these changes, the FHWA adopts a variety of changes in the technical provisions, sign designs, and figures for preferential lane guide signing, as described in the following items, to reflect the state of practice for enhanced sign conspicuity and legibility, and to reflect recent FHWA policy guidance [99] regarding traffic control devices for preferential lane facilities.

250. The FHWA in this final rule adopts Section 2G.10 Preferential Lane Guide Signs—General (Section 2E.51 as proposed in the NPA). This section contains SUPPORT, GUIDANCE, STANDARD, and OPTION statements regarding preferential lane signing. Although not proposed in the NPA, the FHWA clarifies in a STANDARD statement in this final rule that HOV lanes that are managed by varying the occupancy requirements in response to changing conditions are also governed by the provisions in this section. The FHWA adds this statement to

[99] The FHWA's policy guidance can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/policy/tcdplfmemo/index.htm.*

distinguish that such HOV lanes are not governed by the provisions of subsequent sections that deal with managed lanes that also use pricing as a management strategy.

In the NPA, the FHWA proposed to prohibit showing occupancy requirements for preferential lanes on guide signs. A local DOT supported this provision, while a State DOT opposed it. The FHWA adopts this prohibition because the occupancy requirements are most appropriately displayed on regulatory signing.

To address comments from the NCUTCD, two State DOTs, and two toll road operators, the FHWA adopts reorganized and expanded provisions in this final rule to establish signing criteria for the initial and intermediate entry points into a preferential lane from the general-purpose lanes.

Although proposed as a GUIDANCE statement in the NPA, the FHWA adopts a STANDARD statement regarding the mounting of post-mounted Preferential Lane guide signs where lateral clearance is limited, to be consistent with revisions in Sections 2A.18, 2G.03, and 2G.08 for clearance to light fixtures and sign supports.

As proposed in the NPA, the FHWA adopts the STANDARD requirement to use a LEFT plaque on top left edge of the Advance Guide and Preferential Lane Entrance Direction signs where the entry point is on the left-hand side of the general-purpose lanes. Two State DOTs opposed this requirement for similar reasons discussed in Sections 2E.36 and 2E.40; however, the FHWA adopts the requirement to maintain uniformity and enhance road user understanding as described in Chapter 2E.

251. The FHWA in this final rule adopts Section 2G.11 Guide Signs for Initial Entry Points to Preferential Lanes (Section 2E.52 as proposed in the NPA). This section contains STANDARD, GUIDANCE, OPTION, and SUPPORT statements regarding guide signing for initial entry points to preferential lanes.

252. The FHWA in this final rule adopts Section 2G.12 Guide Signs for Intermediate Entry Points to Preferential Lanes (Section 2E.53 as proposed in the NPA). This section contains STANDARD, GUIDANCE, OPTION, and SUPPORT statements regarding guide signing for intermediate entry points to preferential lanes, as proposed in the NPA. Although not proposed in the NPA, in this final rule the FHWA relocates the information from the last STANDARD and SUPPORT statements regarding signing for direct access ramps to a new Section 2G.15.

253. The FHWA in this final rule adopts Section 2G.13 Guide Signs for Egress from Preferential Lanes to General-Purpose Lanes (Section 2E.54 as proposed in the NPA). In the NPA, the FHWA proposed a different title for this section, as well as additional content that included signing for egress from preferential lanes to another highway. In this final rule, the FHWA adopts a separate Section 2G.15 for that information. Section 2G.13 as adopted contains STANDARD, SUPPORT, and GUIDANCE statements regarding guide signing for egress from preferential lanes to general-purpose lanes, as proposed in the NPA.

The FHWA adopts the recommendation to use Pull-Through signs with the Egress Direction sign at exits to direct access ramps, as proposed in the NPA. A State DOT and two toll road operators suggested that Pull-Through signs should only be used when warranted, such as for left exits. The FHWA disagrees because of the ambiguity between single-lane preferential lanes and direct exits, whether left-hand or right-hand side.

Although not proposed in the NPA, the FHWA adopts a GUIDANCE statement to recommend that consideration be given to the use of overhead guide signs to display the information related to egress from the preferential lanes, where two or more adjoining preferential lanes are present in a single direction. The FHWA adds this provision in conjunction with other changes to address comments regarding the visibility of signs installed on median barriers.

254. The FHWA in this final rule adopts Section 2G.14 Guide Signs for Direct Entrances to Preferential Lanes from Another Highway. Although not proposed as a separate section in the NPA, this section contains STANDARD and SUPPORT statements from proposed Section 2E.53 in the NPA, related to guide signing for direct access ramps to preferential lanes.

255. The FHWA in this final rule adopts Section 2G.15 Guide Signs for Direct Exits from Preferential Lanes to Another Highway. Although not included as a separate section in the NPA, as discussed above under Section 2G.13, this section contains STANDARD, GUIDANCE, and SUPPORT statements related to guide signing for direct exits from preferential lanes to another highway. In the NPA, the FHWA proposed the use of a black and white header panel on a Pull-Through sign. A State DOT and two toll road operators opposed the color, stating that preferential lanes are assigned other colors, such as purple and white. The FHWA disagrees, as the purple header is reserved for priced or tolled facilities and is not assigned to the lane; rather, it conveys information and the requirement for a vehicle to be registered in an ETC account program to enter a priced managed lane. Once within the lane, this requirement is not displayed as the lanes are not named for or branded by the ETC account program. The FHWA adopts the use of a black and white sign panel for a Pull-Through sign in this final rule for a preferential lane and addresses similar signing for priced managed lanes in Section 2G.18.

The FHWA also adopts the recommendation to use Pull-Through signs with the Exit Direction sign at exits to direct access ramps, as proposed in the NPA. A State DOT and two toll road operators suggested that Pull-Through signs should only be used when warranted, such as for left exits. The FHWA disagrees because of the ambiguity between single-lane preferential lanes and direct exits, whether left-hand or right-hand side.

256. The FHWA in this final rule adopts ''2G.16 Signs for Priced Managed Lanes—General.'' Although not proposed as a separate section in the NPA, the FHWA adopts this section that contains SUPPORT and STANDARD statements that were proposed in Section 2E.61 of the NPA and significantly expands background information on the signing needs for managed lanes based on possible combinations of operational strategies employed, such as tolling or pricing, either alone or combined with an occupancy requirement for non-toll travel, and whether eligibility for non-toll travel requires registration in a local program. To address comments from a traffic engineering consultant, the FHWA provides a SUPPORT statement referring to the figures illustrating the advance signing sequence for priced lanes to begin 2 miles from the initial entry point due to the additional informational needs of road users to decide whether to use the lane and whether they are eligible to use the lane under certain operational strategies.

257. The FHWA in this final rule adopts ''2G.17 Regulatory Signs for Priced Managed Lanes'' (Section 2B.32 proposed in the NPA). This section contains STANDARD and OPTION statements regarding regulatory signing for priced managed lanes and includes new signs that are modified versions of similar preferential lane signs in response to comments from the NCUTCD and a toll road operator that specific signs should be provided instead of merely providing a reference to a provision for a different application.

258. The FHWA in this final rule adopts Section 2G.18 Guide Signs for Priced Managed Lanes (Section 2E.61 proposed in the NPA). This section provides STANDARD, SUPPORT, GUIDANCE, and OPTION statements related to guide signing for priced managed lanes with operational strategies such as tolls, vehicle occupancy requirements, and vehicle type restrictions that are variable and put into effect on a real-time basis to respond to changing conditions. The FHWA adopts this separate section to further clarify and specifically address the various combinations of operational strategies for managed lanes that include pricing or tolling as a congestion management strategy, as suggested in a comment by the NCUTCD. This new section also provides for consistency with other adopted provisions regarding signing for preferential lanes, and addresses the state of the practice in priced managed lanes.

In the NPA, the FHWA proposed a requirement that guide signing for priced managed lanes strictly comply with the provisions in Sections 2G.10 through 2G.15. A toll road operator suggested that this requirement was too restrictive, and recommended adding options that would allow more flexible use of the purple background color. The FHWA disagrees because the use of the color purple is reserved for sign legends associated with the display of information for ETC account program registration requirements and information and is not intended to be used indiscriminately as an overall sign background for other uses. The FHWA adopts in this final rule the requirement to comply with the provisions of Sections 2G.10 through 2G.15 except as otherwise noted in this section.

The FHWA adopts the proposed GUIDANCE recommending the display of comparative travel times for managed lanes that are an alternative to general purpose lanes. The NCUTCD and a State DOT suggested that this recommendation be removed and replaced with a more general provision since it has had no prior use or testing. The FHWA disagrees and believes that including an abstract provision would result in widely non-uniform practices and therefore adopts in this final rule the language as proposed, but revises the sign design to be in conformance with accepted sign layout practices and the requirements for guide signs for minimizing the overall amount of information displayed on the sign.

In the NPA, the FHWA proposed the use of the word ''EXPRESS'' on guide signs for managed lanes. The NCUTCD and a State DOT opposed the use of the word ''EXPRESS,'' because they felt that it would imply limited access or limited stops. The FHWA disagrees with removing the use the term ''EXPRESS,'' but does revise the provision as adopted in this final rule to clarify that the signs are intended for the managed lanes of a freeway on which a toll is charged but which are available as an alternative to non-tolled lanes of the freeway. In addition, FHWA retains the designation of ''Express Lane'' because, by their nature of management strategies, such facilities further limit access to intersecting routes and the adjacent general-purpose lanes, and the designation, therefore, is appropriate. The FHWA also believes that, given the complexity of management strategies that could be employed on such facilities, specific terms strictly tied to the individual management strategies would become unwieldy and excessive for motorists to comprehend and that the various management strategies applied are more appropriately communicated by the regulatory signing and messages. In concert with similar changes elsewhere in Part 2, the FHWA adopts in this final rule revised provisions to reserve the diamond symbol exclusively for HOV lanes.

259. The FHWA adds several new sign images and revises several existing sign images in Figure 2G–1 Examples of Preferential Lane Regulatory Signs (Figure 2B–8 in the NPA) to illustrate the various regulatory signs used to designate HOV and bus preferential lanes. A local DOT supported the addition of several of the signs and plaques. The FHWA revises the figure from what was illustrated in the NPA to reflect comments regarding the design of certain signs. As part of these changes, the FHWA revises the designs illustrated for the R3–12 series signs. A local professional organization suggested that the design of the Bus Lane Ahead and HOV Lane Ahead signs be revised to include a diagonal arrow, similar to the BEGIN RIGHT (LEFT) TURN LANE (R3–20 series) signs. Two toll road operators and a State DOT suggested that the R3–14 design does not provide desirable information for preferential lanes that operate continuously. The FHWA disagrees with the commenters and adopts in this final rule Figure 2G–1, with some revisions, to reflect the state of the practice for improved conspicuity and legibility of Preferential Lane regulatory signs for HOV Lanes, and to reflect recent FHWA policy guidance on traffic control devices for preferential lane facilities.[100]

260. The FHWA adopts Figure 2G–17 Regulatory Signs for Managed Lanes (Figure 2B–10 in the NPA) to illustrate examples of signs described in Section 2G.17. ATSSA and a local DOT supported the sign illustrations, whereas the NCUTCD suggested that the price signs shown in the figure should be researched prior to placing them in the MUTCD. The NCUTCD, two toll road operators, and a State DOT opposed the R3–31 sign illustrating the toll rate on a per-mile basis. Based on these and other comments, the FHWA deletes the sign illustrating the rate per mile and otherwise adopts the figure as proposed in the NPA, incorporating additional signs that are similar to those for preferential lanes, but with the legends modified to accommodate priced managed lanes because to provide consistency and uniformity in signing practices for priced managed lanes, which are becoming increasingly common, and for which uniform signing provisions are not currently contained in the MUTCD.

Discussion of Amendments Within Chapters 2H Through 2N

261. The FHWA adopts a new chapter numbered and titled Chapter 2H General Information Signs. In the NPA, the FHWA proposed to number this Chapter 2I; however, the chapter number changed due to the reorganization of the chapters adopted in this final rule. This chapter contains several sections from Chapters 2D and 2E of the 2003 MUTCD in order to group similar sign types in the same area of the Manual. A State DOT supported this new chapter. The new chapter includes Section 2H.01 Sizes of General Information Signs and Table 2H–1 (Section 2I.01 and Table 2I–1 proposed in the NPA) that establish the sizes of General Information signs. The FHWA also adopts Sections 2H.02 General Information Signs (I Series), 2H.03 Traffic Signal Speed Sign (I1–1), 2H.04 Miscellaneous Information Signs, 2H.05 Reference Location Signs and Intermediate Reference Location Signs, 2H.06 Enhanced Reference Location Signs, 2H.07 Auto Tour Route Signs, and 2H.08 Acknowledgement Signs, which contain information from Sections 2D.46, 2D.47, 2D.48, 2D.49, 2D.50, 2E.54, and 2E.55 of the 2003 MUTCD. The FHWA adopts these sections in Chapter 2H in a sequence

[100] This August 3, 2007 FHWA policy memorandum can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/policy/tcdplfmemo/index.htm.*

that presents the information in the most logical order.

262. The FHWA adopts in this final rule Section 2H.03 Traffic Signal Speed Sign (Section 2D.47 of the 2003 MUTCD and Section 2I.04 in the NPA) with a revised paragraph 04 that increases the minimum size of the Traffic Signal Speed sign from 12 x 18 inches to 24 x 36 inches to provide for suitable letter sizes, as proposed in the NPA. ATSSA and a local DOT supported the increased sign size. Another local DOT suggested that it might be too large for urban conditions, given the narrow space for signs due to landscaping, utility poles, etc., and might present structural problems when replacing existing signs on existing signal structures. The FHWA disagrees because the current size is too small to be read by road users with 20/40 visual acuity, even in urban situations, and notes that the adopted sign is actually smaller than a standard lane-use sign used on signal structures and is no larger than other signal-related regulatory signs that are commonly installed on mast arms or span wires.

263. In this final rule the FHWA adopts Section 2H.04 (Section 2E.55 of the 2003 MUTCD and Section 2I.06 in the NPA) with a revised title of ''Miscellaneous Information Signs'' and associated text to reflect the relocation of this section into the new Chapter 2H.

264. In the NPA, the FHWA proposed to retain the title ''Trail Signs'' for Section 2H.07 (numbered Section 2D.50 in the 2003 MUTCD and Section 2I.08 in the NPA). However, to address a comment from the NCUTCD and one of its members, in this final rule the FHWA titles Section 2H.07 as ''Auto Tour Route Signs'' to better reflect the content of this section. In the adopted section, all occurrences of the word ''trail'' have been replaced with ''auto tour route.'' In the NPA, the FHWA proposed to add a STANDARD statement prohibiting the use of trail signs on freeways or expressways because trail signs were often misinterpreted to mean walking trails, rather than marked vehicular routes. The NCUTCD and one of its members, eight State DOTs, the National Park Service, numerous trail associations, and citizens opposed the restriction of trail signs on freeways and expressways. The FHWA agrees that there are some situations where it is necessary to install Auto Tour Route signs on freeways or expressways in order to provide continuity between discontinuous segments of conventional roadways that are designated as auto tour routes and for which a freeway or expressway provides the only connection. As a result, the FHWA adopts in this final rule a revised STANDARD and information regarding the circumstances under which Auto Tour Route signs may be installed on freeways and expressways, and information about the types of signs and assemblies to be used.

265. The FHWA adopts in this final rule Section 2H.08 Acknowledgement Signs (Section 2I.09 in the NPA.) As proposed in the NPA, this section contains SUPPORT, GUIDANCE, STANDARD, and OPTION statements regarding the placement and design of the signs that can be used as a way of recognizing a company, business, or volunteer group that provides a highway-related service. Although the Motorist Information Services Association (MISA), an NCUTCD member, and a local DOT supported this section, another NCUTCD member opposed this new section, stating that acknowledgement signs are not traffic control devices and do not belong in the MUTCD. Five State DOTs and a local DOT opposed the requirements related to the sign design and placement, including the restriction on telephone numbers and Internet addresses, stating that more flexibility is needed. The FHWA disagrees with allowing more flexibility and adopts the proposed provisions in this final rule to address the existing extreme variability in acknowledgement sign design and placement practices. The FHWA notes that the restriction on telephone numbers and Internet addresses is consistent with other sections of the MUTCD and that that some agencies' current practices have prioritized acknowledgement signs over more critical traffic control devices, which the FHWA discourages. As a result, the FHWA believes it is important to include sign design and placement regulations in the MUTCD. In this final rule, the FHWA adopts additional information about the design of the signs, including the location of the sponsor acknowledgment logo, the maximum size of the sign display, and a restriction on external and internal illumination. This information is based on the FHWA policy memo ''Optional Use of Acknowledgment Signs on Highway Rights-of-Way,'' dated August 10, 2005.[101]

266. The FHWA adopts in this final rule Chapter 2I General Service Signs. In the NPA, the FHWA proposed to number this Chapter 2F. This chapter contains several sections from Chapters 2D and 2E of the 2003 MUTCD in order to group similar sign types in the same area of the Manual. The FHWA received a comment from a local DOT supporting the creation of this new chapter.

267. The FHWA adopts in this final rule Section 2I.01 Sizes of General Service Signs, and a new Table 2I–1 to establish the minimum sizes of General Service signs and plaques. ATSSA supported the addition of Table 2I–1, while a State DOT and an NCUTCD member opposed establishing requirements for minimum sign sizes for General Service signs. Those in opposition felt that the requirements will no longer allow good engineering judgment in specifying signs that will perform well, but are smaller than the minimum dimensions in the new table. The FHWA disagrees and believes that consistency in sizes of standardized sign legends is intrinsic to the concept of uniformity and adopts the provisions as proposed in the NPA. In response to a comment from the NCUTCD suggesting that many of the sign sizes in Table 2I–1 appear to be larger than necessary, the FHWA notes that the signs have been designed and sized according to conventional design principles.

268. The FHWA adopts in this final rule Section 2I.02 General Service Signs for Conventional Roads that contains information from Section 2D.45 and 2B.10 of the 2003 MUTCD in the NPA, no significant changes were proposed to the information that is adopted in this section.

269. As proposed in the NPA, in Section 2I.03 General Service Signs for Freeways and Expressways (Section 2E.51 of the 2003 MUTCD), the FHWA changes the design of the Truck Parking (D9–16) sign, as illustrated in Figure 2I–1. ATSSA supported the new symbol for the Truck Parking sign. A recent study[102] tested several symbols for this message and found that the message can be successfully symbolized. The FHWA adopts in this final rule the symbol that was found to be the easiest to comprehend and that provides the greatest legibility distance.

270. As proposed in the NPA, the FHWA adopts in this final rule a new section numbered and titled Section 2I.04 Interstate Oasis Signing, containing SUPPORT, GUIDANCE, STANDARD, and OPTION statements regarding signing for facilities that have been designated by a State as having

[101] FHWA's Policy Memo can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/res-mem_ack.htm.*

[102] ''Design and Evaluation of Selected Symbol Signs,'' Final Report, May, 2008, conducted by Bryan Katz, Gene Hawkins, Jason Kennedy, and Heather Rigdon Howard, for the Traffic Control Devices Pooled Fund Study, can be viewed at the following Internet Web site: *http://www.pooledfund.org/documents/TPF-5_065/symbol_sign_report_final.pdf.*

met the eligibility criteria of FHWA's Interstate Oasis Policy.[103] Although the MISA supported this new section, a State DOT opposed it because it felt that the Interstate Oasis program is not needed. The State DOT suggested that sufficient information is provided through the use of general service signs, specific service signs, and rest area signing. The FHWA adopts the section as proposed to comply with the requirements of SAFETEA–LU regarding the establishment of designation criteria and signing requirements for these facilities. The language of this section is based on the signing provisions of the FHWA's Interstate Oasis Policy.[104]

The FHWA also adopts a unique symbol for use on separate Interstate Oasis signs in conjunction with the word message. ATSSA and a local DOT supported the design of the Interstate Oasis (D5–12) sign, while a State DOT and an NCUTCD member suggested that the sign be classified as a D9 series services sign, not a D5 series sign. The FHWA disagrees and classifies the sign as a D5 series sign because it gives direction to a specific facility that is not an individual service. Other D5 series signs are for roadside facilities, such as Rest Area and Scenic Overlook. Based on a comment from a State DOT, the FHWA removes the sign image from the adopted Figure 2I–1, since the panel is not used on its own, and retains the image in Figure 2I–4.

271. As proposed in the NPA, the FHWA adopts Section 2I.05 Rest Area and Other Roadside Area Signs, that combines the text from Sections 2D.42, 2D.43, and 2E.52 of the 2003 MUTCD, so that similar information is located in one section. The FHWA adopts text revisions to clarify the types of signs to be used at rest areas and at scenic and other roadside areas. Section 2D.42 of the 2003 MUTCD can be misinterpreted as meaning that restrooms are required in order to use the Parking Area, Roadside Table, Roadside Park, and Picnic Area signs, which was not FHWA's intent. Restrooms are only required at locations designated as rest areas. An NCUTCD member supported this revision.

A State DOT and an NCUTCD member suggested that the requirements for installing advance roadside area signs were too restrictive. The FHWA agrees and in this final rule adopts the placement information as a GUIDANCE statement, rather than a STANDARD, consistent with the provisions in Section 2E.29.

As proposed in the NPA, the FHWA adopts two paragraphs at the end of this section to allow the use of the Telecommunications Devices for the Deaf (TDD) symbol sign and the Wireless Internet Services (Wi-Fi) symbol sign, to supplement advance guide signs for rest areas if such amenities are available. The FHWA adopts the TDD symbol based on the results of the Sign Synthesis Study [105] that showed that several States are using a similar sign, and because this sign design is specified by the Americans With Disabilities Act to indicate facilities that are equipped with TDD. The FHWA adopts the Wi-Fi symbol sign because many rest areas are being equipped with wireless Internet service for road users visiting these areas and many States are using word message or symbol signs to indicate the availability of this service in the rest area. A State DOT suggested that there be a requirement to install supplemental plaques identifying the Wi-Fi symbol; however, the symbol was evaluated and exhibited an acceptable level of comprehension.[106] The FHWA believes that a uniform symbol is needed for this rapidly expanding signing practice and the human factors testing indicates that the proposed symbol provides optimum comprehension, conspicuity, and legibility. MISA supported this new section.

272. The FHWA adopts in this final rule two new sections numbered and titled Section 2I.06 Brake Check Area Signs, and Section 2I.07 Chain Up Area Signs, as proposed in the NPA as Sections 2F.10 and 2F.11. The FHWA adopts these new types of signs based on the results of the Sign Synthesis Study [107] that revealed that some States use signs for these specific purposes. Some States provide off-road areas (on the shoulder or in a physically separated rest area type of facility) for drivers to install and remove tire chains during winter weather conditions. Some States also provide similar areas for trucks and other heavy vehicles to check their brakes in advance of the start of a long downhill grade. The NCUTCD and four State DOTs opposed placing these signs in Chapter 2I, because they felt that these signs are not guide signs, rather they are warning signs. The FHWA does not consider these to be warning signs, rather it considers these types of areas to be roadside facilities and the signs should be consistent in color and legend with those for other roadside facilities.

273. As proposed in the NPA, the FHWA adopts a new Section 2I.08 Tourist Information and Welcome Center Signs (Section 2F.06 in the NPA) that contains the information from Section 2E.53 of the 2003 MUTCD. The FHWA adopts this change, to group like material in the same chapter. MISA supported this new section. Additionally, as proposed in the NPA, the FHWA adopts a revised design of the Tourist Information (D9–10) sign, as illustrated in Figure 2I–1. A recent study [108] found that the meaning of the existing ''question mark'' symbol for this service is poorly understood by road users. The abbreviation ''INFO'' was fully understood by 96 percent of the participants in the human factors testing. Further, the FHWA believes that the term INFO is understandable in most languages. Although the legibility distance of the tested version of ''INFO'' was less than that of the symbol, the FHWA adopts a design featuring larger and bolder letters to provide legibility that is expected to be comparable to the question mark symbol, consistent with minimum letter heights for guide signs.

274. As proposed in the NPA, the FHWA adopts in this final rule a new Section 2I.09 Radio Information Signing (Section 2F.07 in the NPA) that contains information from Section 2E.56 of the 2003 MUTCD. In the last OPTION statement, the FHWA adopts a revised legend for the D12–4 sign using the word ''CALL'' rather than ''DIAL'' in order to be consistent with the terminology used on the adopted D12–2 Carpool Information and D12–5 Travel Information signs and to reflect current terminology. ATSSA and a local DOT supported this change in legend text.

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[103] FHWA's Interstate Oasis Policy, dated October 18, 2006, can be viewed at the following Internet Web site: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2006_register&docid=E6-17367.*

[104] FHWA's Interstate Oasis Policy, dated October 18, 2006, can be viewed at the following Internet Web site: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2006_register&docid=E6-17367.*

[105] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, page 48, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[106] ''Design and Evaluation of Selected Symbol Signs,'' Final Report, May 2008, conducted by Bryan Katz, Gene Hawkins, Jason Kennedy, and Heather Rigdon Howard, for the Traffic Control Devices Pooled Fund Study, can be viewed at the following Internet Web site: *http://www.pooledfund.org/documents/TPF-5_065/symbol_sign_report_final.pdf.*

[107] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, pages 46–47, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[108] ''Design and Evaluation of Selected Symbol Signs,'' Final Report, May 2008, conducted by Bryan Katz, Gene Hawkins, Jason Kennedy, and Heather Rigdon Howard, for the Traffic Control Devices Pooled Fund Study, can be viewed at the following Internet Web site: *http://www.pooledfund.org/documents/TPF-5_065/symbol_sign_report_final.pdf.*

275. The FHWA adopts in this final rule Section 2I.10 TRAVEL INFO CALL 511 Signs (Section 2F.08 in the NPA) that incorporates text from Section 2D.45 of the 2003 MUTCD associated with these signs. MISA supported this proposed new section. A State DOT suggested that the FHWA allow alternate designs of the sign that would eliminate the duplicate message ''511'' by incorporating a larger scale pictograph. The FHWA disagrees, because the suggested pictograph (the trademarked 511 pictograph) has not undergone legibility testing to determine whether it can be used independently.

276. As proposed in the NPA, the FHWA adopts in this final rule a new Section 2I.11 Carpool and Ridesharing Signing (Section 2F.09 in the NPA) that contains information from Section 2E.57 of the 2003 MUTCD. The FHWA adopts this change because this material relates to the content in Chapter 2I.

277. In the NPA, the FHWA proposed to relocate the information from Section 2C.13 of the 2003 MUTCD to a new section numbered and titled Section 2F.12 Truck Escape Ramp Signs. With the chapter reorganization adopted in this final rule, it would have been Section 2I.12. The FHWA proposed this change to clarify that these types of signs convey information on a form of roadside facility (similar to rest areas, brake check areas, etc.), rather than warnings. Although a local DOT supported this change, the NCUTCD and one of its members, six State DOTs, two local DOTs, and a citizen opposed truck escape ramp signs being reclassified, suggesting that this section and the associated signs remain in Chapter 2C. Based on the comments, FHWA agrees that truck escape ramp signs are only intended to communicate information in an emergency situation and the escape ramp is not to be entered except under such a condition, and thus a warning classification for the signs is more appropriate. The FHWA does not adopt proposed Section 2F.12 in this final rule, and retains the truck escape ramp signs in Chapter 2C with black legends on yellow backgrounds.

278. In this final rule the FHWA adopts Chapter 2J Specific Service Signs that contains the provisions of Chapter 2F of the 2003 MUTCD. This chapter was numbered Chapter 2G in the NPA. Significant proposed and adopted changes to provisions of 2003 MUTCD Chapter 2F are discussed below.

279. In the NPA, the FHWA proposed to revise the STANDARD statement in Section 2J.02 Application (Section 2F.02 of the 2003 MUTCD) to indicate that a service type is allowed to appear on up to two Specific Service signs, rather than only on one. MISA and an NCUTCD member supported this change. A State DOT opposed limiting the number to two, while a State travel information council opposed allowing more than one sign per service type because they felt that the overflow of service types onto two signs at one interchange would further complicate the signing. The FHWA disagrees that signing would be further complicated, based on the fact that the total number of signs allowed has not changed. The FHWA adopts in this final rule the change as proposed in the NPA to reflect FHWA's Interim Approval (IA–9) to Display More than Six Specific Service Logo Panels for a Type of Service, dated September 21, 2006,[109] which allows for up to 2 Specific Service signs containing up to 12 logos for a given type of service. As part of this change, the FHWA also adopts a paragraph 06 indicating that when a service type is displayed on two signs, the signs for that service type should follow one another in succession. MISA, a State DOT, and an NCUTCD member supported this provision. Two State DOTs felt that it would not be practical for the signs to follow one another in succession, because their existing sign panels would have to be removed and relocated. The commenters suggested that the wording allow installation of additional service signs as space allows. The FHWA declines revising the language as suggested because it is important that the signs be in succession to aid the driver in recollection and decision making.

280. In Section 2J.03 Logos and Logo Sign Panels (Section 2F.03 of the 2003 MUTCD), the FHWA proposed in the NPA to add to the first GUIDANCE statement a recommendation that the letter heights for word message logos should have the minimum letter heights described in Section 2J.05. A State DOT and a State travel information council commented that the minimum letter heights referenced in Section 2J.05 are in a STANDARD statement. Therefore, to avoid conflicts created by referencing a STANDARD statement in a GUIDANCE statement, the FHWA does not adopt the GUIDANCE as proposed in the NPA. Instead, in this final rule the FHWA adopts a SUPPORT statement referencing Section 2J.05 for minimum letter heights for logo sign panels.

As proposed in the NPA, the FHWA also adopts OPTION, STANDARD, GUIDANCE, and SUPPORT statements in this section regarding the use and design of supplemental messages within the logo sign panel. To enhance recognition of the presence of a supplemental message, the figures depict the logo sign panels with the supplemental messages on a yellow background. The FHWA adopts this new text to incorporate messages, such as DIESEL and 24 HOURS that are helpful to road users. ATSSA, a State travel information council, MISA, an NCUTCD member, and a traffic signing vendor supported the proposed language. In the NPA, the FHWA also proposed restricting the number of supplemental messages on a logo panel to just one. A State DOT opposed this restriction but the FHWA disagrees because the recommendation of a maximum of one supplemental message is based on driver information processing capabilities. An agency may, through engineering judgment based on applicable design considerations and human factors, display more than one supplemental message if it deems it to be essential to motorist direction.

In the NPA, the FHWA proposed to add recommendations regarding the specific minimum letter heights for the supplemental message for logo sign panels on Specific Service signs for various roadway classifications. A State DOT and an NCUTCD member suggested that the proposed letter height of only 4 inches on a mainline freeway or expressway sign is too small, and recommended a minimum letter height of 6 inches. The FHWA notes that 4 inches represents the minimum letter height, and agencies can use larger letter heights. The 4-inch supplemental legend was balanced with the recommendation for an 8-inch business name. In order to provide consistency and to avoid repeating language, the FHWA does not adopt the recommendation as proposed in the NPA. Instead, in this final rule the FHWA adopts a STANDARD statement that references Table 2J–1 for minimum height requirements for letters and numerals on supplemental messages displayed within the logo sign panel.

The FHWA adopts a new supplemental message for use with logo sign panels that may be used by businesses that are designed with facilities to accommodate the on-site movement and parking of recreational vehicles (RVs). As proposed in the NPA, the language was developed based on the conditions listed in Interim Approval IA–8, dated September 6,

[109] FHWA's Interim Approval IA–9, dated September 21, 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interim_approval/pdf/ia_9_logopanels.pdf*.

2005,[110] as well as additional criteria deemed necessary, such as alternate RV Access supplemental message design and placement, and the need for an engineering study to demonstrate that a U-turn can be made by RVs, if U-turns are needed to access the RV accessible site desiring to be signed as such. The proposed language created a significant amount of interest, particularly within the RV community. The FHWA received over 1,150 letters from RV owners, many of whom are members of the Family Motor Coach Association (FMCA). All of those commenters supported the concept of RV signing. Only one RV owner commented that RV accessible sites should not be signed because there are too many signs along the highway already and that special interest groups should not be candidates for additional signing. The large number of members of the FMCA who submitted letters, as well as a few additional citizens, suggested that the FHWA retain the existing sign designs contained in the Interim Approval, primarily because the program has already been implemented in 15 States, and they are concerned about the costs that those States would incur if they were forced to change their signs. These commenters felt that the 15 States that are already using these signs might abandon the RV accessible program instead of upgrading the signs. ATSSA, a State DOT, MISA, an NCUTCD member, a traffic engineering consultant, and three citizens supported the design proposed in the NPA for several reasons. Many thought that the design in the Interim Approval produced a cluttered appearance that was alleviated in the NPA design by keeping the RV Access supplemental message within the logo sign panel. The FHWA adopts the design proposed in the NPA, because the FHWA believes it is important to contain the RV symbol within the borders of the business logo to make it easier for the travelling public to determine which service accommodates RVs and to simplify the overall sign design. The FHWA points out to the RV owners who submitted comments that, due to the systematic upgrade provisions of Section 655.603(d)(1) of title 23, Code of Federal Regulations, the 15 States that have signs in place do not need to spend any funds on immediately upgrading their existing signs since they can keep their existing signs in place until they need to be replaced, at which time replacement with a sign that is compliant with the MUTCD would occur. In addition, although not proposed in the NPA, the FHWA adopts a GUIDANCE statement in this final rule recommending that agencies using the RV Access supplemental message should have a policy on the site requirements needed to qualify for such a designation. This incorporates additional information from the Interim Approval regarding the need for States to develop a policy on site requirements, as suggested in a comment from a citizen.

The FHWA also adopts a new OPTION statement allowing the use of the supplemental message OASIS within the logo panel of a business that has been designated as an Interstate Oasis facility. As proposed in the NPA, the FHWA adopts this additional supplemental message to reflect the Interstate Oasis Program and Policy that was published in the **Federal Register** on October 18, 2002.[111]

Finally, in the NPA, the FHWA proposed to add STANDARD, OPTION, and GUIDANCE statements regarding the use of dual logo panels (two smaller logos on the same panel) on Specific Service signs. The FHWA based this proposal on the results of research in Texas[112] which found that mixing food and gas logos in a dual logo panel did not significantly impact their effectiveness. Although a local DOT supported this proposal, the NCUTCD and one of its members, eight State DOTs, a State travel information council, MISA, and a traffic signing vendor opposed it. Further review by the FHWA indicates that the research in Texas was a simulation only. In addition, the FHWA has not received results from field experimentation underway in Texas and Kentucky to support inclusion of dual logos at this time. As a result, the FHWA does not adopt in this final rule the proposed use of dual logo sign panels on Specific Service signs.

281. The FHWA adopts in Section 2J.04 Number and Size of Signs and Logo Sign Panels (Section 2F.04 of the 2003 MUTCD) OPTION and STANDARD statements to permit the use of, and provide the associated requirements for, additional logo sign panels of the same specific service type when more than six businesses of a specific service type are eligible for logo sign panels at the same interchange. ATSSA, MISA, a local DOT, and an NCUTCD member supported this new provision as proposed in the NPA, while three State DOTs and a State travel information council expressed opposition. Those in opposition suggested that the additional logo sign panels of the same service type, beyond six, would lead to sign proliferation, potentially causing driver confusion. Some of the commenters stated that the purpose of the logo panels is to inform motorists of the specific services available at a particular interchange so that they can make informed decisions about essential motorist services before exiting the highway, and the fact that one sign would have the full complement of six specific service providers for a single type is a clear indication that the motorist will have a number of choices for that service type at that interchange. Thus, these commenters felt it is not necessary to identify each provider at that location. The FHWA understands the purpose of the program and notes that States may develop policies regarding the scope and use of Specific Service signing and might elect to use only General Service signing. The FHWA adopts this provision as proposed in the NPA, based on the Interim Approval to Display More than Six Specific Service Logo Panels for a Type of Service (IA–9), dated September 21, 2006.[113]

282. In the NPA, the FHWA proposed adding a STANDARD statement in Section 2J.05 Size of Lettering (Section 2F.05 of the 2003 MUTCD), specifying minimum letter heights for logo sign panels consisting only of word legends that are displayed on the mainlines of freeways and expressways and on conventional roads and ramps. ATSSA and a local DOT supported the letter heights as proposed in the NPA. Four State DOTs opposed the proposed sizes because they felt that the legend size on word-only logo sign panels should not be mandated and should be consistent with how trademarks are handled. The FHWA disagrees because the purpose of a minimum letter height is for legibility of legends that do not have recognition value by virtue of a unique graphic representation. Trademarked word graphic business representations

[110] Interim Approval IA–8 can be viewed at the following Web site: *http://mutcd.fhwa.dot.gov/res-interim_approvals.htm.*

[111] The Interstate Oasis Program and Policy can be viewed at: *http://mutcd.fhwa.dot.gov/res-policy.htm.*

[112] ''Effects of Adding Dual-Logo Panels to Specific Service Signs: A Human Factors Study,'' by H. Gene Hawkins and Elisabeth R. Rose, 2005, published in Transportation Research Record number 1918, is available for purchase from the Transportation Research Board at the following Internet Web site: *www.trb.org.* A brief summary of the research results can be viewed at the following Internet Web site: *http://pubsindex.trb.org/document/view/default.asp?lbid=772254.*

[113] FHWA's Interim Approval IA–9, dated September 21, 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interim_approval/pdf/ia_9_logopanels.pdf.*

constitute logos and are not subject to this provision. The NCUTCD, one of its members, and MISA supported the letter heights, with the exception of the letter heights on ramps, which they felt should be changed to 4-inch upper-case and 3-inch lower case to reflect that ramp panels are half the size of mainline panels. The FHWA disagrees because of the need to maintain legibility, regardless of panel size. In this final rule, the FHWA adopts a reference in the STANDARD to a new Table 2J–1 with minimum letter and numeral sizes for Specific Service signs according to sign type, rather than repeating the detailed requirements in the STANDARD statement. The FHWA adopts the minimum letter heights in Table 2J–1 to provide letter heights that will enhance legibility for older drivers. This new table includes the sizes for Specific Service signs, logo panels, and logo panel supplemental messages.

283. As proposed in the NPA, the FHWA adopts Section 2J.08 Double-Exit Interchanges (Section 2F.08 of the 2003 MUTCD) with a GUIDANCE paragraph 03 to recommend that where a service type is displayed on two Specific Service signs at a double-exit interchange, one of the signs should display the logo panels for the service type of the businesses that are accessible from one of the two exits, and the other sign should display the logo panels for the service type of the businesses that are accessible from the other exit. MISA and an NCUTCD member supported the intent of this section, but suggested revisions to allow for a ''split-service'' sign format where two services would be displayed for one exit. The commenters suggested that ''split-service'' signs where the top section displays FOOD—EXIT 5A and the bottom section displays LODGING—EXIT 5A would not comply with the proposed text. The FHWA disagrees, noting that the purpose of this provision is to avoid situations where one sign is split between each exit, not service category. An example would be one sign displaying ''FOOD—EXIT 5A'' and ''FOOD—EXIT 5B'' followed by a second Food sign that also applies to both exits with the same headings. The FHWA's intent is that one sign should read ''FOOD—EXIT 5A'' while the other reads ''FOOD—EXIT 5B''. This provision does not preclude the display of two services on one sign. The FHWA adopts paragraph 03, as proposed in the NPA, to provide consistency in logo signing for double-exit interchanges when a service type is displayed on two signs.

284. The FHWA adopts Section 2J.09 Specific Service Trailblazer Signs, containing SUPPORT, STANDARD, GUIDANCE, and OPTION statements regarding these guide signs that are required along crossroads for facilities that have logo panels displayed along the main roadway and ramp, and that require additional vehicle maneuvers to reach. ATSSA supported this section as proposed in the NPA, while two DOTs and a State travel information council opposed the new section in its entirety, specifically the mandating of the use of Specific Service trailblazer signs, as indicated in paragraph 02. Two additional State DOTs suggested that more flexibility be provided to allow other official signs and legal outdoor advertising signs to serve as substitutes for Specific Service trailblazer signs, where it is not feasible or practical to install these signs. The FHWA disagrees because highway agencies do not control the content, format, or continued presence of off-premise signs and therefore reliance on off-premise signs is not advisable. The NCUTCD suggested relaxing the requirement that facilities shall not be considered eligible for signing from the ramp and main roadway where it is not feasible or practical to install Specific Service trailblazer signs. The FHWA disagrees, because the continuity of the system of signs is essential to motorist guidance. The FHWA adopts this new section and an associated new figure, as proposed in the NPA, to enhance the uniformity of this signing practice, which is being used by many States.

285. The FHWA adopts Section 2J.10 Signs at Intersections (Section 2F.09 of the 2003 MUTCD) and expands paragraph 05, as proposed in the NPA, to require that the action message or the directional arrow shall all be on the same line as the type of service or below the logo sign panels. A State DOT opposed changing this to a requirement, because many of their signs do not meet this requirement and would need to be replaced. The FHWA disagrees and adopts the requirement in this final rule. The 2003 MUTCD language required the action message or directional arrow to be on the same line as the type of service, which was required to be above the logo(s), but provided an optional alternative to display the action message or directional arrow below the logo(s). The text adopted in this final rule merely consolidates the 2003 OPTION and STANDARD statements, and the consolidated STANDARD continues to allow the action message or directional arrow to be either (1) above the logos on the same line as the service type, or (2) below the logos. Further, under the systematic upgrade provisions of Section 655.603(d)(1) of title 23, Code of Federal Regulations, States can keep their existing signs in place until they need to be replaced, at which time replacement with a sign that is compliant with the MUTCD would occur.

286. In this final rule the FHWA adopts Chapter 2K Tourist-Oriented Directional Signs that contains the provisions of Chapter 2G of the 2003 MUTCD. The FHWA did not propose any significant changes to this chapter in the NPA (numbered 2H therein), nor does the FHWA adopt any significant changes to the text in this chapter in this final rule.

287. The FHWA adopts in this final rule a new Chapter 2L Changeable Message Signs (Chapter 2M in the NPA.) The NPA contained information from Sections 2A.07 and 2E.21 of the 2003 MUTCD as well as additional new information, organized into seven sections, specifically pertaining to the description, application, legibility and visibility, design characteristics, message length and units of information, installation, and display of travel times on changeable message signs. Five State DOTs, a local DOT, a local association, and two toll road operators suggested that FHWA clarify the terms Changeable Message Sign (CMS), Dynamic Message Sign (DMS), and Variable Message Sign (VMS), since the terms are used differently throughout the traffic engineering and the ITS/electronics industry. The FHWA adopts in this final rule the term Changeable Message Sign (CMS) as it is the standard nomenclature in the traffic engineering profession, and clarifies that this term is synonymous with signs referred to as DMS and VMS. The FHWA adopts this new chapter to consolidate all information about CMSs into one location in the Manual and to reflect the recommendations of extensive research on changeable message sign legibility, messaging, and operations conducted over a period of many years by the Texas Transportation Institute.[114] A State DOT, a traffic control device vendor, and a legal firm supported the creation of a consolidated chapter, whereas a local ITE chapter suggested that there needed to be clarification on what types of CMSs are covered by this chapter. The FHWA agrees and adopts clarifying text in this final rule to distinguish between various

[114] Information on the many research projects on changeable message signs conducted by the Texas Transportation Institute (TTI) can be accessed via TTI's Internet Web site at: *http://tti.tamu.edu/*.

types of CMS and the applicability of these provisions to each type.

288. The FHWA adopts Section 2L.01 Description of Changeable Message Signs (Section 2M.01 in the NPA). ATSSA and a local DOT supported the proposed prohibition of advertising messages on CMSs. A law firm suggested that States need to have an opportunity to allow advertising on CMSs under controlled circumstances to assist with funding, thereby enabling modern CMS technology, which is a vital element of the ITS program. The FHWA disagrees, as advertising in the highway right of way is not permitted, and the FHWA believes it is a distraction from traffic conditions, official traffic control devices, and the driving task in general. ATSSA also supported the description of CMSs and the design language.

Although not proposed in the NPA, the FHWA adopts a GUIDANCE statement in this final rule to consolidate and clarify existing provisions stating that blank-out signs that display only single-phase, predetermined electronic-display legends that are limited by their composition and arrangement of pixels or other illuminated forms in a fixed arrangement (such as a blank-out sign indicating a part-time turn prohibition, a blank-out or changeable lane-use sign, or a changeable OPEN/CLOSED sign for a weigh station), should conform to the provisions of the applicable section for the specific type of sign, provided that the letter forms, symbols, and other legend elements are duplicates of the static messages, as detailed in the ''Standard Highway Signs and Markings'' book. The FHWA adopts this language in this final rule to provide information regarding these types of signs, allowing greater flexibility in the use of such signs.

289. The FHWA adopts Section 2L.02 Applications of Changeable Message Signs (Section 2M.02 in the NPA), which allows the use of CMSs, both permanent and portable, by State and local highway agencies to display emergency, homeland security, and America's Missing: Broadcast Emergency Response (AMBER) alert messages, in addition to safety or transportation-related messages already included in the 2003 MUTCD. The FHWA also adopts a GUIDANCE statement, as proposed in the NPA, that States have a policy regarding the display of these types of messages. ATSSA and a State DOT supported these changes. Another State DOT suggested that additional messages be allowed when used in a temporary traffic control zone. The FHWA believes that this information should be considered in the State's policy on the use of CMSs and not included in the MUTCD. Based on a comment from a State DOT, the FHWA also adopts in this final rule a GUIDANCE statement that when multiple CMSs are used to address a specific situation, the message displays should be consistent to the driver along the roadway corridor and adjacent corridors, and that different operating agencies should coordinate their messages accordingly.

290. In Section 2L.03 Legibility and Visibility of Changeable Message Signs (Section 2M.03 in the NPA), the FHWA had proposed adding a recommendation in the NPA regarding care and maintenance of the protective material on the front face of a CMS. Two State DOTs opposed this language, stating it was too prescriptive and that specific details regarding maintenance should not be included in the MUTCD. The FHWA agrees and does not adopt the proposed language in this final rule.

291. The FHWA adopts Section 2L.04 Design Characteristics of Changeable Message Signs (Section 2M.04 in the NPA), as proposed in the NPA, which expands the elements that are prohibited on CMSs to include advertising, exploding, scrolling, or other dynamic elements. Two State DOTs, three local DOTs, and an association of local ITS partners suggested that sequencing arrows be allowed. The FHWA disagrees because sequencing arrows are not appropriate for CMSs that can accommodate word legends that are comparable to static signs when installed at the roadside or in an overhead location. However, to address this issue, in this final rule the FHWA adopts a reference to Part 6 regarding the use of flashing arrow boards for lane closures that are placed in the closed portion of a lane.

As proposed in the NPA, the FHWA adopts a recommendation that except in the case of a limited-legend CMS (such as a blank-out or electronic-display changeable message regulatory sign) that is used in place of a static regulatory sign or an activated blank-out warning sign that supplements a static warning sign at a separate location, changeable message signs should be used as a supplement to, and not as a substitute for, conventional signs and markings. ATSSA, a State DOT, a local DOT, and a local chapter of ITE supported this language.

As proposed in the NPA, the FHWA adopts provisions for spacing between characters, words, and message lines, as well as letter heights and width-to-height ratios of the sign characters, in this section. ATSSA, a State DOT, three local DOTs, a traffic control device vendor, and a local ITE section suggested revisions to the proposed language or suggested that it be deleted because it was too prescriptive. The FHWA adopts the language as proposed, based on research evaluations [115] that support the provisions. The FHWA understands that CMS technology is continuing to develop and will consider those developments in future rulemaking and/or policy guidance.

The FHWA adopts a requirement that CMSs automatically adjust their brightness under varying light conditions to maintain legibility. ATSSA supported this language. A State DOT suggested that additional clarification be provided. The FHWA notes that Table 2A–5 provides information for the use of a white legend on a black background for the colors of regulatory electronic changeable displays.

The FHWA proposed in the NPA to recommend that the front face of a CMS be covered with protective material. A State DOT, a local DOT, and a local ITE chapter suggested that this recommendation be removed, since there might be signs that do not need a protective front material. The FHWA agrees and does not adopt the reference to protective material in this final rule.

In GUIDANCE paragraph 11, the FHWA decides to remove the specific recommended minimum values of luminance for CMSs because such precise information is more appropriately contained in other reference materials. Instead, the FHWA adopts the GUIDANCE statement as a recommendation that the luminance should meet industry criteria for CMS. The FHWA adopts the recommended range of luminance contrast as proposed in the NPA.

The remaining paragraphs that were proposed in this section are related to color messages and backgrounds on CMSs. ATSSA supported the proposed language, while several State and local DOTs, traffic control device manufacturers, and an NCUTCD member suggested changes to the text or suggested that the language be deleted. Some agencies felt that the language indicated that all CMSs are to be in color. The FHWA disagrees, as only the sign legend is required to be in color, not the background. Some commenters did not know that the capability exists for displaying the colors indicated in the NPA. The capability does exist and

[115] Information on the many research projects on changeable message signs conducted by the Texas Transportation Institute (TTI) can be accessed via TTI's Internet Web site at: *http://tti.tamu.edu/*.

some agencies have begun to use signs that employ more advanced technologies, however; FHWA believes that agencies have not specified the use of the colors because of the lack of standards and apparent or implied acceptance of existing technologies in use. Based on the availability and effective use of signs that have the capabilities to display full color the FHWA adopts the language as proposed in the NPA. Based on a comment from a local ITE section, the FHWA also adopts information on the use of symbols regarding resolution and replication of static versions of signs.

292. The FHWA adopts Section 2L.05 Message Length and Units of Information (Section 2M.05 in the NPA), with revisions to the STANDARD to clarify that each message on a CMS shall consist of no more than two phases. Two State DOTs, seven local DOTs, an association of local DOTs, and a traffic engineering consultant opposed this language, stating that it was overly restrictive and that a third phase should be allowed. The FHWA disagrees, because messages composed of more than two phases exceed driver information processing capabilities and adopts the language as proposed in the NPA. Some of the commenters, as well as an NCUTCD member, suggested that the language conflicted with the last GUIDANCE statement in the section recommending an additional CMS to be used if the message required more than two phases. To address this comment, in this final rule the FHWA adopts a revision the last GUIDANCE statement to clarify that the display of information that would otherwise necessitate more than two phases would be handled by the use of two CMSs at separate locations, each with distinct, independent messages with a maximum of two phases each. In this final rule the FHWA also adds to the GUIDANCE statement an additional principle that the duration between the displays of two phases should not exceed 0.3 seconds, to clarify the issue of how long an interval between successive phases should be.

The FHWA adopts a requirement, as proposed in the NPA, that each phase of a message shall be understood by itself regardless of the sequence in which it is read. A State DOT, two local DOTs, and a toll road operator suggested that this language be changed to a recommendation, or be applicable only to permanent CMS. The FHWA disagrees and believes that the logical display of messages is critical to their comprehension and subsequent action by road users to promote effective traffic operation. The FHWA adopts the language as proposed in the NPA, in this final rule.

The FHWA adopts a requirement that techniques of message display such as animation, rapid flashing, dissolving, exploding, scrolling that travels horizontally or vertically across the face of the sign, or other elements, shall not be used. This language is similar to the requirements in Sections 2L.04 and 6F.60. The Minnesota DOT and a local ITE section suggested that there needed to be more guidance, particularly related to moving arrows. The FHWA disagrees with allowing the use of moving arrows on permanent CMSs. However, to address this issue, the FHWA adopts a reference to Part 6 regarding the use of flashing arrow boards for lane closures.

293. The FHWA adopts Section 2L.06 Installation of Permanent Changeable Message Signs (Section 2M.06 in the NPA) that contains recommendations on the factors that should be considered when installing permanent CMSs that are not used in place of static signs. ATSSA and a local DOT supported the provisions in this proposed section. To address a comment from the NCUTCD, the FHWA adopts language in this final rule to clarify that CMSs should be located upstream of known bottlenecks and high-crash locations to enable drivers to choose an alternate route.

294. In the NPA, the FHWA proposed to add Section 2M.07 Display of Travel Times on Changeable Message Signs. Although ATSSA supported this new section, several State and local DOTs, the NCUTCD and several of its members, as well as other associations provided various comments regarding the specific language or opposed the new section in its entirety because it is not related to traffic control devices. Much of the proposed language included information about public involvement. The FHWA agrees with the commenters and does not adopt this section in this final rule. The information is contained in the FHWA's 2004 policy document titled ''Dynamic Message Sign (DMS) Recommended Practice and Guidance'' [116] if agencies would like more information.

295. In the NPA, the FHWA proposed in Section 2M.04 General Design Requirements for Recreational and Cultural Interest Area Symbol Guide Signs (Section 2H.04 of the 2003 MUTCD and Section 2J.04 in the NPA) to replace the entire set of recreational and cultural area symbol signs with a new, updated, and expanded set of signs based on the National Park Service's (NPS) updated Uniguide Standards Manual,[117] in addition to a few United States Forest Service standard symbol signs for activities not covered in the Uniguide Standards. The Society for Environmental Graphic Design (SEGD) and Harpers Ferry Center (part of the National Park Service) supported the integration of SEGD Recreation Symbols into the MUTCD, and suggested that even more of them be included in the MUTCD. The NCUTCD and one of its members, four State DOTs, two local DOTs, and the U.S. Army Corps of Engineers opposed the proposed symbols for several reasons, including: (1) Some of them conflict with other previously-adopted symbols in the MUTCD; (2) they had not undergone sufficient legibility testing; and (3) by adopting the proposed symbols, the MUTCD would contain a mixture of symbol systems, and therefore would not be uniform. In consideration of the comments, in this final rule the FHWA adopts only the current versions of the NPS Uniguide symbols that do not conflict with symbols adopted by other provisions of the MUTCD, and revises the figures in Chapter 2M accordingly. Because the symbols previously adopted by the MUTCD for roadway applications have undergone legibility and comprehension evaluations prior to adoption, FHWA determines that it is inappropriate to replace those already-adopted symbols with symbols that are untested and complex in their designs. In response to a comment regarding the numbering of the symbols, the FHWA adopts the current designations available at the time of rulemaking with the presumption that the designations adopted by the MUTCD will be adhered to as revisions to the SEGD materials evolve. The FHWA believes it is important to establish the primacy of the MUTCD as its contents are subject to the Federal rulemaking process.

In the NPA, the FHWA proposed adding ''Prohibited Activities and Items'' as one of the usage categories for recreational and cultural interest area symbol guide signs in this section and in Table 2M–1 (Table 2H–1 of the 2003 MUTCD and Table 2J–1 in the NPA). Based on comments discussed in the following item, the FHWA does not adopt this usage category in this final rule. The FHWA revises Table 2M–1 to reflect the new set of signs, as well as

[116] Dynamic Message Sign (DMS) Recommended Practice and Guidance, dated 7/16/2004, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/res-memorandum_dms.htm.*

[117] Information about the National Park Service's Uniguide Standards Manual can be obtained from the National Park Service, Harpers Ferry Center, 67 Mather Place, Harpers Ferry, WV 25425, telephone 304–535–5050, Internet Web site *http://www.nps.gov/hfc/products/uniguide.htm.*

figures within Chapter 2M that show recreational and cultural signs.

296. The FHWA adopts Section 2M.07 Use of Prohibitive Circle and Diagonal Slash for Non-Road Applications (Section 2H.07 in the 2003 MUTCD and Section 2J.07 in the NPA) with revisions to the title and additional clarifying language to describe the appropriate use of the prohibitive circle and diagonal slash. The clarifying language is in addition to the text proposed in the NPA regarding signing for prohibited activities or items in recreational or cultural interest areas when a standard regulatory sign for such a prohibition is not provided in Chapter 2B.

In the NPA, the FHWA proposed to specify that the red diagonal slash be placed behind the symbol, rather than over it, consistent with National Park Service standards. Although a local DOT, MISA, and an NCUTCD member supported this text and the associated images proposed in Figure 2J–11, ATSSA, another NCUTCD member, a State DOT, and three local DOTs opposed the inconsistent use of the slash, as well as all of the sign images in proposed Figure 2J–11. The FHWA agrees with the commenters and does not adopt the language regarding the red diagonal slash in this final rule, thereby making the use of the slash consistent (symbol behind the slash). Also, the FHWA does not adopt Figure 2J–11. The FHWA adopts revised sign images in the figures throughout Chapter 2M to show the slash in front of the symbol.

297. The FHWA adopts Section 2M.08 Placement of Recreational and Cultural Interest Area Symbol Signs (Section 2H.08 of the 2003 MUTCD and Section 2J.08 in the NPA) including the new binoculars symbol, as proposed in the NPA, to denote wildlife viewing areas based on the Sign Synthesis Study,[118] which revealed that several States and the National Park Service were already using this symbol in this manner to design an effective guide sign. The FHWA also adopts the OPTION statement proposed in the NPA, allowing the symbol on the Wildlife Viewing Area sign to be placed to the left or right of the legend, and the arrow to be placed below the symbol. MISA and an NCUTCD member supported this text and the associated symbol, while a State DOT suggested that the symbol on the Wildlife Viewing Area sign should always be placed on the same side, similar to pictographs for street name signs. The FHWA disagrees, and adopts the language as proposed, because flexibility is needed based on whether the associated arrow is pointing to the left or right.

Finally, the FHWA adopts information in the last OPTION statement permitting the use of Advance Turn or Directional Arrow auxiliary signs with white arrows on brown backgrounds with Recreational and Cultural Area Interest symbol guide signs to create Recreational and Cultural Interest Area Directional Assemblies. Although not proposed in the NPA, the FHWA adopts this language in this final rule to provide agencies with the flexibility to create Recreational and Cultural Interest Area Directional Assemblies, similar to other assemblies that are permitted in the MUTCD.

298. The FHWA adopts Section 2M.09 Destination Guide Signs (Section 2H.09 in the 2003 MUTCD and Section 2J.09 in the NPA), and deletes the first sentence of the second STANDARD statement that restricted the use of white on brown destination guide signs on linear parkway-type highways that primarily function as arterial connectors. This change proposed in the NPA is the result of an amended memorandum of understanding that was signed in 2006 by the National Park Service and the FHWA.[119] MISA and an NCUTCD member supported this change.

299. The FHWA adopts Section 2M.10 Memorial or Dedication Signing (Section 2I.07 Memorial Signing in the NPA), which is comprised primarily of text pertaining to memorial and dedication signs that was in Sections 2D.49 and 2E.08 of the 2003 MUTCD. The FHWA relocates the information on these type of signs to Chapter 2M because they are more appropriately classified as a Recreational and Cultural Interest Area signs, rather than as General Information Signs. The FHWA also revises the background color for Memorial or Dedication Signs from green to brown. The FHWA adopts revised statements within the section, as proposed in the NPA, in order to make the information in this section regarding memorial and dedication signing consistent with Section 2D.53 Signing of Named Highways (Section 2D.49 of the 2003 MUTCD). Although not proposed in the NPA, the FHWA adopts GUIDANCE, STANDARD, and OPTION statements regarding design recommendations, requirements, and options for these signs that are consistent with general signing principles and with provisions for other recreational and cultural interest area signs to address the fact that the information on these signs was relocated from another Chapter.

300. The FHWA adopts Section 2N.03 Evacuation Route Signs (Section 2I.03 of the 2003 MUTCD), with reorganized paragraphs, as proposed in the NPA, to provide a more logical flow. The FHWA also adopts information regarding the design of the new Tsunami Evacuation Route sign, as proposed in the NPA. The design is based on a symbol currently being used in all Pacific Coast States.

The FHWA also adopts the clarification of the use of Advance Turn Arrow (M5 series) and Directional Arrow (M6 series) auxiliary signs with Evacuation Route signs in paragraphs 02 and 03, as proposed in the NPA.

301. The FHWA adopts Section 2N.08 Emergency Aid Center Signs (Section 2I.08 of the 2003 MUTCD), as proposed in the NPA, and adopts an OPTION statement allowing the use of a fluorescent pink background color when Emergency Aid Center signs are used in an incident situation, such as during the aftermath of a nuclear or biological attack. ATSSA and a local DOT supported this change. The FHWA adopts this change, because Emergency Aid Center (EM–6 Series) signs might be useful for incident situations.

302. The FHWA adopts Section 2N.09 Shelter Directional Signs (Section 2I.09 of the 2003 MUTCD), as proposed in the NPA, with an OPTION statement allowing the use of a fluorescent pink background color when Shelter Direction signs are used in an incident situation, such as during the aftermath of a nuclear or biological attack. ATSSA supported this change. The FHWA adopts this change, because Shelter Direction (EM–7 Series) signs may be useful for incident situations.

Discussion of Amendments to Part 3—Pavement Markings—General

303. In the NPA, the FHWA proposed to remove all references to blue raised pavement markers for locating fire hydrants from Part 3 because they are not considered to be traffic control devices. Two local DOTs agreed with the proposal. The NCUTCD, a State DOT, and a traffic control device manufacturer recommended keeping blue raised pavement markers in the MUTCD. Based on the comments, in this final rule the FHWA removes all STANDARD, GUIDANCE, and OPTION statements regarding blue raised pavement markers from the Manual, but adds a new SUPPORT statement in Section 3B.11 stating that blue raised pavement markers are sometimes used

[118] ''Synthesis of Non-MUTCD Traffic Signs,'' FHWA, December 2005, can be viewed at the following Internet Web site: *http://tcd.tamu.edu/documents/rwstc/Signs_Synthesis-Final_Dec2005.pdf.*

[119] This Memorandum of Understanding can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/res-policy.htm.*

to help emergency personnel locate fire hydrants.

304. Based on a comment from a State DOT, the FHWA adopts the terms ''dotted lane line'' and ''dotted line extension'' instead of ''dotted line'' throughout Part 3 and the rest of the MUTCD to clarify the provisions applicable to each. A ''dotted lane line'' is used to separate a continuing lane from a non-continuing lane, while a ''dotted line extension'' is used to extend a line through an intersection or taper area.

305. As proposed in the NPA, the FHWA adopts the optional use of appropriate route shield pavement marking symbols (including appropriate colors) to assist in guiding road users to their destinations. The NCUTCD commented that colors of State route shield markings should also be allowed and the FHWA agrees. The FHWA includes a figure illustrating several examples of route shield pavement markings.

306. As proposed in the NPA, the FHWA adopts language to clarify that dotted lane lines, rather than broken lane lines, are to be used for non-continuing lanes, including acceleration lanes, deceleration lanes, and auxiliary lanes. Sections 3A.06, 3B.04, 3C.02, and 3D.02 all contain information on the use of dotted lane lines for these uses. The FHWA also adopts revisions to the various figures in Chapter 3B that illustrate the adopted provisions on proper uses of the different types of lines and adds figures where needed to better illustrate the text on the use of dotted lane lines. As documented in NCHRP Synthesis 356,[120] a number of States and other jurisdictions currently follow this practice, which is also the standard practice in Europe and most other developed countries. The FHWA believes that the existing use of a normal broken lane line for these non-continuing lanes does not adequately inform road users of the lack of lane continuity ahead and that the standardized use of dotted lane lines for non-continuing lanes as adopted in this final rule will better serve this important purpose in enhancing safety and uniformity. Sections 3B.04 and 3B.09 below contain further discussion of dotted lane lines.

307. In the NPA, the FHWA proposed to place the information on object markers and barricades in a new chapter titled Chapter 2L Object Markers, Barricades, and Gates. This involved the relocation of Chapter 3C Object Markers and Section 3F.01 Barricades to Part 2 because readers of the MUTCD have difficulty finding object markers in the 2003 MUTCD. In addition, most jurisdictions treat these devices as signs for purposes of inventory and policy. As discussed above in Chapters 2B and 2C, in this final rule, the FHWA relocates the information on barricades to the adopted Section 2B.67 Barricades and the information on object markers to Sections 2C.63, 2C.64, 2C.65, and 2C.66.

308. As proposed in the NPA, the FHWA adopts in this final rule OPTION statements in various sections within Part 3 to allow the use of retroreflective or internally illuminated raised pavement markers in the roadway immediately adjacent to curbed noses of raised medians and curbs of islands, or on top of such curbs, based on recommendations from the Older Driver handbook.[121] This is an effective practice commonly used to aid road users in identifying these channelizing features at night.

Discussion of Amendments Within Chapter 3A

309. In Section 3A.02 Standardization of Application, in the NPA the FHWA proposed revising the OPTION statement about temporary masking of markings. A State DOT expressed concern about the tape being able to match the color of the pavement. The FHWA disagrees with this comment because the NPA wording ''approximately the same color'' allows sufficient flexibility. A toll road operator recommended adding a durability requirement for tape and requiring that the tape be fully maintained. The FHWA disagrees with this comment because the MUTCD does not specify durability times or ''full maintenance'' of any markings. The FHWA adopts the revised OPTION statement in the final rule as proposed in the NPA.

310. In the NPA, the FHWA proposed in Section 3A.05 Colors (numbered Section 3A.04 in the NPA) to limit the use of red raised pavement markers to truck ramps, one-way roadways, and ramps. A toll road operator recommended relocating the text to a section specifically concerning raised pavement markers. The FHWA disagrees because this section provides the STANDARD for the application of red raised pavement markers consistent with the STANDARD for applying other colors. The FHWA received comments from the NCUTCD and two State DOTs recommending that red raised pavement markers be allowed on two-way undivided roadways to indicate wrong-way movement to vehicles. Research conducted by the Texas Transportation Institute [122] supported the use of red raised pavement markers on the left side of two-way undivided roadways to indicate wrong-way movement to vehicles traveling on the wrong side of the center line. The FHWA agrees with the research and in this final rule adopts an expanded paragraph 04 to allow the use of red raised pavement markers on travel lanes where the color red is visible to traffic proceeding in the wrong direction.

The FHWA proposed to add paragraph 06 explaining the use of purple markings to supplement lane line or edge line markings for toll plaza approach lanes that are to be used only by vehicles with registered Electronic Toll Collection (ETC) accounts. The NCUTCD, two State DOTs, and two toll road operators opposed the mention of purple lines because of concerns over visibility and the requirement to use the color purple. The FHWA disagrees with these comments because purple was already established in the 2003 MUTCD for future use, purple as used on both signs and markings is visible at night as a distinct color, and purple is being included for optional, not mandatory, use for markings. A State DOT and four toll road operators agreed with the revision, but recommended removing mention of ETC transponders in regard to allowable use of an ETC lane and, as discussed previously in Chapter 2F, the FHWA agrees and revises the terminology to refer to ETC Account-Only lanes. This new paragraph is consistent with other changes in Part 2 of the MUTCD regarding the use of the color purple for signing to readily identify lanes that are to be used only by vehicles with registered ETC accounts.

311. As proposed in the NPA, the FHWA adopts in Section 3A.06 (numbered Section 3A.05 in the NPA), a change in the title to ''Functions, Widths, and Patterns of Longitudinal Pavement Markings.'' Based on a comment from a toll road operator

[120] NCHRP Synthesis 356, ''Pavement Markings—Design and Typical Layout Details,'' 2006, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_356.pdf.*

[121] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendations #I.C(2), I.C(4f), and I.F(2).

[122] ''Red Retroreflective Pavement Markings: Driver Understanding of Their Purpose,'' by Jeffrey D. Miles, Paul J. Carlson, Brooke Ullman, and Nada Trout, was published by the Transportation Research Board in Transportation Research Record 2056, 2008, pages 34–42, and can be viewed at the following Internet Web site: *http://trb.metapress.com/content/p006183142152145/fulltext.pdf.*

regarding the general function of a dotted line, the FHWA adopts a revision to the STANDARD statement in paragraph 01 item D to read, ''A dotted line provides guidance or warning of a downstream change in lane function'' in order to more accurately describe the function of the dotted line.

The FHWA received comments from the NCUTCD, a State DOT, and a local DOT recommending removal of the proposed wording ''continuing lane'' and ''non-continuing lane'' in the GUIDANCE statement regarding the lengths of line segments and gaps for dotted lines. The FHWA agrees and in this final rule the proposed phrase concerning separation of a continuing lane and non-continuing lane is removed from paragraph 06. The FHWA received comments from a State DOT and a toll road operator opposed to the existing language recommending 3-foot line segments and 9-foot gaps for dotted lines because they wanted more flexibility. The FHWA disagrees and declines to revise the dimensions in order to encourage increased consistency in the dimensions for dotted lines based on their function, while still allowing flexibility for agencies. The recommended dimensions reflect the most common practice as documented in NCHRP Synthesis 356.[123]

312. In the NPA, the FHWA proposed a new section titled Section 3A.06 Definitions Relating to Pavement Markings, containing definitions of the terms ''neutral area,'' ''physical gore,'' and ''theoretical gore.'' Based on comments from the NCUTCD, three State DOTs, and two local DOTs, the FHWA in this final rule modifies the definitions to enhance accuracy and clarity and relocates the information to Section 1A.13, where all definitions are located.

Discussion of Amendments Within Chapter 3B

313. In the NPA, the FHWA proposed a new STANDARD statement in Section 3B.01 Yellow Center Line Pavement Markings and Warrants to specifically prohibit the use of a single solid yellow line as a center line marking on a two-way roadway. Two State DOTs and a local DOT agreed with the proposal in the NPA. Six commenters, including three local DOTs, two consultants, and a retailer, opposed the revision. The commenters suggested that a single solid yellow center line be allowed on low-speed roads, low-volume roads, school zones, and parking aisles. In addition, several of the commenters mentioned that single solid yellow center lines are sometimes used in Europe and Canada, and that a single line is more cost effective than a double solid yellow center line. The FHWA disagrees with these comments because there have been no studies showing the effectiveness or road user understanding of a single solid yellow center line, especially in regard to passing prohibitions, there is no defined meaning of a single yellow center line in regard to passing or no passing, and this marking has not been allowed by the MUTCD. Some agencies have improperly used a single solid yellow center line because of the lack of a specific prohibition statement. The FHWA adopts paragraph 05 as proposed in the NPA.

The FHWA proposed in the NPA to add SUPPORT paragraph 08, which references sections of the Uniform Vehicle Code (UVC) that contain information regarding left turns across center line no-passing zone markings and paved medians. The NCUTCD and a State DOT supported the revision. Two State DOTs and a consultant disagreed with the revision, stating that the sentence is unnecessary, that the UVC is not readily available without purchase, and that the UVC is not applicable in all States. The FHWA disagrees, because the UVC is the model for State laws and the FHWA supports adoption of the UVC by all States for their motor vehicle laws as a necessary component of traffic control device uniformity, and because the sentence provides clarification. The information was contained in the 1988 MUTCD, and the lack of this information in the 2000 and 2003 Editions of the MUTCD has generated questions and indicates the need to provide the information in this edition. The FHWA adopts the language as proposed in the NPA.

314. In the NPA, the FHWA proposed in Section 3B.02 No-Passing Zone Pavement Markings and Warrants to add an OPTION permitting the use of yellow diagonal markings in the neutral area between the two sets of no-passing zone markings, reflecting common practice for discouraging travel in that area. A local DOT agreed with the revision, but recommended making the paragraph a STANDARD. The FHWA disagrees with the commenter because no studies have been performed to justify making the markings mandatory. The FHWA adopts in this final rule paragraph 13 as proposed in the NPA.

The FHWA received one comment regarding the existing language for minimum taper lengths. A local DOT recommended changing the STANDARD to GUIDANCE to allow more flexibility to practitioners in low-speed urban conditions, such as some traffic calming and parking situations. The FHWA agrees that flexibility is needed, similar to that given in Part 6 for taper lengths at flagger stations and for shifting tapers, and the FHWA can find no recent research basis for the longstanding minimum values for either urban or rural conditions in the STANDARD. Therefore, the FHWA adopts paragraph 16 as GUIDANCE. The value of taper length calculated by the formula remains as the recommended minimum for any given condition of speed and offset.

315. In the NPA, the FHWA proposed in Section 3B.03 Other Yellow Longitudinal Pavement Markings to change the first OPTION to GUIDANCE in order to recommend for certain conditions, rather than just permit, the use of arrows with two-way left-turn lanes. A State DOT asked for guidance on the distance between sets of two-way left-turn lane arrows. The FHWA disagrees that a distance is needed because it depends on several factors, such as speeds, geometry, and intersection spacing. The NCUTCD supported the proposed change, but recommended relocating the text to Section 3B.20. A consultant agreed with the proposal, but made an editorial recommendation. Four State DOTs, five local DOTs, and two NCUTCD members opposed upgrading the paragraph from OPTION to GUIDANCE because of concerns about potential for increased maintenance costs. The FHWA adopts paragraph 04 as GUIDANCE, but relocates the text describing the placement locations for two-way left-turn lane-use arrow pavement markings to Section 3B.20, where it more logically belongs. The NCHRP Synthesis 356 [124] highlighted a variety of marking issues for which additional uniformity could be provided to aid road users. The synthesis found that the use of arrows in two-way left-turn lanes at the start of the lane and at other locations along the lane, as needed, is the predominant practice. The FHWA also modifies the figures that contain arrows in two-way left-turn lanes to show when they are recommended and when they are optional.

316. In the NPA, the FHWA proposed in Section 3B.04 White Lane Line Pavement Markings and Warrants a

[123] NCHRP Synthesis 356, ''Pavement Markings—Design and Typical Layout Details,'' 2006, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_356.pdf.*

[124] NCHRP Synthesis 356, ''Pavement Markings—Design and Typical Layout Details,'' 2006, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_356.pdf.*

STANDARD specifying that dotted lines are required for acceleration, deceleration, and auxiliary lanes. The NCUTCD, a State DOT, a local DOT, and two citizens agreed with the proposal. Two State DOTs and a local DOT opposed the revision and requested that dotted lines not be required, but did not indicate reasons. The FHWA believes uniformity is needed and adopts in this final rule the language as proposed in the NPA with minor editorial changes.

The FHWA received several comments regarding the proposal in the NPA to require the use of wide dotted white lane lines for lane drops. The NCUTCD, a State DOT, three local DOTs, and a citizen agreed with the proposal, but recommended text revisions for clarity. Three State DOTs, two local DOTs, and a citizen opposed the proposed requirement because they wanted flexibility to use other markings. The FHWA believes uniformity is needed and adopts the required use of lane drop markings as proposed in the NPA with minor editorial changes and adds a sentence to the GUIDANCE to clarify that, for lane drops at intersections, the lane drop marking should begin no closer to the intersection than the furthest upstream regulatory or warning sign associated with the lane drop. The FHWA also adds ''in advance of freeway route splits with dedicated lanes'' as an additional required use for wide dotted white line markings, because this situation is similar to a lane drop.

In this final rule, the FHWA revises the language in paragraph 06 item D for auxiliary lane markings ''between two or more adjacent intersections'' to ''between two adjacent intersections'' based on comments from a State DOT and a local DOT.

Based on the comments discussed above dealing with lane drop markings and auxiliary lane markings, the FHWA adopts three additional drawings to Figure 3B–10 and a new Figure 3B–11 to better illustrate the provisions of the text.

The FHWA received several comments regarding the proposed STANDARD in the NPA requiring the use of dotted white lane lines at entrance ramps with parallel acceleration lanes and the OPTION to extend the dotted lane line to the downstream end of the acceleration taper. The NCUTCD, three State DOTs, and a local DOT agreed with the proposal, but recommended text revisions. Two local DOTs opposed the proposed OPTION to allow the dotted lane line to extend to the downstream end of the acceleration taper because they believe that drivers could be trapped in the lanes that are ending. The FHWA disagrees and notes that extending the dotted white lane line to the downstream end of the acceleration taper is an OPTION and its use in some conditions can help drivers determine the length of the taper during periods of darkness and help drivers avoid trying to merge into heavy traffic prematurely. The FHWA adopts the language as proposed with minor editorial changes.

The FHWA also revises the language for widths of dotted lines throughout Section 3B.04 to provide clarification. A State DOT, two local DOTs, and a citizen expressed confusion concerning the text and associated figures proposed in the NPA. The FHWA adopts language clarifying that wide dotted lines are to be used in advance of lane drops and for auxiliary lanes, which are really just a special case of a lane drop, and that normal width dotted lines are to be used for other dotted lane lines and dotted extensions of lines. The FHWA also updates the figures throughout Part 2 and Part 3 for consistency with the text regarding dotted lane lines.

The FHWA establishes a target compliance date of December 31, 2016 (approximately seven years from the effective date of this final rule), or roadway resurfacing, whichever occurs first, for the replacement of broken white lane lines with dotted white lane lines required to achieve compliance with these provisions at existing locations. The FHWA establishes this target compliance date because of the road user confusion that would likely occur as a result of a long-term mixing of the application of both broken lane lines and dotted lane lines for non-continuing lanes. These locations typically involve merging or lane changing and have a high potential for crashes if road users misunderstand or are confused by the markings. The FHWA believes that, without a specific target compliance date, replacing existing broken lane lines with dotted lane lines under the geometric conditions where dotted lines are required in this final rule might be delayed by some agencies until the existing markings are totally worn off. Most agencies restripe their markings when they are worn to a degree, but well before they are totally absent from the pavement, due to safety issues with unmarked pavement. Further, Portland cement concrete pavements have a very long service life, especially in southern climates, thus making the intervals between resurfacings very long. The FHWA anticipates that the required replacement with the new lane line marking pattern at existing locations will provide safety benefits to road users, and that a seven-year phase-in period is longer than the life of most markings and will allow State and local highway agencies and owners of private roads open to public travel to spread out the work over a reasonable time period and thus minimize any impacts.

317. In Section 3B.05 Other White Longitudinal Pavement Markings, the FHWA proposed language in the NPA to clarify the requirements for channelizing lines in gore areas alongside the ramp and through lanes for exit ramps and entrance ramps in order to improve uniformity in application and to reflect the predominant practice as documented in NCHRP Synthesis 356.[125] The NCUTCD, three State DOTs, and a local DOT agreed with the proposal, but recommended revisions that included only extending the channelization line for entrance ramps with tapered acceleration lanes to a point at least half the distance from the theoretical gore, to more accurately reflect predominant practice to allow earlier merging into the mainline lane. A State DOT opposed the proposal and recommended that the STANDARD be changed to an OPTION. The FHWA disagrees with reducing this to an OPTION, because uniformity is needed to minimize road user confusion, and in this final rule adopts the language as proposed in the NPA but with the suggested change regarding tapered acceleration lanes.

The FHWA also adopts a third drawing to Figure 3B–9 for additional clarification of channelizing line markings for tapered entrance ramps.

318. In Section 3B.08, Extensions Through Intersections or Interchanges, a consultant suggested that the existing GUIDANCE text from the 2003 MUTCD recommending that edge lines should not be extended through major intersections or major driveways as solid lines, be changed to a STANDARD. The FHWA agrees because such a provision is already a STANDARD in Section 3B.06 and adopts paragraph 06 as a STANDARD in this final rule for consistency.

319. In Section 3B.09, Lane-Reduction Transition Markings, the FHWA proposed in the NPA to revise paragraph 08 to recommend that a dotted lane line be used approaching a lane reduction, consistent with the proposed use of dotted lane lines for other conditions in which a lane does not continue ahead. The FHWA received several comments on this

[125] NCHRP Synthesis 356, ''Pavement Markings—Design and Typical Layout Details,'' 2006, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_356.pdf.*

proposal. The NCUTCD, two State DOTs, four local DOTs, two toll road operators, and a citizen agreed with the proposal, but recommended several changes, including changing the sentence to an OPTION, requiring the use of wide dotted white lines instead of normal dotted white lines, and allowing the use of either dotted white lines or broken white lines as lane reduction markings. Four State DOTs and two local DOTs opposed the revision. Although lane-reduction transitions share many characteristics in common with lane drops and auxiliary lanes, the FHWA believes that additional research and experimentation with dotted lane lines on the approach to lane-reduction transitions would be beneficial before adopting the dotted lane line markings for this application. Although the NCUTCD recommended that highway agencies be given the option of using either the current standard markings or the proposed dotted lane line markings for lane-reduction transitions, the FHWA believes that the non-uniformity that would result from having two allowable markings for this application would not be in the best interest of road users. Therefore, the FHWA does not adopt the proposed change in this final rule and retains the text from the 2003 MUTCD for paragraph 08. The FHWA also updates related figures and Section 3B.04 for consistency.

320. In Section 3B.10, Approach Markings for Obstructions, the FHWA proposed language in the NPA to clearly indicate that toll booths at toll plazas are fixed obstructions that shall be marked according to the requirements of this section. The proposal was based on the recommendations from the Toll Plazas Best Practices and Recommendations Report.[126] Based on comments from the NCUTCD, four toll road operators, and two State DOTs, the FHWA adopts in this final rule a SUPPORT statement referencing Chapter 3E Markings for Toll Plazas (Section 3B.29 in the NPA) for additional information on approach markings for toll plaza islands and makes editorial changes to the text.

The FHWA received several comments regarding the existing language in the 2003 MUTCD for minimum taper lengths approaching obstructions. Three toll road operators and a State DOT opposed the statement because some toll plazas cannot accommodate the requirement. Two local DOTs opposed the statement because urban conditions cannot always accommodate the requirement. Consistent with the same change in Section 3B.02, the FHWA in this final rule modifies paragraph 05 from STANDARD to GUIDANCE.

In the NPA, the FHWA proposed to change an existing OPTION to GUIDANCE to recommend, rather than just permit, that where observed speeds exceed posted or statutory speed limits, longer tapers should be used. Two State DOTs and a local DOT opposed the revision. The FHWA in this final rule removes the statement because it is unnecessary, as the formula for taper length based on speed is provided earlier in the section.

321. In Section 3B.11, Raised Pavement Markers—General, the FHWA proposed in the NPA to limit the use of red raised pavement markers to being visible to traffic proceeding in the wrong direction of a one-way roadway or ramp. A State DOT and a local DOT agreed with the proposal. The NCUTCD, a State DOT, and an NCUTCD member recommended allowing the use of red raised pavement markers on divided highways and on the left-hand side of two-way roadways. Consistent with changes as discussed previously in Section 3A.05, the FHWA in this final rule revises paragraph 02 to read, ''The side of a raised pavement marker that is visible to traffic proceeding in the wrong direction may be red (see Section 3A.05).''

Additionally, the FHWA proposed in the NPA to add a GUIDANCE statement near the end of the section that recommends consideration of the use of more closely spaced retroreflective pavement markers where additional emphasis is needed. Based on recommendations from the NCUTCD, three State DOTs, and an NCUTCD member, the FHWA adopts this statement as an OPTION.

322. In Section 3B.13, Raised Pavement Markers Supplementing Other Markings, several commenters made recommendations regarding the existing GUIDANCE from the 2003 MUTCD that raised markers should not supplement right-hand edge line markings. The NCUTCD, two State DOTs, a local DOT, and a toll road operator opposed the existing provision, stating that in many cases there is no bicycle use of the shoulder and the use of raised markers on the right-hand edge line can be very beneficial for delineation on curves and at other locations where extra emphasis of the edge line is needed. Four bicyclist-related organizations recommended leaving the existing provision in place because raised markers can cause bicyclists using the shoulder to lose control if they accidentally drive over the markers. The FHWA believes that there are many locations where raised markers can be used on right-hand edge lines where bicycles are not allowed on a highway and/or to enhance safety overall, without compromising safety for bicyclists. Therefore, in this final rule the FHWA removes the existing GUIDANCE and adopts a new GUIDANCE paragraph 02 that reads as follows: ''Raised pavement markers should not supplement right-hand edge lines unless an engineering study or engineering judgment indicates the benefits of enhanced delineation of a curve or other location would outweigh possible impacts on bicycles using the shoulder, and the spacing of raised pavement markers on the right-hand edge is close enough to avoid misinterpretation as a broken line during wet night conditions.''

323. In Section 3B.14, Raised Pavement Markers Substituting for Pavement Markings, the FHWA proposed in the NPA to change the GUIDANCE to a STANDARD requiring that the color of raised pavement markers shall match the color of the markings for which they substitute, in order to assure uniformity of markings colors. Based on comments from the NCUTCD, a State DOT, a local DOT, and an NCUTCD member, the FHWA in this final rule removes the statement because the information is covered in Section 3B.11.

For consistency with changes discussed above in Section 3B.13 regarding the use of raised pavement markers on right-hand edge lines, the FHWA in this final rule makes comparable changes in Section 3B.14.

324. In Section 3B.15, Transverse Markings, the FHWA relocates the existing second STANDARD statement to Section 3B.20 in the final rule. This STANDARD statement requires pavement marking letters, numerals, arrows, and symbols to be installed in accordance with the SHSM, and is relocated to the section where it more appropriately belongs.

325. In the NPA, the FHWA proposed several changes to Section 3B.16 Stop and Yield Lines to clarify the intended use of these markings. The FHWA proposed to add requirements regarding the use of stop and yield lines, specifically as these relate to locations where YIELD (R1–2) signs or Yield Here to Pedestrians (R1–5 or R1–5a) signs are used. A State DOT and a local DOT agreed with the proposal. Two State DOTs and a local DOT disagreed with the proposal and recommended

[126] ''State of the Practice and Recommendations on Traffic Control Strategies at Toll Plazas,'' June 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/rpt/tcstoll/index.htm.*

allowing stop lines at railroad crossings and other locations that operate under yield control. The FHWA proposed these changes to assure that stop lines are not misused to indicate a yield condition or vice versa. The FHWA adopts the STANDARD proposed in the NPA, which requires that stop lines shall not be used at locations on uncontrolled approaches where drivers are required by State law to yield to pedestrians. This change is in accordance with FHWA's Official Interpretation #3–201(I), dated January 10, 2007.[127]

The FHWA proposed a new STANDARD statement in the NPA that required the use of Yield (Stop) Here to Pedestrian (R1–5 series) signs at a crosswalk that crosses an uncontrolled multi-lane approach when a yield (stop) line is used. A local DOT recommended that the sentence be GUIDANCE instead of a STANDARD. The FHWA disagrees and adopts paragraph 13 for consistency with the requirement in paragraph 01 of Section 2B.11.

326. The FHWA proposed in the NPA to add a new section numbered and titled ''Section 3B.17 Do Not Block Intersection Markings,'' containing OPTION and STANDARD statements regarding the use of markings to indicate that the intersection is not to be blocked and to add a new Figure 3B–18 (Figure 3B–17 in the NPA) showing the options for the Do Not Block Intersection Markings. Four local DOTs and an NCUTCD member approved of the new section. Two local DOTs opposed the new section because of a concern over maintenance in northern States and potential driver confusion over right-of-way. The FHWA believes that Do Not Block Intersection Markings are being used more widely across the country to improve traffic flow through intersections and that uniformity in the use and type of markings is needed to minimize road user confusion. The markings are optional and not mandated for use, but the MUTCD provisions will improve uniformity if markings are used for this purpose. In this final rule the FHWA adopts the section and figure as proposed in the NPA, but with minor editorial revisions.

327. In the NPA, the FHWA proposed in Section 3B.18 Crosswalk Markings, to expand the GUIDANCE regarding the specific placement of crosswalk markings and to add new GUIDANCE regarding the placement of crosswalk markings across uncontrolled approaches, based on engineering judgment and engineering studies. A State DOT and two local DOTs opposed the expanded language on engineering studies. A State DOT and a local DOT agreed with the proposal, but recommended that roundabouts be exempted, and that the study consider the 85th percentile speed in addition to the posted speed. The FHWA believes that an engineering study for crosswalks is appropriate at locations not controlled by a traffic signal, stop sign, or yield sign, including at a roundabout if it does not have a yield sign controlling the entry. The FHWA adopts in this final rule the language proposed in the NPA for the engineering study, but also includes the 85th percentile speed as a consideration in an engineering study. The language reflects the findings of the FHWA report, ''Safety Effects of Marked Versus Unmarked Crosswalks at Uncontrolled Locations.'' [128]

The FHWA received comments from the NCUTCD, five State DOTs, four local DOTs, and an NCUTCD member regarding the proposed conditions where marked crosswalks alone should not be installed. A local DOT disagreed with the proposed GUIDANCE and recommended that it be an OPTION because they desire more flexibility. The remaining commenters agreed with the proposal, but recommended editorial changes. The FHWA believes that GUIDANCE is appropriate because of pedestrian safety concerns and adopts the language as proposed in the NPA with editorial changes.

The FHWA also proposed in the NPA to add a GUIDANCE statement recommending that crosswalk markings should be located so that the curb ramps are within the extension of the crosswalk markings. A local DOT opposed the revision and an organization for the blind recommended making the proposal a STANDARD. The FHWA adopts paragraph 17 as proposed in the NPA to be consistent with existing provisions in ADAAG [129] and to provide more consistency for pedestrians as they negotiate the crosswalk and curb ramps.

In the NPA, the FHWA also proposed to add a SUPPORT statement at the end of the section that incorporates information regarding detectable warning surfaces that mark boundaries between pedestrian and vehicular ways where there is no raised curb. The proposed language was in response to requests from the U.S. Access Board, based on ADAAG.[130] Two State DOTs, a local DOT, and an NCUTCD member agreed with the proposal. An organization for the blind requested that the statement be revised to a STANDARD. Two State DOTs and two local DOTs opposed the revision because detectable warning surfaces are not considered traffic control devices and the information is already contained in ADAAG. The FHWA decides to adopt the language as SUPPORT because it merely provides information about provisions in other existing or proposed Federal regulations, but the FHWA revises the proposed text to remove the specifications and dimensions for detectable warning devices and instead reference the ADAAG. For the same reason, the FHWA does not adopt in the final rule the Figure 3B–20 that was proposed in the NPA.

328. In Section 3B.20, the FHWA proposed in the NPA to incorporate the word ''arrow'' in several places to reflect that, because arrows are often not thought of as symbols, the provisions of this section are intended to apply to arrows. The FHWA also changes the title of the section to ''Pavement Word, Symbol, and Arrow Markings,'' as proposed in the NPA.

The FHWA includes arrows in the list of items that are to be designed in accordance with the Pavement Markings chapter of the SHSM book. A local DOT requested that the statement be revised to an OPTION to allow local jurisdictions to use different arrow designs. The FHWA believes that uniformity of arrow markings is important and adopts paragraph 04 as a STANDARD.

The FHWA does not adopt Figure 3B–28 or Figure 3B–29 as proposed in the NPA because the same information is provided in other figures in Chapter 2B. References in Chapter 3B are updated to refer to the figures in Part 2 as appropriate.

In the NPA, the FHWA proposed to change an existing OPTION to GUIDANCE in order to recommend, rather than just permit, that the International Symbol of Accessibility parking space marking should be placed in each parking space designated for use

[127] FHWA Official Interpretation #3–201(I), dated January 10, 2007, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/3_201.htm.*

[128] ''Safety Effects of Marked Versus Unmarked Crosswalks at Uncontrolled Locations,'' FHWA report #HRT–04–100, Charles Zegeer, et al., September 2005, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/safety/pubs/04100/04100.pdf.*

[129] The Americans With Disabilities Accessibility Guidelines (ADAAG) can be viewed at the following Internet Web site: *http://www.access-board.gov/ada-aba/index.htm.*

[130] The Americans With Disabilities Accessibility Guidelines (ADAAG) can be viewed at the following Internet Web site: *http://www.access-board.gov/ada-aba/index.htm.*

by persons with disabilities, for consistency with the provisions of the Americans with Disabilities Act. A State DOT and an NCUTCD member opposed the change and recommended that it remain GUIDANCE because the marking can become obscured by snow and it can pose a safety hazard for pedestrians when it is wet and slippery. The FHWA adopts the language as proposed in the NPA because many State and local laws and codes require the wheelchair symbol marking and it is the predominant practice. As a GUIDANCE condition, the marking can be omitted based on engineering study or judgment.

In the NPA, the FHWA also proposed to add a new GUIDANCE that describes the use and placement of lane-use arrows in lanes designated for the exclusive use of a turning movement, in turn bays, in lanes from which movements are allowed that are contrary to the normal rules of the road, and where opposing offset channelized left-turn lanes exist. The NCUTCD, three State DOTs, four local DOTs, a toll road operator, and a consultant agreed with the proposal, but recommended that the second arrow in a turn bay be optional. Four State DOTs and a local DOT opposed the change to GUIDANCE and recommended that it remain an OPTION. The FHWA proposed the NPA language to reflect common practice and provide for increased uniformity, as highlighted in the NCHRP Synthesis 356.[131] The FHWA adopts the language proposed in the NPA with editorial changes and, based on the comments, the FHWA adds paragraph 22, which provides an OPTION that the second (downstream) arrow may be omitted based on engineering judgment when arrows are used for a short turn lane.

In addition, the FHWA proposed in the NPA to add a GUIDANCE that recommends the use of ONLY word markings to supplement the required arrow markings where through lanes approaching an intersection become mandatory turn lanes. A local DOT agreed with the proposal. A State DOT and two local DOTs opposed the revision and recommended the statement be revised to an OPTION. The FHWA believes improved uniformity is needed to adequately inform road users of the lane-use restriction at a lane drop and adopts the GUIDANCE as proposed in the NPA.

Also, the FHWA proposed in the NPA to add a GUIDANCE to recommend that lane-reduction arrow markings be used on roadways with a speed limit of 45 mph or above, and to recommend that they be used on roadways with lower speed limits when determined to be appropriate based on engineering judgment. A State DOT and a local DOT agreed with the proposal. Five State DOTs, a local DOT, and an NCUTCD member opposed the proposal and recommended that all lane-reduction arrows remain as an OPTION. A local DOT suggested the statement clarify that an on-ramp merge lane is not a ''lane reduction'' and the FHWA agrees. Based on the information in NCHRP Synthesis 356,[132] the FHWA believes that, for enhanced safety, lane-reduction arrows should be recommended on high-speed roads in order to provide a clear indication that the lane reduction transition is occurring. The FHWA adopts the language as proposed in the NPA, but includes language clarifying that a typical parallel acceleration lane is not a ''lane reduction'' but that lane-reduction arrows may be used in long acceleration lanes based on engineering judgment.

Additionally, to respond to a comment from a consultant, the FHWA adds a new STANDARD that a single-direction lane-use arrow shall not be used in a lane bordered on both sides by yellow two-way left-turn lane longitudinal markings, to clarify the existing provisions regarding arrows. A two-way left-turn lane, by definition, has traffic flowing in two directions, so it is inappropriate and potentially very confusing to road users to place a single-direction arrow in a two-way left-turn lane. The unique two-way arrow is the only appropriate type of arrow marking for this application, and thus a specific prohibition of one-direction arrows is necessary because of improper application by some jurisdictions.

Finally, in the NPA the FHWA proposed to add an OPTION allowing the use of lane-use arrows in a dropped lane on the approach to a freeway or expressway exit, reflecting common practice. The FHWA received a comment from the NCUTCD in opposition to the proposed OPTION, stating that normal lane-use arrows are inappropriate for freeways and expressways because the exit ramp typically departs from the mainline at a small angle rather than the 90-degree turn suggested by the shape of normal turn arrows. The NCUTCD suggested that a new style of arrow be developed and added to the MUTCD specifically for dropped lanes at exit ramps. The FHWA disagrees and adopts the OPTION as proposed in the NPA, with editorial changes, because normal lane-use arrows are successfully used at many locations where the angle of turn is much less than 90 degrees, there is no evidence of any problems with these arrows at the many locations where they are currently used in advance of freeway lane drops, and research would be needed to develop and test different style arrows to assure they would be better understood by road users than the existing arrows.

329. The FHWA received several comments regarding the proposal in the NPA to add a new section numbered and titled Section 3B.22 Speed Reduction Markings, containing SUPPORT, STANDARD, and GUIDANCE statements regarding transverse markings that may be placed on the roadway within a lane in a pattern to give drivers the impression that their speed is increasing. The NCUTCD and three State DOTs agreed with the proposed section, but recommended editorial changes. Two local DOTs and an NCUTCD member opposed the proposed section because of a concern that speed reduction markings have not been adequately tested and do not work. The FHWA disagrees because the Traffic Control Devices Pooled Fund Study on speed reduction markings[133] found that these markings can be effective in reducing speeds at certain locations, and because it is necessary to provide a standardized design for such markings in order to provide uniformity. The FHWA adopts the language proposed in the NPA with editorial changes and adds a new GUIDANCE statement to paragraph 02 explaining that speed reduction markings should not be used in areas frequented mainly by local or familiar drivers (*e.g.,* school zones), based on comments citing the above-mentioned Pooled Fund Study research. Five State DOTs, a local DOT, and a citizen requested that a longitudinal spacing table be developed for the speed reduction markings. The FHWA declines adding a longitudinal spacing table at this time because this goes beyond the scope of this rulemaking and would need to be addressed in a future rulemaking.

330. The FHWA adopts in this final rule a new section numbered and titled Section 3B.24 Chevron and Diagonal Crosshatch Markings (numbered Section

[131] NCHRP Synthesis 356, ''Pavement Markings—Design and Typical Layout Details,'' 2006, pages 7–13, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_356.pdf.*

[132] NCHRP Synthesis 356, ''Pavement Markings—Design and Typical Layout Details,'' 2006, page 32, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_356.pdf.*

[133] ''Pavement Markings for Speed Reduction,'' December 2004, prepared by Bryan J. Katz for the Traffic Control Devices Pooled Fund Study, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/safety/pubs/04100/04100.pdf.*

3B.26 in the NPA) containing OPTION, STANDARD, and GUIDANCE statements on the use of markings intended to discourage travel on certain paved areas. As proposed in the NPA, the FHWA eliminates the optional use of diagonal markings in gore areas and requires that, if markings are used in the gore, they shall be chevron markings, because gores separate traffic flowing in the same direction and diagonal crosshatching is inappropriate for that condition. Based on a comment from a public utilities commission, the FHWA adopts an OPTION statement that crosshatch markings may also be used at highway-rail and highway-light rail transit grade crossings. While a local DOT agreed with the proposed minimum widths for chevron and diagonal lines, the NCUTCD and two local DOTs recommended that the minimum width for chevron and diagonal lines be less than 12 inches for lower speed roadways. The FHWA agrees with the NCUTCD and adopts the minimum width at 8 inches for roadways with speed limits less than 45 mph. Based on a comment from a State DOT that some agencies use an angle of 36 degrees rather than 45 degrees because a 3–4–5 triangle can be used to easily lay out the crosshatch markings in the field, the FHWA adopts a chevron angle of ''approximately 30 to 45 degrees.''

331. In Section 3B.25 (numbered Section 3B.26 in the 2003 MUTCD) Speed Hump Markings, the FHWA proposed in the NPA to revise the STANDARD to more clearly state that if speed hump markings are to be used on a speed hump or a speed table, the only markings that shall be used are those shown in Figures 3B–29 and 3B–30. Based on comments from a State DOT and an NCUTCD member noting that the existing OPTION and proposed revised STANDARD contained the same information, the FHWA deletes the OPTION in this final rule. The FHWA received several comments regarding the proposed language restricting markings to those in the accompanying figures. A local DOT agreed with the proposal, while a State DOT, two local DOTs, and two consultants opposed the proposal and recommended allowing local variations of speed hump markings. The FHWA disagrees with allowing local variations in speed hump markings because the FHWA believes that additional uniformity will better serve the interests of road users. Because the 2003 MUTCD language is not prescriptive, a wide variety of marking patterns are being used for speed humps and unfamiliar drivers do not recognize the local markings. The FHWA adopts paragraph 01 as proposed in the NPA.

332. In this final rule, the FHWA is moving all of the information from the NPA proposed Section 3B.29 Markings for Toll Plazas to a new adopted Chapter 3E Markings for Toll Plazas (see item 341 below).

Discussion of Amendments Within Chapters 3C Through 3J

333. As proposed in the NPA, the FHWA adopts a new chapter, numbered and titled Chapter 3C Roundabout Markings, to reflect the state of the practice for roundabout markings, especially for multi-lane roundabouts, the safe and efficient operation of which necessitates specific markings to enable road users to choose the proper lane before entering the roundabout. The FHWA also adopts seven sections within the chapter that describe pavement markings at roundabouts, including lane lines, edge lines, yield lines, crosswalk markings, and pavement word, arrow, and symbol markings. The chapter also includes a variety of new figures that illustrate examples of markings for roundabouts of various geometric and lane-use configurations. In the NPA, the FHWA solicited comments on whether it is necessary for all of the proposed new figures illustrating roundabout markings to be added to the MUTCD or whether some of those illustrations should be placed in other documents for reference, such as the FHWA Roundabouts Guide,[134] which is in the process of being updated. The FHWA received comments on both sides of the issue. The FHWA believes that, for this edition of the MUTCD, it is important to provide these illustrations of new concepts in markings in one location for ready reference. As practitioners gain more familiarity with these markings, the FHWA will consider the possibility of eliminating some of the figures in a future edition. The FHWA adopts most of the figures in this final rule but, in response to comments, deletes several of the figures and editorially combines the content of the deleted figures with the content of other figures being adopted. The FHWA believes this presents the same information in a more concise manner.

With respect to Section 3C.01 General as proposed in the NPA, the FHWA received several comments about the proposed STANDARD defining roundabouts and requiring pavement markings and signs at roundabouts to present a consistent message to the road user. The comments noted that Section 1A.13 already contains a definition of a roundabout and that consistency of messages between signs and markings is a general requirement applicable to all conditions. The FHWA agrees and replaces the proposed STANDARD with a SUPPORT that provides a more general description of a roundabout and refers to Section 1A.13.

The FHWA received comments from two State DOTs, a local DOT, an NCUTCD member, and a consultant about the proposed OPTION that traffic control signals may be used at roundabouts to facilitate pedestrian crossings or meter traffic. The FHWA agrees with the comments that the use of traffic control signals at any location is governed by provisions in Part 4 rather than Part 3, and the FHWA in this final rule replaces the proposed OPTION with a SUPPORT statement referring to Part 4.

334. In Section 3C.02 White Lane Line Pavement Markings for Roundabouts, the FHWA relocates to Section 9C.04 the STANDARD and GUIDANCE statements about bicycle lane markings in and on the approach to roundabouts that were proposed in the NPA in Section 3C.02, because the information is more appropriately located in Section 9C.04, and adopts a SUPPORT statement in Section 3C.02 referring to Section 9C.04. The FHWA also adopts a STANDARD that a through lane that becomes a dropped lane at a roundabout shall be marked with a dotted white lane line in accordance with Section 3B.04. This statement is necessary to remind users of the requirements of Section 3B.04 that also apply to lane drops when they occur at a roundabout.

335. The FHWA in this final rule revises the title of Section 3C.03 from ''Edge Line Pavement Markings for Roundabouts,'' as proposed in the NPA, to ''Edge Line Pavement Markings for Roundabout Circulatory Roadways,'' in order to more accurately describe the subject of the provisions in the section. The FHWA received a comment from a local DOT suggesting that the recommended use of a white edge line on the outer edge of the circulatory roadway, including the wide dotted edge line extension across the lanes entering the roundabout, be changed to an OPTION. The FHWA disagrees because the edge line markings provide important guidance to road users entering the roundabout and circulating within the roundabout, and this has been found to be successful in practice in Europe and elsewhere. A State DOT

[134] ''Roundabouts: An Informational Guide,'' Report number FHWA–RD–00–67, June, 2000, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/safety/00068.htm.*

opposed the proposed GUIDANCE recommending that a wide dotted line be used across the entry to a roundabout and requested that a normal dotted line be used, consistent with the 2003 MUTCD. The FHWA disagrees because the wide dotted line provides special emphasis that is recommended for drivers entering the roundabout. The GUIDANCE is adopted as proposed.

336. In the NPA, the FHWA proposed Section 3C.05 Crosswalk Markings at Roundabouts, which provides STANDARD, GUIDANCE, and SUPPORT statements concerning the use of crosswalks at roundabouts. The FHWA received a comment from an organization for the blind suggesting that the proposed GUIDANCE for marked crosswalks if pedestrian facilities are provided be changed to a STANDARD. The FHWA disagrees and notes that there may be some cases where it is not desirable to provide marked crosswalks, such as where overpasses or underpasses are provided. Two local DOTs and a consultant suggested that the recommendation be changed to an OPTION. The FHWA disagrees and adopts the provision as a GUIDANCE statement in this final rule because if at-grade pedestrian crossing activity is present, pedestrians should be provided with crosswalks to indicate the proper places to cross the roundabout approaches.

337. Based on a comment from a State DOT, the FHWA does not adopt Section 3C.07 Example Markings for Roundabouts, which was proposed in the NPA. The FHWA adopts a SUPPORT statement in Section 3C.01 in the final rule that refers to the figures in Chapter 3C that provide examples of pavement markings at roundabouts. The FHWA also renumbers the following section that was proposed in the NPA, Markings for Other Circular Intersections, from 3C.08 to 3C.07 in the final rule.

338. The FHWA adopts a new chapter titled Chapter 3D Markings for Preferential Lanes, that contains information relocated from NPA numbered Section 3B.24 Preferential Lane Word and Symbol Markings and NPA numbered Section 3B.25 Preferential Lane Longitudinal Markings for Motor Vehicles. The FHWA also relocates to Chapter 3D and renumbers Table 3B–2 and Figures 3B–31, 3B–32, 3B–33, and 3B–34 that were proposed in the NPA, which list and show the required longitudinal markings for buffer-separated preferential lanes and counter-flow preferential lanes.

339. In Section 3D.01 (numbered Section 3B.24 in the NPA) Preferential Lane Word and Symbol Markings, the FHWA adopts information regarding markings to be used for ETC preferential lanes in the STANDARD, for consistency with other related changes in Parts 2 and 3 regarding ETC Account-Only lanes. Based on comments from the NCUTCD, a State DOT, and two toll road operators, the FHWA revises paragraph 06 to clarify that preferential lane use word or symbol markings are required when the separation area between a preferential lane and the adjacent general purpose lane can be traversed by motor vehicles.

In the NPA, the FHWA proposed to add a word marking for ETC Account-Only lanes. A State DOT, two toll road operators, and a local DOT opposed the proposed revision because it would reduce the ability to reconfigure plaza lanes. The NCUTCD and a State DOT agreed with the proposal, but recommended adding HOT lanes to the list of types of preferential lanes where word markings are required, and adding an OPTION that allows preferential lane-use markings to be omitted under certain circumstances. The FHWA in this final rule revises paragraph 06 to include HOT lanes along with HOV lanes and adds paragraph 08 to allow preferential lane word or symbol markings to be omitted at toll plazas where physical conditions preclude their use.

The FHWA had proposed in the NPA adding the word marking TRANSIT ONLY as an alternative to a ''T'' marking for light-rail transit lanes. Instead, based on a comment from the NCUTCD, the FHWA in this final rule adopts the word marking LRT ONLY because the word marking ''TRANSIT'' is too wide to fit in most lanes.

340. In Section 3D.02 (Section 3B.25 in the NPA) Preferential Lane Longitudinal Markings for Motor Vehicles, the FHWA in this final rule edits, expands, and reorganizes the existing section, which corresponds to comparable sections on preferential lanes in Part 2. These changes reflect typical existing practices for the marking of preferential lanes, as documented in various FHWA guidance and handbooks.[135] The FHWA also revises paragraph 03 as proposed in the NPA to match the names of different configurations of preferential lanes that are defined in Section 1A.13.

The FHWA proposed in the NPA to add a new GUIDANCE regarding the use of dotted line markings at direct exits from preferential lane facilities, to reduce the chances of unintended exit maneuvers. A local DOT opposed the use of dotted lines because of a concern that the dotted lines will add to driver confusion. The FHWA disagrees and considers the proposed GUIDANCE as an important best practice, reflecting a recent FHWA policy memorandum.[136] The FHWA adopts paragraph 08 as proposed in the NPA.

341. The FHWA adopts a new chapter, numbered and titled Chapter 3E Markings for Toll Plazas, that contains information relocated from Section 3B.29 Markings for Toll Plazas, which was a new section proposed in the NPA. As adopted in the final rule, Section 3E.01 contains SUPPORT, STANDARD, GUIDANCE, and OPTION statements for the use of pavement markings at toll plazas. The chapter provides uniformity in pavement markings at toll plazas because toll plazas have not been included in previous editions of the MUTCD.

The NCUTCD, a State DOT, and three toll road operators agreed with the NPA proposal that longitudinal markings for Electronic Toll Collection lanes comply with Section 3D.01 (numbered Section 3B.25 in the NPA), but recommended editorial changes. To reflect the comments, the FHWA revises paragraph 02 to require that, for Open Road Tolling lanes that bypass a mainline toll plaza on a separate alignment, the longitudinal markings shall also comply with Section 3D.02, and word markings shall be used in accordance with Section 3D.01 (Section 3B.24 in the NPA) on the approach to the point of divergence from the mainline.

The FHWA received several comments on the proposed GUIDANCE in the NPA recommending that ETC Account-Only lanes be separated from cash payment toll plaza lanes by a physical barrier or pavement markings. The NCUTCD, a State DOT, four toll road operators, and a local DOT agreed with the proposal, but recommended that the statement be changed to an OPTION, that striping alone not be allowed, and that vehicle speed not be used to determine the point of separation between lanes. The FHWA disagrees with the comments because the recommendations are based on the Toll Plazas Best Practices and Recommendations report.[137] The FHWA

[135] Available FHWA guidance and handbooks on preferential lanes can be viewed at the following Internet Web site: *http://ops.fhwa.dot.gov/freewaymgmt/hov.htm.*

[136] The FHWA's August 3, 2007 policy memorandum on ''Traffic Control Devices for Preferential Lane Facilities'' can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/policy/tcdplfmemo/preferen_lanes_tcd.pdf.*

[137] ''State of the Practice and Recommendations on Traffic Control Strategies at Toll Plazas,'' June

Continued

adopts paragraph 04 as GUIDANCE, but revises the text for clarity.

The FHWA received comments regarding the NPA proposal to allow the use of purple solid longitudinal markings to supplement lane lines. The NCUTCD and a State DOT opposed the use based on recommendations from a toll road task force. As discussed above in Section 3A.05 regarding comments on the use of purple markings, the FHWA disagrees with these comments and adopts the optional use of purple markings A toll road operator and a local DOT agreed with the optional use of purple markings, but recommended that the minimum width of 1 inch for the supplemental purple line be revised. Based on its own experience and observations, the FHWA agrees that 1 inch is too narrow and changes the minimum width of the optional purple supplemental marking to 3 inches and adopts a maximum width to be the same width as the line it supplements.

Finally, based on comments from the NCUTCD and a toll road operator that it is impractical to install edge lines in the constrained space between toll booths, the FHWA adds paragraph 08 that states: ''Longitudinal pavement markings may be omitted alongside toll booth islands between the approach markings and any departure markings.''

342. In Section 3F.02 (Section 3D.02 in the NPA) Delineator Design, the FHWA adopts a SUPPORT paragraph in the final rule to clarify the differences between single delineators, double delineators, and vertically elongated delineators when discussing a series of delineators along a roadway. This editorial clarification is necessary to reduce user confusion over these terms.

343. In Section 3F.03 (Section 3D.03 in the NPA) Delineator Application, the FHWA proposed in the NPA to add a GUIDANCE to recommend that delineators should be used wherever guardrail or other longitudinal barriers are present in order to provide consistency in application. Two local DOTs agreed with the proposal. A local DOT disagreed with the proposal and requested that delineators should be recommended on guardrails based on the lateral distance from the roadway. The FHWA disagrees. Because guardrail and barriers are typically close to the roadway, delineation on these features helps make road users aware of the potential to collide with them during conditions of darkness, and this delineation assists road users with navigating the roadway alignment. A State DOT and a local DOT agreed with the proposal, but requested clarification for the location of the delineators. The FHWA modifies the text of the adopted Section 3F.03 in several places to clarify that delineators are used in a series rather than a single delineator alone.

344. In Section 3F.04 (Section 3D.04 in the NPA) Delineator Placement and Spacing, the FHWA proposed in the NPA to change the GUIDANCE discussing the mounting height of delineators. Based on comments from the NCUTCD and three State DOTs questioning the ability to consistently achieve a precise mounting height of 4 feet, the FHWA in this final rule revises paragraph 01 to describe the recommended mounting height as ''approximately 4 feet.''

345. In the NPA, the FHWA proposed revising Chapter 3G Colored Pavements (Chapter 3E in the NPA and 2003 MUTCD), Section 3G.01 General, in order to provide a more logical flow of information, to better emphasize traffic control device and non-traffic control device colored pavements, and to reflect FHWA's Interpretation 3–169(I) [138] on non-retroreflective colored pavements. The proposed language classified as a traffic control device any retroreflective colored pavement between crosswalk lines and non-retroreflective colored pavement between crosswalk lines that is intended to communicate a regulatory, warning, or guidance message. A State DOT, two local DOTs, and a pedestrian advisory board agreed with the revisions. A citizen opposed the revisions because of concern that the language placed restrictions on the use of stamped concrete for aesthetic measures. The FHWA disagrees with the citizen because the language includes brick patterns in the list of aesthetic treatments that are not considered to be traffic control devices, and the FHWA adopts the text as proposed in the NPA.

346. In Chapter 3H (Chapter 3F in the NPA and 2003 MUTCD), the FHWA revises the title in this final rule to ''Channelizing Devices Used for Emphasis of Pavement Marking Patterns'' based on a comment from the NCUTCD, to more accurately reflect the content. As discussed above in item 107, the section discussing barricades is relocated to Section 2B.67 Barricades.

In Section 3H.01 (numbered Section 3F.01 in the NPA) Channelizing Devices, the FHWA proposed in the NPA to require that the design of channelizing devices, except for color, be consistent with Sections 6F.67, 6F.68, and 6F.69 (as numbered in the NPA). Based on comments from the NCUTCD, a traffic device manufacturer, ATSSA, and a citizen, the FHWA revises the STANDARD to require that the design of channelizing devices, except for color, comply with all of Chapter 6F rather than just three sections in that chapter. The FHWA also revises the OPTION to include additional types of channelizing devices and references specific sections of Chapter 6F for descriptions of the devices.

In addition, the FHWA proposed in the NPA to expand the STANDARD to require that the color of the reflective bands on channelizing devices shall be white, except for bands on channelizing devices that are used to separate traffic flows in opposing directions, which shall be yellow. Two State DOTs, an NCUTCD member, and a consultant opposed the proposed use of yellow banding because, as written, it would apply also to temporary traffic control zones and conflict with provisions in Chapter 6F. Two local DOTs agreed with the proposal. The NCUTCD and a State DOT agreed with the proposal, but recommended editorial changes to clarify that the yellow bands would apply only outside of Temporary Traffic Control (TTC) Zones. The FHWA agrees with the recommended editorial changes and adopts a revised paragraph 04 to clarify the required use of the yellow bands on channelizing devices.

347. In the NPA, the FHWA proposed several revisions to Chapter 3I Islands (Chapter 3G in the NPA and 2003 MUTCD). In Section 3I.01 (Section 3G.01 in the NPA) General, the FHWA proposed to add the purpose of toll collection to the definition of island for traffic control purposes. The NCUTCD opposed the change and recommended the deletion of toll booth plazas from being considered islands. The FHWA disagrees because toll booth plaza islands are located between traffic lanes and do control vehicular movements and share similar characteristics with many other types of islands. The FHWA adopts the language as proposed in the NPA but relocates the revised definition to Section 1A.13 and editorially combines it with similar text in the definition of Island that existed in Section 1A.13 of the 2003 MUTCD.

348. In Section 3I.03 (Section 3G.03 in the NPA) Island Marking Application, the FHWA proposed in the NPA to change a STANDARD discussing pavement markings in the neutral area to a GUIDANCE because it is not always practical or necessary for a jurisdiction to include chevron or diagonal hatching

2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/rpt/tcstoll/index.htm.*

[138] FHWA's Official Interpretation 3–169(I), dated September 1, 2004, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/documents/pdf/3-169-I-FL-S.pdf.*

in the triangular neutral area for all islands, especially small triangular channelizing islands at intersections. A local DOT agreed with the proposal. Based on a comment from a State DOT, the FHWA revises paragraph 02 editorially and adopts the statement as GUIDANCE.

349. The FHWA deletes Section 3G.05 Island Object Markers, as numbered and titled in the 2003 MUTCD and in the NPA, because object markers have been designated as signs and relocated to Chapter 2C and this text is no longer appropriate in Part 3. The provisions of former Section 3G.05 are addressed by text in Chapter 2C.

350. In Section 3I.05 (Section 3G.06 in the NPA), the FHWA in the final rule revises the title to ''Island Delineation'' and adds an OPTION, repeated from Section 3B.11, that allows the use of raised pavement markers in front of and on top of curbed noses of raised medians and curbs of islands.

351. In the NPA, the FHWA proposed adding a new section at the end of Chapter 3I, numbered and titled Section 3I.06 (numbered Section 3G.07 in the NPA) Pedestrian Islands and Medians, containing SUPPORT statements on the purpose of pedestrian islands and medians as well as the placement of detectable warnings at curb ramps. The information proposed within this section was included in order to assist practitioners with meeting the provisions of ADAAG.[139] Two State DOTs and a local DOT opposed the proposed section because they do not consider pedestrian islands and medians to be traffic control devices and the information is already contained in ADAAG. Two local DOTs agreed with the proposal and an organization for the blind requested that the language be changed to a STANDARD. The FHWA decides to adopt the language as SUPPORT because it merely provides information about provisions in other existing or proposed Federal regulations. However, the FHWA does not adopt in this final rule the details on placement of detectable warning surfaces and Figure 3G–1 that was proposed in the NPA, because the information is contained in ADAAG.

352. In the NPA, the FHWA proposed to add a new chapter to the end of Part 3 that is numbered and titled Chapter 3J Rumble Strip Markings (Chapter 3H in the NPA), which contained two sections that describe the use of markings in conjunction with longitudinal and transverse rumble strips. A local DOT agreed with the proposal, but recommended text changes. A State DOT, a local DOT, four organizations representing bicyclists, and an NCUTCD member opposed the proposed chapter because they do not believe rumble strips are traffic control devices and they feel the inclusion of the chapter will have negative implications for bicyclists. The FHWA has not made a determination on whether or not rumble strips are traffic control devices, but believes that certain types of rumble strips, particularly those that are formed from white or colored strips of pavement marking material, might have characteristics that could potentially make them candidates for future consideration as traffic control devices. Also, because rumble strips have been in use for many years and numerous agencies are considering increased usage as part of their strategic highway safety plans, there is a need to include provisions in the MUTCD for pavement markings that are used with rumble strips. The FHWA adopts the chapter as proposed, but makes revisions to Sections 3J.01 and 3J.02 as described below.

353. In Section 3J.01 (Section 3H.01 in the NPA) Longitudinal Rumble Strip Markings, the FHWA proposed language for the use of rumble stripes (longitudinal lines located over longitudinal rumble strips.) A State DOT asked if rumble strips were being considered as traffic control devices. Based on the comment, the FHWA adds a SUPPORT statement in paragraph 02 to clarify that, ''This Manual contains no provisions regarding the design and placement of longitudinal rumble strips.''

Based on comments from the NCUTCD and an NCUTCD member, the FHWA revises paragraph 04 to reference Section 3A.05 for the color of edge lines or center lines associated with longitudinal rumble stripes. Also, based on a comment from the NCUTCD, the FHWA adds a new STANDARD in paragraph 05 that states that an edge line shall not be used in addition to a rumble stripe that is located along a shoulder. This clarification is needed to preclude the use of a double edge line, which would be in conflict with the defined meanings of double lines in Chapter 3B.

As requested by the NCUTCD and a State DOT, the FHWA adds Figure 3J–1 to illustrate the text in Section 3J.01.

354. In Section 3J.02 (Section 3H.02 in the NPA) Transverse Rumble Strip Markings, the FHWA proposed that the color of a transverse rumble strip shall be the color of the pavement or white. A State DOT opposed the proposal because of concerns that white transverse lines could be confused with stop lines or crosswalks. The FHWA disagrees because there is no evidence of such confusion if properly used and located. Another State DOT asked if rumble strips were being considered as traffic control devices. Based on the comment, the FHWA adds a SUPPORT statement in paragraph 02 to clarify that, ''This Manual contains no provisions regarding the design and placement of transverse rumble strips that approximate the color of the pavement.'' A third State DOT recommended that black be added as an acceptable color for a transverse rumble strip and the FHWA agrees. A consultant recommended that orange be added as an acceptable color in a TTC situation and the FHWA agrees, for consistency with Section 6F.87 (see additional discussion there). The FHWA revises paragraph 03 to read, ''Except as otherwise provided in Section 6F.87 for TTC zones, if the color of a transverse rumble strip used within a travel lane is not the color of the pavement, the color of the transverse rumble strip shall be either black or white.''

Discussion of Amendments to Part 4—Highway Traffic Signals

Discussion of Amendments Within Chapter 4A—General

355. As discussed above under General and Part 1, in this final rule the FHWA relocates all the definitions in Section 4A.02 Definitions Relating to Highway Traffic Signals to Section 1A.13 in order to consolidate all definitions in one place in the MUTCD. Where definitions of the same term exist in both sections, the FHWA retains the most accurate definition or combines the definitions editorially. The FHWA also adopts a SUPPORT statement as the sole text of Section 4A.02, referring to Sections 1A.13 and 1A.14 for definitions and acronyms.

Discussion of Amendments Within Chapter 4B

356. In the NPA, the FHWA proposed in Section 4B.02 Basis of Installation or Removal of Traffic Control Signals to change the OPTION statement (with the exception of the last sentence of item E) to a GUIDANCE, in order to recommend the steps that should be taken to remove a traffic control signal from operation, rather than merely describe steps that may be taken. The FHWA also proposed to add to the remaining sentence of the OPTION statement that only the first two steps (items A and B of the GUIDANCE) need to be completed for

[139] The Americans with Disabilities Act Accessibility Guidelines (ADAAG) can be viewed at the following Internet Web site: *http://www.access-board.gov/ada-aba/index.htm.*

temporary traffic control signals, because the other steps (items C through E of the GUIDANCE) do not apply to those locations. An NCUTCD member in comments suggested deleting the reference to installing signs in item C because experience has found that signs do not help with citizen awareness of a study and that public notification is more effective through public meetings and/or the media. The FHWA agrees with the commenter and adopts the changes as proposed in the NPA, but with the suggested deletion in item C.

357. In Section 4B.04 Alternatives to Traffic Control Signals, the FHWA proposed in the NPA to add two items (L and H) to the list of less restrictive alternatives that should be considered before a traffic control signal is installed. Item H discusses revising the geometrics at the intersection to add pedestrian median refuge islands and/or curb extensions. Item L discusses the use of a pedestrian hybrid beacon or in-roadway warning lights if pedestrian safety is a major concern at a location. A toll authority, two local DOTs, and a consultant agreed with the addition, and a The FHWA adopts the addition of these items as proposed in the NPA because they are viable potential alternatives to a new traffic control signal.

358. In Section 4B.05 Adequate Roadway Capacity the FHWA proposed in the NPA to add a paragraph to the GUIDANCE clarifying that additional methods for increasing roadway capacity that do not involve widening a signalized intersection should be carefully evaluated. Such methods could include revising pavement markings or lane-use assignments where appropriate. The FHWA proposed this language to recommend that lower-cost options should be considered to increase roadway capacity and operational efficiency at signalized intersections. A local DOT supported this proposal. A State DOT, a local DOT, five associations, an NCUTCD member, and three private citizens agreed with the proposal and suggested adding a statement to consider the needs of bicyclists prior to implementing the alternative methods for increasing capacity. The FHWA agrees with these comments and also adopts in this final rule an additional statement that any impacts to bicyclists should also be considered.

A State DOT agreed with the revision and suggested that the list include other methods such as proper traffic signal timing, optimization, major route priority, truck and transit priority devices, traffic signal coordination, advanced traffic signal signage, and closed loop systems. The FHWA disagrees with this comment and declines to add the suggested items to the list because these measures are adequately addressed elsewhere in Part 4.

A State DOT opposed this revision and suggested removing Section 4B.05 from the MUTCD since adequate roadway capacity is not a traffic control device. The FHWA disagrees because this longstanding section of the MUTCD is necessary because of safety and operational impacts to signalized intersections, and because markings and lane use can significantly affect capacity.

Discussion of Amendments Within Chapter 4C

359. In Section 4C.01 Studies and Factors for Justifying Traffic Control Signals, the FHWA proposed in the NPA to add a second paragraph to the first OPTION statement allowing any four sequential 15-minute periods to be considered as 1 hour in signal warrants that require conditions to be present for a certain number of hours, if the separate 1-hour periods used in the analysis do not overlap each other and both the major and minor street volumes are for the same specific 1-hour periods. The FHWA proposed to add this paragraph to clarify that the 1-hour periods of peak traffic volumes do not necessarily need to correspond to 60 minutes starting at the :00 hour on the clock. A local DOT opposed this revision based on concerns about its potential misuse in litigation. The FHWA disagrees because this revision reflects accepted engineering practice and is an optional practice which presents a viable alternative to agencies that wish to use it. The FHWA adopts in this final rule the language as proposed in the NPA.

360. In Section 4C.04 Warrant 3, Peak Hour, the FHWA proposed in the NPA to add to the OPTION statement that a traffic signal justified only under this warrant may be operated in flashing mode during the hours when the warrant is not met. The FHWA also proposed to add a GUIDANCE statement recommending that such a signal be traffic-actuated. The FHWA proposed these statements to encourage efficient operational strategies, because a traffic signal justified only under the Peak Hour warrant may have very low traffic volumes during much of the day. This language is similar to provisions in Sections 4C.05 (Warrant 4, Pedestrian Volume) and 4C.06 (Warrant 5, School Crossing). A local DOT agreed with the proposals. Two State DOTs and a local DOT opposed the OPTION for flashing operation because they felt that traffic signals should not flash ordinarily, not all drivers understand flashing traffic signals, the number of crashes might increase, and the flashing operation takes away from the operational characteristics of actuated signals. The FHWA disagrees with the commenters because the flashing mode is currently utilized in many jurisdictions and has proven effective for signals with an unusual peak hour scenario. Also, any actuated signal can be operated in flashing mode and the decision should be based on engineering judgment. Therefore, the FHWA adopts in this final rule the language as proposed in the NPA.

361. In Section 4C.05 Warrant 4, Pedestrian Volume, the FHWA proposed in the NPA to revise the STANDARD statement regarding criteria that are to be met in an engineering study for a traffic signal to be considered. The FHWA proposed replacing the existing two criteria with two new criteria based on vehicular and pedestrian volumes, and requiring that only one of the criteria be met. The criteria, and the associated volume curves, are derived from other vehicle-based traffic signal warrants and supplemented with data gathered during a TCRP/NCHRP study.[140] The FHWA received comments from the NCUTCD, a State DOT, three local DOTs, six associations, and three private citizens in support of the NPA revisions. A local DOT and four associations suggested that bicyclists receive equal treatment and be included in all counts and applied to all appropriate warrants. The FHWA disagrees with these comments because consideration of bicyclists in applying signal warrants is adequately covered in Section 4C.01, Studies and Factors for Justifying Traffic Control Signals. A State DOT suggested adding a formula to the warrants. The FHWA disagrees with the commenter since the curves are based on formulas and there is no need to put the precise formula in the text. An association and an NCUTCD member suggested that the warrants also include consideration for the width of the crossing, the number of lanes, the frequency of adequate gaps in traffic, or the presence of one-way versus two-way traffic flows since it is generally easier to cross one-way traffic than two-way traffic. The FHWA concurs that number of lanes contributes to pedestrian

[140] ''Improving Pedestrian Safety at Unsignalized Pedestrian Crossings,'' TCRP Report 112/NCHRP Report 562, Transportation Research Board, 2006, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_562.pdf.*

exposure but disagrees with the suggested revision because issues with crossing distance should be addressed with refuge islands or other geometric treatments, and should not be a warrant for a signal unless the pedestrian and vehicle volumes are present. Additionally, the warrant revisions are based on the NCHRP study,[141] which did not recommend separate curves for different numbers of lanes on the major street. A local DOT opposed the revision of the pedestrian warrant because of concerns that new signalization will be easier to attain since the changes require that only one criterion needs to be met. The commenter suggested that other methods such as signing, pedestrian walkways, and overpasses should be investigated prior to the installation of a new traffic signal. The FHWA disagrees because the criteria still account for both pedestrian volume and major street volume and therefore the attainment of signalization has not been made easier. The FHWA notes that alternatives to signalization are discussed in Section 4B.04, Alternatives to Traffic Control Signals. The FHWA adopts in this final rule the language as proposed in the NPA.

Similar to other traffic signal warrants, the FHWA also proposed in the NPA to add an OPTION statement following the criteria, allowing the use of different volume curves based on the posted or statutory speed limit or the 85th percentile speed, or the location of the intersection. A local DOT suggested adding flexibility to allow the installation of a signal to encourage pedestrians to cross at a safe location, such as a new trail, rather than simply to accommodate them. The FHWA disagrees with the commenter since this warrant can be used at trail crossings, and adopts in this final rule the language as proposed in the NPA.

An NCUTCD member suggested that ''or YIELD'' be added after the proposed ''STOP'' in paragraph 04. The FHWA disagrees with the suggested revision, as a YIELD sign is not a restrictive enough traffic control device to facilitate high pedestrian crossing volumes and should not prevent the installation of a signal for pedestrian crossing if it is warranted. Additionally, the suggested revision would preclude roundabouts within 300 feet of the pedestrian signal.

The FHWA also proposed to revise the OPTION statement to reduce the required pedestrian volumes for this warrant by as much as 50 percent if the 15th percentile crossing speed of pedestrians is less than 3.5 feet/second. A local DOT agreed with this revision, while two State DOTs and two local DOTs were opposed to the revisions based primarily on concerns that the text appears to require a pedestrian speed study and it is impractical to measure the 15th percentile speed of pedestrians. The FHWA disagrees because this is an OPTION and does not require a study. The 15th percentile crossing speed would only be needed if the agency wants to explore a reduction in the pedestrian volume criterion. The FHWA adopts in this final rule the language as proposed in the NPA.

362. In both Section 4C.05 Warrant 4, Pedestrian Volume, and Section 4C.06 Warrant 5, School Crossing, the FHWA proposed in the NPA to add recommendations to the GUIDANCE statement that a traffic signal installed at an intersection or major driveway location, based on the pedestrian warrant or school crossing warrant only, should also control the minor street or driveway. When a traffic control signal is installed at an intersection with STOP signs on the minor street to assist pedestrians in crossing the major street, minor-street traffic can cross and turn left into the major street after stopping during the display of the green on the major street. This violates the expectations of drivers on the major street and compromises the meaning and effectiveness of the green signal indication. The FHWA believes that, even if the volume of traffic on the minor street is low when a signal is justified based on Warrant 4, it is in the best interest of traffic safety that the minor street also be controlled by signals rather than by STOP signs. A local DOT agreed with the proposed GUIDANCE for providing a minimum distance for a pedestrian signal from side streets or driveways. A State DOT opposed the revision and suggested that the minimum distance for a pedestrian signal from side streets or driveways be increased to 300 feet to be consistent with the distance from a traffic signal. The FHWA disagrees as the two distances are for different purposes and reasons. The 100-foot distance is for low volume side streets or driveways that are STOP or YIELD sign controlled, to avoid pedestrian conflicts with side-street turning vehicles; whereas the 300-foot distance is for an adjacent traffic control signal or STOP sign controlling the street to be crossed at a more significant intersection. A consultant suggested that a roundabout should be evaluated as a safer option when crashes reach the point where a signal is warranted. The FHWA agrees but does not modify the MUTCD text in this final rule because roundabouts are discussed in Section 4B.04, Alternatives to Traffic Control Signals, as an alternative to traffic signal control. The FHWA in this final rule adopts the language as proposed in the NPA with editorial revisions.

363. In the NPA, the FHWA proposed a new section following Section 4C.09, numbered and titled Section 4C.10 Warrant 9, Intersection Near a Highway-Rail Grade Crossing, and containing SUPPORT, STANDARD, GUIDANCE, and OPTION statements describing the new warrant, which is intended for use in locations where none of the other eight signal warrants are met, but the proximity of the intersection to a highway-rail grade crossing is the principal reason to consider installing a traffic control signal. The FHWA proposed this new warrant because some stop-controlled approaches to intersections near highway-rail grade crossings contain a stop line that is closer to the track than the length of a large vehicle, and sight distance obstructions might preclude the vehicle from waiting on the approach side of the grade crossing before entering the intersection. Many of these intersections do not meet one of the other warrants in the MUTCD because those warrants use minimum volume thresholds for considering the installation of a traffic signal rather than the proximity of a highway-rail grade crossing. The warrant is based on recommendations from an NCHRP research project.[142]

The NCUTCD, two State DOTs, and two local DOTs agreed with the new warrant in the NPA. A State DOT, a local DOT, and an NCUTCD member opposed the new warrant for a variety of reasons, including concerns that it could add a significant number of unnecessary signals, perceived inconsistency with 23 U.S.C. 130 regarding use of Federal funds, uncertainty as to whether the warrant is practical or feasible since it is based on a research project, and the desire for further review and testing before implementation as a national standard. The FHWA disagrees with these comments because meeting the warrant does not require installation of a signal,

[141] ''Improving Pedestrian Safety at Unsignalized Pedestrian Crossings,'' TCRP Report 112/NCHRP Report 562, Transportation Research Board, 2006, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_562.pdf.*

[142] ''Warranting Traffic Signals on the Basis of Proximity of Railroad Grade Crossings,'' by Elena Shenk Prassas, William R. McShane, Edward Lieberman, and Roeof Engelbrecht, was published by the Transportation Research Board in Transportation Research Record 2030, 2007, pages 59–68, and can be viewed at the following Internet Web site: *http://trb.metapress.com/content/r6856337l2484256/fulltext.pdf.*

the FHWA is not aware of any conflicts with Federal funding under 23 U.S.C. 130, and the consensus of practitioners that was developed by the NCUTCD's processes is that the warrant is needed and should be added to the MUTCD.

A local DOT suggested increasing the minimum threshold volume because a signal could be warranted with only 25 vehicles in the peak one-hour period. The FHWA disagrees with the commenter since the language is based on an NCHRP study and a signal does not have to be installed if the warrant is met.

A State DOT suggested that the warrant should only be invoked when some vehicle operators will have no choice but to stop on the tracks to attain adequate sight distance. The FHWA agrees with commenter that the warrant is intended to prevent vehicles from queuing across a highway-rail grade crossing and becoming trapped in a queue with no means of clearing the tracks. However, the FHWA does not make the suggested revision because this situation does not need to be explicitly stated in the text.

A local DOT suggested that STANDARD Item B be changed to GUIDANCE because rail preemption usually involves numerous signal locations within the rail corridor and the cost of the preemption might exceed the original signal budget. The FHWA disagrees since neither Section 4D.27 nor Section 8C.09 indicates that preemption must be applied to anything other than the one intersection under consideration.

A State DOT suggested that an additional criterion be added to the STANDARD that would address locations where vehicles continuously queue on the crossing and might create a hazardous situation. The FHWA points out that the words ''continuously'' and ''hazardous'' are undefined and too strong for this situation.

A State DOT opposed the requirement for highway-rail grade crossing to have both flashing-light signals and automatic gates if a traffic signal is installed based on this warrant, because there are some crossings at or near intersections where gates might not be practical to install. The FHWA believes that it is possible that locations exist where installing gates might be impractical, but where it is still worthwhile to install a signal at the highway-highway intersection in order to facilitate traffic movements that enable vehicles to move off the tracks prior to the arrival of a train. Gates can discourage additional vehicles from driving onto the tracks during the track clearance phase, but the flashing-light signals and bells should be sufficient where gates are impractical. The FHWA in this finale rule adopts a revised STANDARD in paragraph 09, item C, to require only flashing-light signals and adopts GUIDANCE recommending automatic gates.

The FHWA adopts this new section with revisions noted above in this final rule.

364. The FHWA adopts in this final rule the new Figure 4C–9 Warrant 9, Intersection Near a Highway-Rail Grade Crossing (One Approach Lane at the Track Crossing), Figure 4C–10 Warrant 9, Intersection Near a Highway-Rail Grade Crossing (Two or More Approach Lanes at the Track Crossing), and the associated Tables 4C–2, 4C–3, and 4C–4, as proposed in the NPA but with minor editorial revisions based on comments received.

Discussion of Amendments Within Chapter 4D—General

365. The FHWA in the NPA proposed to reorganize Chapter 4D so that similar subjects are grouped together in adjacent sections, or combined into single sections within the Chapter. While the NCUTCD agreed with the proposed reorganization, an NCUTCD member suggested that the explanations of the meanings and applications of signal indications should precede the explanation of signal face arrangements, so that users could know what the indications mean and how they are to be applied before trying to arrange them into signal faces. The FHWA agrees and in this final rule relocates NPA proposed Sections 4D.09 and 4D.10 to follow Section 4D.03 as Sections 4D.04 and 4D.05, respectively, and renumbers NPA proposed sections 4D.04 through 4D.08 to be Sections 4D.06 through 4D.10.

366. The FHWA proposed in the NPA the addition of flashing yellow arrow and flashing red arrow indications as optional alternatives to a circular green indication for permissive left-turn and right-turn movements in Part 4, which affects many sections within Chapter 4D. The proposed text throughout Chapter 4D incorporated the provisions of the Interim Approval IA–10 [143] for flashing yellow arrows during permissive turn intervals. The Interim Approval and the proposed MUTCD text were are based on research contained in NCHRP Report 493.[144] The research found that the flashing yellow arrow is the best overall alternative to the circular green as the permissive signal display for a left-turn movement, has a high level of understanding and correct response by left-turn drivers and a lower fail-critical rate than the circular green, and the flashing yellow arrow display in a separate signal face for the left-turn movement offers more versatility in field application. It is capable of being operated in any of the various modes of left-turn operation by time of day, and is easily programmed to avoid the ''yellow trap'' associated with some permissive turns at the end of the circular green display. The application of flashing yellow arrow indications for right-turn movements is a logical extension of use for left turns and will provide jurisdictions with a useful tool to effectively control a wide variety of situations involving right turns. Further, the optional use of flashing red arrow indications for permissive left-turn and right-turn applications where each successive vehicle must come to a complete stop before turning permissively provides a useful tool to improve safety and operation of signalized intersections in some circumstances.

The NCUTCD, a State DOT, two local DOTs, an NCUTCD member, an anonymous commenter, and a citizen agreed with adding flashing yellow arrow and flashing red arrow. A State DOT and four local agencies opposed the addition of flashing yellow arrows because of concerns about losing signal display uniformity, cost implications for converting existing signals, possible driver confusion, and public educational campaign requirements. Two State DOTs, five local agencies, an association, and an NCUTCD member opposed the addition of flashing red arrow left-turn faces because of concerns about lack of uniformity for signal faces, and possible driver misinterpretation. A local DOT and an anonymous commenter suggested allowing three-section flashing yellow arrow displays where the flashing yellow arrow and steady yellow arrow are displayed in the same signal section. This configuration was suggested to provide flexibility where there are height restrictions. The FHWA disagrees with these comments because the suggested configuration would reduce uniformity for flashing yellow arrow

[143] FHWA's Interim Approval #IA–10, dated March 20, 2006, can be found at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interim_approval/pdf/ia-10_flashyellarrow.pdf*.

[144] NCHRP Report 493, ''Evaluation of Traffic Signal Displays for Protected/Permissive Left-Turn Control,'' 2003, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_493.pdf*.

displays, it has not been tested, a four-section signal face can be used in the majority of situations, and if vertical clearance is an issue a horizontal face could be used. Two local DOTs agreed with the addition of flashing yellow arrows and flashing red arrows and suggested requiring the use of conflict monitors/malfunction management units (CMs/MMUs) that monitor flashing indications if flashing arrows are used for left-turn control, based on concerns over public safety. The FHWA disagrees with providing additional language about the CMs/MMUs because this information is too detailed in electronic issues for the MUTCD. The FHWA adopts the flashing yellow arrow and flashing red arrow in Part 4, based on the supporting research [145] and the usefulness of these optional displays to address significant safety and operational issues.

The NCUTCD in its comments also recommended revising Sections 4D.17 through 4D.20 (Sections 4D.06 and 4D.07 in the 2003 MUTCD) to eliminate provisions that allow the use of separate left-turn signal faces that include circular green indications for permissive turns. Such separate left-turn faces are those which have been used with signal displays in a configuration known as ''Dallas phasing,'' which uses a separate signal face over the left-turn lane that displays a circular green indication for permissive left turns while the signal faces for adjacent thru lanes display red indications. The NCUTCD stated that signal faces and indications for permissive left turns have been the subject of much research over the past 10 or more years and the results of that research have indicated that a circular green for a permissive left-turn movement located over or in front of a left-turn lane is often misunderstood by drivers. Also, a flashing yellow arrow to indicate a permissive left-turn movement has proved very successful. As a result, the NCUTCD recommended changes that support the optional use of flashing yellow arrows for permissive left turns, as noted above. The changes recommended by the NCUTCD to address the circular green permissive left-turn in a separate signal face also eliminate the need to distinguish between three different types of separate left-turn signal faces (as proposed in the NPA as items B, C, and D of the SUPPORT statement). The FHWA agrees that the available option of using flashing yellow arrow indications has made the circular green displays used with ''Dallas phasing'' obsolete and unneeded, and that the research supports prohibiting ''separate signal faces'' for left turns with circular green indications. The FHWA adopts in this final rule provisions in Sections 4D.17 through 4D.20 that reflect these NCUTCD recommendations. The FHWA also replaces the terms ''flashing yellow arrow signal face'' and ''flashing red arrow signal face'' throughout the MUTCD text and figures with appropriate language, such as ''a separate signal face with a flashing yellow arrow.''

367. A State DOT and an NCUTCD member suggested reducing redundant language in Chapter 4D to provide clear and concise language and using figures within each section to reduce the amount of text. The FHWA agrees and adopts in this final rule appropriate edits and additional figures where needed.

Discussion of Amendments Within Chapter 4D—Specific

368. In Section 4D.01 General, the FHWA adds SUPPORT paragraph 04 as proposed in the NPA, to clarify the condition of a seasonal shutdown. The FHWA adds this information to incorporate clarifications into the MUTCD per Official Interpretation #4–288, dated April 27, 2005.[146] A local DOT agreed with this revision.

The FHWA also relocates a paragraph regarding coordination of traffic control signals within one-half mile of one another from Section 4D.14 of the 2003 MUTCD and adds it to GUIDANCE paragraph 09. The FHWA also adds that coordination for such traffic signals should be considered where a jurisdictional boundary or a boundary between different signal systems falls in between them. The FHWA includes this change to encourage jurisdictions to coordinate traffic signal timing plans across jurisdictional or system boundaries. A local DOT agreed with this revision. The FHWA adds a new SUPPORT statement at the end of this section that contains information regarding traffic signal coordination that was previously in Section 4D.14 of the 2003 MUTCD. A local DOT opposed this revision because they believe the original text was clearer and more consistent with the previous paragraph. The FHWA disagrees because the text is intended to address control sections on different cycle lengths, not across jurisdictional boundaries. In this final rule the FHWA relocates the paragraph as proposed in the NPA and makes editorial revisions.

369. In Section 4D.03 Provisions for Pedestrians, the FHWA proposed in the NPA to revise the first GUIDANCE statement to indicate that accessible pedestrian signals should be provided where deemed appropriate by engineering judgment. A State DOT agreed with the revision. A consultant agreed with the proposed revision and suggested elevating the GUIDANCE to a STANDARD, to be in conformance with the draft Public Rights-of-Way Accessibility Guidelines (PROWAG) which requires accessible pedestrian signals where visual pedestrian signal heads are installed and where pushbuttons are used. The FHWA is waiting for the United States Department of Justice adoption of the anticipated United States Access Board public right of way guidelines before prior to revising the MUTCD on this issue, and therefore the FHWA adopts the in this final rule revised language as proposed in the NPA.

The FHWA also proposed to change the OPTION statement to a GUIDANCE to recommend, rather than merely permit, the use of No Pedestrian Crossing signs at traffic control signal locations where it is necessary or desirable to prohibit certain pedestrian movements, where such movements are not physically prevented by other means. The FHWA proposed this change because if the pedestrian movement is to be prohibited, a prohibitory sign should be used. A local DOT agreed with this revision. A State DOT also agreed and suggested that signs should be used if it is not practical to provide a barrier. The FHWA agrees and adopts in this final rule the language as proposed in the NPA with the suggested revision.

370. In Section 4D.04 (Section 4D.09 in the NPA) Meaning of Vehicular Signal Indications, the FHWA in the NPA proposed to add to item A(1) of the STANDARD statement a requirement that vehicular traffic turning left yield the right-of-way to other vehicles approaching from the opposite direction so closely as to constitute an immediate hazard. The FHWA proposed this change to conform the MUTCD to the Uniform Vehicle Code and to the laws in many States.

In the NPA, the FHWA also proposed editorial changes to item A(2A) of the STANDARD statement. Two local DOTs suggested further revisions to item A(2) to clarify that pedestrians cannot be legally in a crosswalk when there is a

[145] NCHRP Report 493, ''Evaluation of Traffic Signal Displays for Protected/Permissive Left-Turn Control,'' 2003, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_493.pdf.*

[146] FHWA's Official Interpretation 4–288, dated April 27, 2005, can be found at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/pdf/4_288.pdf.*

green arrow indication. The FHWA disagrees and declines to adopt the suggested revision because the statement is intended to address the situation that there may still be a pedestrian in the crosswalk, finishing his or her crossing, when the green arrow is first displayed.

The FHWA also proposed in the NPA to add a new item A(4) in the STANDARD statement that pedestrians facing a GREEN ARROW signal indication, unless otherwise directed by a pedestrian signal indication or other traffic control device, shall not cross the roadway. A local DOT opposed the proposed item A(4) because the text implies that a pedestrian can have a walk signal for a crosswalk in conflict with a motorist who has a green arrow indication across that same crosswalk. The commenter suggested revising the language to prohibit this conflict. The FHWA disagrees because scenarios exist where a green arrow is displayed that would not be in conflict with the pedestrian movement, such as where a crosswalk is parallel to a straight-through green arrow or where a channelization island is used to separate the pedestrian movement from a right-turn movement on a green arrow.

The FHWA adopts items A(1) through A(4) as proposed in the NPA.

The FHWA also proposed the separation of existing STANDARD item B(1) into two items to more clearly indicate the meaning of a steady circular yellow and a steady yellow arrow to vehicular traffic. As part of this change, the FHWA proposed to add that a steady yellow arrow signal indication warns that the related flashing arrow movement is being terminated. The FHWA proposed this change to provide consistency with the addition of the applications of flashing yellow arrows and flashing red arrows. A local DOT opposed the revision because of concerns that there will be increased driver confusion and rear-end crashes. The commenter notes that motorists traditionally have not been used to interpreting the yellow as described in the NPA proposal because a yellow has always come after a green movement and thus never mandated a stop. The FHWA disagrees because the concerns raised by the commenter have not been an issue where this display sequence has been used. The FHWA adopts in this final rule the language of item B of the STANDARD as proposed in the NPA.

The FHWA proposed in the NPA to revise STANDARD item C(1) to clarify that, where permitted, vehicles making a right turn or a left turn from a one-way street onto another one-way street when a steady circular red indication is displayed shall be governed by the rules applicable to making a stop at a STOP sign. The FHWA proposed this change to clarify the right-of-way rules for turning after stopping on a circular red indication. The FHWA also proposed to revise item C(2) related to a steady red arrow signal indication that is similar in nature, but reflects the different requirements for turning on a red arrow versus on a circular red. The FHWA in this final rule adopts the language of item C of the STANDARD as proposed in the NPA.

In the NPA, the FHWA proposed to delete the information from existing item D of the STANDARD statement and instead describe the meanings of flashing yellow signal indications in a new item E and flashing red signal indications in a new item F, to more specifically clarify their meanings to vehicular traffic, to pedestrians, and when displayed as a beacon. The FHWA also proposed to state in new STANDARD item D that a flashing green indication has no meaning and shall not be used. A State DOT, and four local DOTs agreed with the NPA's proposals. The FHWA in this final rule adopts the language of item D of the STANDARD as proposed in the NPA.

In new item E of the STANDARD statement, the FHWA proposed in the NPA to add an item 2 that describes the use of flashing yellow arrow indications for permissive turning movements in the direction of the arrow. The FHWA proposed this change to allow agencies to use the flashing yellow arrow, as an option to the steady circular green indication, for intersections with permitted turning phases. The effectiveness of the flashing yellow arrow for this purpose has been demonstrated as reported in NCHRP Report 493.[147] A State DOT opposed this change because of concerns that the text ''vehicular traffic shall to yield to pedestrians in the crosswalk'' and ''pedestrians shall yield to vehicles upon activation of the flashing yellow arrow'' is contradicting. The FHWA disagrees because ''vehicular traffic shall to yield to pedestrians in the crosswalk'' is needed to indicate that vehicles moving on flashing yellow arrows must yield to the pedestrians, and ''pedestrians shall yield to vehicles upon activation of the flashing yellow arrow'' is needed to clarify that pedestrians must yield to any vehicles that entered the intersection legally on a previous phase and have not yet fully cleared the intersection when the flashing yellow arrow is first displayed. The FHWA adopts in this final rule the language as proposed in the NPA.

An NCUTCD member opposed the proposed new STANDARD item E (5), which described the meaning of a flashing yellow signal indication that is displayed as a beacon at the approach to or along a curve or other geometric feature because it implied that flashing circular yellow beacons can be used over curves or other geometric features (other than intersections) and would not necessarily have to supplement another traffic control sign or marker. The FHWA agrees with the comment and does not adopt proposed item E(5) in this final rule.

A local DOT opposed proposed new item F(2), which describes the meaning of a flashing red arrow signal indication, because of the belief that the operation might lead drivers to think that the opposing movement also has a flashing red operation and that the intersection is functioning as stop and go on all approaches. The FHWA disagrees because there has been no evidence that drivers have been making this misinterpretation when flashing red arrows have been used, such as during late night or emergency flash operation. The FHWA also notes that a supplementary R10–27 sign could be used to mitigate this concern. The FHWA in this final rule adopts the language as proposed in the NPA.

A local DOT opposed proposed new item F(4) regarding the meaning of flashing circular red signal indications used as beacons supplementing another traffic control device, because of concerns that the text is inconsistent with the MUTCD. The FHWA disagrees because the commenter has misunderstood the intent of this language, which is merely to state what drivers are expected to do when seeing a flashing red Stop Beacon, as described in Chapter 4L, that accompanies a STOP, DO NOT ENTER, or WRONG WAY sign. The FHWA adopts in this final rule the language as proposed in the NPA.

371. In Section 4D.05 Application of Steady Signal Indications (Section 4D.10 in the NPA), the FHWA proposed in the NPA to modify item A(2) in the first STANDARD to exclude the use of a circular red signal indication with a green arrow indication when it is physically impossible for traffic to go straight through the intersection, such as from the stem of a T-intersection. In this final rule, the FHWA does not adopt that proposed language because it

[147] NCHRP Report 493, ''Evaluation of Traffic Signal Displays for Protected/Permissive Left-Turn Control,'' 2003, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_493.pdf.*

would conflict with other provisions adopted in Section 4D.25.

A citizen and two anonymous commenters suggested revising item B(4) to totally ban all yellow trap situations and adding a figure to illustrating the yellow trap. The FHWA did not propose such a total ban in the NPA and believes that it is reasonable to allow for exceptions in rare cases if a warning sign is used, as provided in items B(4)(c) and B(4)(d). The FHWA also notes that there is no need to illustrate yellow trap in the MUTCD because such illustrations exist in other documents such as handbooks published by the Institute of Transportation Engineers.

An anonymous commenter suggested adding a new STANDARD statement after proposed item E(1)(b) to require a steady yellow arrow following a flashing yellow arrow or flashing red arrow in certain situations, and revising proposed item E(2) to reflect the use of flashing yellow arrow and flashing red arrow signal indications for permissive turns, as discussed in Sections 4D.17 and 4D.21. The FHWA agrees and in this final rule adopts a new item E(2) and a revised item E(3) (item E(2) in the NPA) for consistency with other STANDARD statements in Chapter 4D that require these displays.

The FHWA proposed in the NPA a modified item E(4) (item E(3) in the NPA) in the first STANDARD to permit the use of a steady yellow arrow indication to terminate a flashing yellow arrow or a flashing red arrow controlling a permissive left-turn phase. The FHWA proposed this change to provide consistency with the addition of the flashing yellow arrow and flashing red arrow indications for permissive left turns. As documented in NCHRP Report 493,[148] the steady yellow arrow was found to be successful as the change interval display following the flashing yellow arrow permissive interval. A subsequent study by the University of Wisconsin[149] found no evidence to suggest that the flashing yellow arrow permissive indication negatively affects drivers' understanding of the steady yellow change interval indication. No problems with this display have been reported to the FHWA by the dozens of highway agencies that have implemented flashing yellow arrows at several hundred intersections under experimentation or interim approval. The FHWA in this final rule adopts the language as proposed in the NPA.

An anonymous commenter suggested revising STANDARD item E(5)(a) (item E (4)(a) in the NPA) to include preemption situations at railroad crossings when a flashing yellow arrow changes to steady yellow arrow back to a flashing yellow arrow. The FHWA agrees and adopts the suggested revision in this final rule.

In this final rule the FHWA also revises the final STANDARD statement to reflect the elimination of the use of circular red indications in separate left turn signal faces, as discussed below in Section 4D.19, and the elimination of ''Dallas phasing'' signal displays, as discussed above in item 366.

An anonymous commenter suggested revising the last paragraph in the final STANDARD statement to limit the prohibition of both flashing and steady displays in the same signal section to yellow indications, since signal faces are, in some cases, allowed to display both a flashing red and a steady red indication from the same signal section during steady mode operation. The FHWA agrees in concept and adopts in this final rule the language as proposed in the NPA with revisions to address the comment.

372. In Section 4D.06 (Section 4D.18 in the 2003 MUTCD) Signal Indications—Design, Illumination, Color, and Shape, the FHWA proposed in the NPA to revise the first STANDARD statement, which states that letters or numbers shall not be displayed as part of a vehicular signal indication. The FHWA specifically proposed to prohibit vehicular countdown displays because countdown indications on vehicular signal indications, and similar methods of attempting to indicate a ''pre-yellow'' warning, such as a flashing green interval, have been found to lengthen the ''dilemma zone'' and thereby result in increased crash rates.[150] A private citizen opposed this proposed prohibition on vehicular countdown indications because he believes an advance warning of a signal change should be allowed for heavy trucks. The commenter requested the adoption of a new STANDARD for advanced warning system for high-speed roads. The FHWA disagrees because the research supports the ban on vehicular countdown indications and therefore adopts in this final rule the language as proposed in the NPA.

In the NPA, the FHWA also proposed an exception to the prohibition on lettering for toll plaza signals. As discussed below in Chapter 4K, the FHWA is not allowing the use of traffic control signals at toll plazas, so the FHWA does not adopt the exception in this final rule.

The FHWA also proposed in the NPA to add a statement in the first STANDARD that strobes or other flashing displays within or adjacent to red signal indications shall not be used, in order to clarify that strobes within traffic signals are not approved traffic control devices. This would be consistent with FHWA's Official Interpretation 4–263.[151] Although FHWA allowed experimentation with strobes in red traffic signals in the mid-1980s, the FHWA made a determination in 1990 not to approve further experimentations with strobe lights in traffic signals, and to terminate all experimentations with these devices that were in progress at that time. As stated in the Official Interpretation, research conducted as part of the experimentation process showed inconsistent benefits and some significant disadvantages to the use of strobes and similar flashing displays. Any strobes operating within red traffic signals are not in accordance with the MUTCD, and they are not under any approved experimentation. The FHWA received comments from a State DOT and two local DOTs supporting this revision. The NCUTCD, a State DOT, and a local DOT supported the revision and suggested expanding the strobe prohibition to signal indications other than red because a strobe is inappropriate with any traffic signal display. Two State DOTs, a local DOT, and an association supported the revision and suggested clarifying ''flashing displays adjacent to red signal indications'' to allow emergency vehicle preemption (EVP) confirmation lights. Two State DOTs opposed the revision because they believe from anecdotal information the strobes have merit in certain situations and have a positive effect on highway safety. The FHWA believes that such anecdotal information

[148] NCHRP Report 493, ''Evaluation of Traffic Signal Displays for Protected/Permissive Left-Turn Control,'' 2003, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_493.pdf.*

[149] An abstract and summary of ''An Evaluation of Driver Comprehension of Solid Yellow Indications Resulting from Implementation of Flashing Yellow Arrow,'' 2007, by Michael A. Knodler, David A. Noyce, Kent C. Kacir, and Chris L. Brehmer, can be viewed at the following Internet Web site: *http://pubsindex.trb.org/document/view/default.asp?lbid=802137.*

[150] ''Safety Evaluation of a Flashing-Green Light in a Traffic Signal,'' by D. Mahalel and D.M. Zaidel, Traffic Engineering + Control magazine, February, 1985, pages 79–81, is available for purchase from Hemming Information Services, 32 Vauxhall Bridge Road, London, SW1V 2SS, England, at the following Internet Web site: *http://www.tecmagazine.com/.*

[151] FHWA's Official Interpretation 4–263, dated July 2, 2003, can be found at the following Internet Web site: *http://mutcd.fhwa.dot.gov/documents/pdf/4–263–I–FL–s.pdf.*

is insufficient to override the formal studies that have consistently shown no benefit of strobes and disadvantages in some cases. A consultant disagreed with the strobe prohibition because it will prohibit the use of the red strobe above the flashing red signal indication on the STOP/SLOW paddle Automatic Flagger Assistance Devices (AFADs) and suggested revising the text or providing an exception for construction work zone traffic control devices. The flashing red indication of the AFAD is a Stop Beacon as defined in Section 4L.05 and it is a highway traffic signal device so the strobe prohibition would apply. The FHWA is not aware of any documented justification for allowing an exception in construction work zones or AFADs. The FHWA in this final rule adopts the language as proposed in the NPA with editorial revisions to clarify that the strobe prohibition applies to all colors of signal indications and to exclude EVP confirmation lights.

A State DOT and an NCUTCD member suggested prohibiting dual-arrow (green arrow/yellow arrow) indications because they believe that they cause problems for color blind drivers. The FHWA disagrees because dual-arrow indications have been in use for decades with no documented problems and green-yellow color blindness is extremely rare in comparison to red-green color blindness.

373. In the new Figure 4D–1 Example of U-Turn Signal Face that was proposed in the NPA, a State DOT noted that the U-Turn display is not currently manufactured nor is there an ITE specification for it. The FHWA notes that while there is currently no ITE specification, the lens design has been manufactured and is being used in some jurisdictions. The signal indication is not required, but could be used to control a U-turn movement on an approach from which there is no left-turn movement physically possible or the left-turn is prohibited. Four local DOTs opposed the new figure because the U-turn signal display is not common and might not be clear from long distances. The FHWA disagrees because, although not widely used at present, the need for U-turn signal indications is increasing and it is necessary to establish uniform provisions for their design and use. The FHWA also notes that, although the shape of arrow will not be able to be seen from as long a distance as a left-turn or right-turn arrow, vehicles would be decelerating to slower speeds in a U-turn lane, so that distance is not as critical. The FHWA adopts new Figure 4D–1 as proposed in the NPA.

374. In Section 4D.07 (Section 4D.15 in the 2003 MUTCD) Size of Vehicular Signal Indications, the FHWA proposed in the NPA to modify the STANDARD to require 12-inch signal indications for all new signal installations, to reflect the predominant current signal design practice, to reflect the results of studies [152] that have shown the significant safety benefits of using 12-inch indications, and to make signal indications more visible to older drivers. As part of this proposed change, the FHWA would allow existing 8-inch signal indications to be retained for the remainder of their useful life. In the NPA, the FHWA proposed to revise the OPTION statement to allow the use of 8-inch signal indications under three specific circumstances where such use could be advantageous. Three local DOTs and an NCUTCD member agreed with the revisions. The NCUTCD and a State DOT suggested revising the proposed statement permitting existing 8-inch indications to be retained for the remainder of their useful life from STANDARD to OPTION to improve readability. The FHWA agrees and adopts the change in this final rule based on the commenters' recommendation.

The NCUTCD and a State DOT suggested adding additional items in the OPTION to also allow 8-inch signal indications for supplemental near side signal indications and along roadways with speeds less than 30 miles per hour, and where the signal indications are located less than 120 feet from the stop line. Four State DOTs, 15 local agencies, 2 associations, a consultant, a signal equipment supplier, and 5 citizens similarly requested allowing 8-inch signal indications in historic downtown districts, residential districts, central business districts, and suburban town centers, where they believe that 12-inch indications would not be context appropriate. The FHWA agrees and adopts in this final rule a revised OPTION allowing 8-inch circular signal indications for near side supplemental signal indications and for circular indications located less than 120 feet from the stop line on all roadways with a posted or statutory speed limit of 30 miles per hour or less.

A local DOT suggested adding an OPTION allowing 8-inch indications for vehicular signal faces that exclusively control a bicycle movement or bikeway since 12-inch indications might be excessive given the typical speeds and position of bicycles. The FHWA agrees and in this final rule adopts the suggested OPTION.

A State DOT requested allowing 8-inch indications for ramp metering signals where the indications are at eye level with the driver and visibility might not be an issue. The FHWA disagrees and does not adopt this suggestion because ramp metering signals are typically located on ramps and many ramps are relatively high speed. The ramp metering signals are sometimes not anticipated by unfamiliar road users, so prominent signal indications are important.

375. In Section 4D.08 (Section 4D.16 in the 2003 MUTCD) Positions of Signal Indications Within a Signal Face—General, the FHWA proposed in the NPA to add to the STANDARD a statement that unless otherwise stated for a particular application, if a vertical signal face contains a cluster(s), the face shall have at least three vertical positions. The FHWA proposed this change because road users who are color vision deficient identify the illuminated color by its position relative to the other signal sections. An NCUTCD member noted that the proposed clause about clusters belongs in Section 4D.09 (Section 4D.16 in the 2003 MUTCD), which discusses vertical signal faces. The commenter suggested adding an OPTION statement that allows dual red indications in signal faces that do not control turning movements and also suggested adding a GUIDANCE statement to describe how the dual red indications are to be arranged into clusters. The FHWA agrees with the commenter's concerns and adopts in this final rule an OPTION statement in Section 4D.09 allowing clustering of two circular red or two red arrow indications in a vertically-arranged signal face but prohibiting clustering of two identical green arrows because that display can incorrectly imply that a two-lane turn movement is allowed. The FHWA also adopts references in Section 4D.09 to Figure 4D–2 and certain other figures to illustrate examples of clusters. A local DOT suggested adding an OPTION to allow the use of a single-section signal at approaches controlled by a flashing or steady circular red signal for minor driveways at signalized intersections. The FHWA disagrees because a single-section flashing circular red indication is a stop beacon and is discussed in Section 4L.05. If the

[152] These studies are summarized and documented in the FHWA report ''Making Intersections Safer: A Toolbox of Engineering Countermeasures to Reduce Red-Light Running,'' pages 22–23, which can be viewed at the following Internet Web site: *http://safety.fhwa.dot.gov/intersections/docs/rlrbook.pdf* and in ''Signalized Intersections: Informational Guide'', FHWA publication number FHWA–HRT–04–091, August 2004, page 283, which can be viewed at the following Internet Web site: *http://www.tfhrc.gov/safety/pubs/04091/*.

circular red indication alternates between flashing red and steady red, then a single section is not appropriate because a change in position is needed and a change interval is also required.

The FHWA also proposed in the NPA to add requirements to the STANDARD statement for the position of U-turn arrow signal sections in a signal face. The FHWA proposed this change to accommodate the new U-turn arrows as described previously in item 373. A local DOT and an NCUTCD member agreed with the revision and suggested removing the reference to U-turns to the right because they are rare and a circular indication can be used. The FHWA disagrees because U-turns to the right can be used for frontage roads and removing the text might result in possible misapplication. The FHWA adopts in this final rule the language as proposed in the NPA.

376. In new Section 4D.09 (Section 4D.07 in the NPA) Positions of Signal Indications within a Vertical Signal Face, the NCUTCD, a State DOT, a consultant, an NCUTCD member, and two anonymous commenters made suggestions regarding the text proposed in the NPA to incorporate signal faces using a flashing yellow arrow or flashing red arrow for permissive turn indications. The FHWA agrees and deletes the term ''immediately'' from the second paragraph of the first STANDARD adopted in this final rule and also revises the list of relative positions to include steady and/or flashing yellow arrow and red arrow sections. Similarly, the FHWA also adopts a revised Section 4D.10 (Section 4D.08 in the NPA) Positions of Signal Indications within a Horizontal Signal Face with similar revisions to the list of relative positions, based on the commenters' suggestions.

A State DOT suggested adding a figure to illustrate clusters. An anonymous commenter also suggested clarifying the last STANDARD to accommodate specific provisions in Section 4D.25 for the use of dual-arrow signal indications. The FHWA agrees and adopts in this final rule a revised second STANDARD, containing clarifications based on the commenters' suggestions, and also adopts a reference to various figures that illustrate clusters in vertical signal faces.

An anonymous commenter suggested clarifying the positioning for flashing red arrow and steady red arrow signal indications because of concern for color-blind drivers. The FHWA agrees with the commenter and adopts in this final rule a revised STANDARD paragraph 03 that effectively prohibits two adjacent red arrow sections in a vertical face unless they are clustered side-by-side, to address the color blindness issue. This is necessary to avoid the safety consequences of a colorblind road user being confused by the signal display when two red arrows are in line with each other vertically.

377. In Section 4D.11 Number of Signal Faces on an Approach, the FHWA proposed in the NPA to revise item A of the STANDARD to clarify that two primary signal faces are required for a straight-through movement if such movement exists at a location, even if it is not the major movement, and to require two primary signal faces for the major signalized turning movement if no straight-through movement exists, such as on the stem of a T-intersection. The FHWA proposed this change to ensure that the straight-through movement, or major signalized turning movement in absence of a straight-through movement, contains redundant primary signal faces in case one of the signal faces fails, and to incorporate the FHWA's Official Interpretation number 4–295(I).[153] Two State DOTs and a local DOT opposed the revision because they would prefer to retain the flexibility to provide a single signal face for specific conditions. An NCUTCD member agreed with the revision. The FHWA agrees with the NCUTCD member that two primary signal faces shall be provided for the through movement and adopts in this final rule the language as proposed in the NPA with editorial revisions.

The FHWA also proposed in the NPA to add an OPTION allowing a single section green arrow signal when there is never a conflicting movement at an intersection. This single section signal may be used for a through movement at a T-intersection if appropriate geometrics and signing are placed according to an engineering study to allow for free flow of traffic where there are no conflicting movements. The FHWA proposed this change to incorporate Official Interpretation 4–255(I) into the MUTCD.[154] A local DOT agreed with the revision. The FHWA in this final rule adopts the language as proposed in the NPA.

In the NPA, the FHWA proposed adding a GUIDANCE statement at the end of the section that outlines the recommendations for providing and locating signal faces at intersections where the posted or statutory speed limit or the 85th percentile speed on an approach exceeds 40 mph. As documented in two FHWA reports, ''Making Intersections Safer: A Toolbox of Engineering Countermeasures to Reduce Red-Light Running'' [155] and ''Signalized Intersections: Informational Guide,'' [156] numerous studies have found significant safety benefits from locating signal faces overhead rather than at the roadside, providing one overhead signal face per through lane when there is more than one through lane, providing supplemental near-side and/or far-side post-mounted faces for added visibility, and including backplates on the signal faces. A study [157] of intersections in British Columbia, Canada, also found statistically significant collision reductions in the range of 10 to 45 percent when signal displays were upgraded from a single overhead signal face to two overhead faces. Additionally, two recent studies, by the URS Corporation [158] and by Bradley University,[159] found that reconfiguring diagonal signal spans to box spans or mast arm layouts with far-side signal face locations produced significant reductions in the number of red light violations and entries into the intersection late in the yellow change interval. The FHWA proposed the addition of this GUIDANCE to reflect modern signal design practices and to enhance the safety of signalized intersections along higher-speed roadways, where the potential benefits are greatest. For the same reasons, the FHWA also proposed that this GUIDANCE also be considered for any major urban or suburban arterial street with four or more lanes. A citizen agreed with the revision. The NCUTCD and a local DOT agreed but suggested

[153] FHWA's Official Interpretation 4–295(I), dated October 19, 2005, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/4_297.htm.*

[154] FHWA's Official Interpretation 4–255(I), dated February 19, 2003, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/documents/pdf/4-255-I-NE-s.pdf.*

[155] Pages 17–27 of this report can be viewed at the following Internet Web site: *http://safety.fhwa.dot.gov/intersections/docs/rlrbook.pdf.*

[156] ''Signalized Intersections: Informational Guide'', FHWA publication number FHWA–HRT–04–091, August 2004, pages 73–75 and 281–282, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/safety/pubs/04091/.*

[157] ''Safety Benefits of Additional Primary Signal Heads,'' March, 1998, by Emmanuel Felipe and Dragana Mitic, can be obtained from G.D. Hamilton Associates, 1199 Hastings Street West, Suite 900, Vancouver, BC, V6E 3T5, Canada.

[158] Details on this study, ''Far-Side Signals vs. Diagonal Span Behavioral Research,'' project number 12937724, February 2006, can be obtained from URS Corporation, 3950 Sparks Drive, SE., Grand Rapids, MI 49546–2420.

[159] Evaluation of Signal Mounting Configurations at Urban Signalized Intersections in Michigan and Illinois'' by Kerrie L. Schattler, Matthew T. Christ, Deborah McAvoy, and Collette M. Glauber, August 1, 2007, can be obtained from the Department of Civil Engineering and Construction, Bradley University, 1501 West Bradley Avenue, Peoria, IL 61625.

revising the speed threshold value to 45 miles per hour or higher to eliminate a potentially ambiguous situation where 85th percentile speeds are between 40 and 45 miles per hour and neither the posted nor the statutory speed exceed 40 miles per hour. The FHWA agrees and adopts in this final rule the language as proposed in the NPA with the suggested revision.

A large city DOT opposed the proposed new GUIDANCE statements because of concerns that providing one signal face per through lane is too extreme and will place an unnecessary financial hardship on agencies. The commenter said the collision data and red light running data in that city does not support the NPA recommendation and suggested replacing the GUIDANCE with a new statement that would recommend practices similar to those used in California. The NCUTCD and a State DOT agreed with the general concepts of the NPA proposal but suggested replacing GUIDANCE items A and B with a table to list the recommended number of signal heads for various lane and speed combinations, including certain speed ranges below 45 mph, and recommended fewer overhead signal faces than one signal per through lane in some cases. A State DOT agreed with the new GUIDANCE, but suggested that it be lowered to an OPTION. Three State DOTs, 13 local agencies, an NCUTCD member, a consultant, and a citizen opposed GUIDANCE item B regarding locating a signal face over the center of each through lane because of concerns about the cost for agencies, aesthetics, increased energy usage, shortening of the operating time for battery backups, liability issues, lack of effectiveness for increased visibility, and lack of design flexibility for engineers.

In consideration of the comments received, the FHWA adopts in this final rule a revised GUIDANCE that references a new Table 4D–2 ''Recommended Minimum Number of Primary Signal Faces for Through Traffic on Approaches with Posted, Statutory, or 85th Percentile Speed of 45 mph or Higher'' in this final rule. The adopted text and table recommend that all primary faces should be located on the far side, that the total number of overhead and/or post-mounted far side primary signal faces should equal the number of through lanes on approaches with two or more through lanes, and that certain minimum numbers of those total signal faces should be located overhead on the far side of the intersection. A note in the table also indicates that, if practical, all of the recommended total number of primary through signal faces should be located overhead. The revised GUIDANCE indicates that it applies only to new or reconstructed signal installations. The FHWA believes that the adopted GUIDANCE and the associated table will enhance safety as new and reconstructed signals are installed on higher-speed approaches as well as accommodate older existing signals for the remainder of their service life. However, the FHWA disagrees with the NCUTCD's suggestion for adding specific guidance on the number and location of signal faces for approaches with speeds less than 45 mph, because such a provision was not proposed in the NPA and should be subject to the review and comment process of a future rulemaking. The FHWA adopts the language as proposed in the NPA that merely recommends that the same layouts as for higher speed approaches be considered for any major urban or suburban arterial street with four or more lanes and other approaches with speeds less than 45 mph.

A State DOT and four local agencies opposed the proposed GUIDANCE item C recommending that separate signal faces controlling exclusive turn lanes should be located overhead, approximately over the center of the turn lane, because of concerns about the lengths of mast arms that will be needed. The FHWA disagrees with the commenters because the proposed GUIDANCE is based on best practices currently in use in many jurisdictions and therefore adopts in this final rule the GUIDANCE as proposed in the NPA.

Three State DOTs supported GUIDANCE item E (item D in the NPA) about supplemental signal faces, with editorial comments. The FHWA adopts in this final rule the language as proposed in the NPA with editorial changes.

Two State DOTs, two local agencies, and an NCUCTD member agreed with GUIDANCE item F (item E in the NPA) about backplates but suggested making exceptions for pole-mounted, supplemental, and cluster signals because of concerns about needing larger pole foundations and their opinion that the need for backplates is not critical on supplemental or pole-mounted signals. A State DOT and five local agencies opposed item E because of concerns about additional wind loading and they believe mast arms provide contrast with the signal head. The FHWA disagrees and adopts in this final rule item F because on high speed approaches the need for contrast is very important for all signal faces.

The FHWA also adopts the proposed Figure 4D–3, retitled Recommended Vehicular Signal Faces for Approaches with Posted, Statutory, or 85th Percentile Speed of 45 mph or Higher, with revisions to reflect adopted revisions in the text of Section 4D.11.

378. In Section 4D.12 (Section 4D.17 in the 2003 MUTCD) Visibility, Aiming, and Shielding of Signal Faces, the FHWA proposed in the NPA a revised 4th paragraph of the first GUIDANCE statement to add that signal backplates should be used on all of the signal faces that face an approach with a posted or statutory speed limit or 85th percentile speed is 45 mph or higher, and that signal backplates should be considered when the speeds are less than 45 mph. The FHWA proposed this change to reflect modern signal design practices to enhance safety by increasing the visibility of signal faces on higher-speed approaches, especially for older drivers, to reflect safety studies as documented in the FHWA reports ''Signalized Intersection: Informational Guide'' [160] and ''Making Intersections Safer: Toolbox of Engineering Countermeasures to Reduce Red Light Running,'' [161] as well as recommendations from the Older Driver handbook.[162] Two local DOTs agreed with the revision. The FHWA also received comments about providing exceptions to the backplate recommendations and in opposition to backplates similar to comments received in Section 4D.11. The FHWA in this final rule adopts the language as proposed in the NPA.

The FHWA also proposed an OPTION statement allowing the use of yellow retroreflective strips along the perimeter of a signal face backplate. The FHWA proposed this change to increase the conspicuity of the signal face at night, and to add language to the MUTCD in accordance with Interim Approval IA–1, dated February 2, 2004.[163] A local DOT agreed with the revision. Another local DOT also agreed but suggested that the minimum width be changed to zero. The FHWA notes that the use of the

[160] ''Signalized Intersections: Informational Guide,'' FHWA publication number FHWA–HRT–04–091, August 2004, pages 288–290, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/safety/pubs/04091/.*

[161] Page 26 of this report can be viewed at the following Internet Web site: *http://safety.fhwa.dot.gov/intersections/docs/rlrbook.pdf.*

[162] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendation #I.N(3)

[163] The Interim Approval for Use of Retroreflective Border on Signal Backplates, number IA–1, dated February 6, 2004, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/pdfs/ia_retroborder.pdf.*

retroreflective strip is optional and any width less than an inch would provide limited benefit. The FHWA in this final rule adopts the language as proposed in the NPA.

In this final rule, the FHWA also editorially revises the order in which the paragraphs of Section 4D.12 appear, to more logically group like topics together.

379. In Figure 4D–4 (Figure 4D–2 in the 2003 MUTCD) Lateral and Longitudinal Location of Primary Signal Faces, a local DOT suggested deleting this figure because the MUTCD proposed to mandate 12-inch indications for all new installations. The FHWA disagrees that the figure is obsolete, since it illustrates the 20-degree ''cone of vision'' provisions that are still in effect and since 8-inch lenses will still be allowed for certain situations. The FHWA adopts Figure 4D–4 as proposed in the NPA but with revisions to reflect adopted revisions in the text of Chapter 4D.

380. In new Section 4D.13 Lateral Positioning of Signal Faces, the FHWA proposed in the NPA a STANDARD requiring that overhead-mounted turn signal faces of certain types for exclusive turn lanes shall be located directly over the turn lane. The FHWA proposed this statement to ensure that drivers associate the proper turn signal face with the exclusive turn lane and because the research documented in NCHRP Report 493 [164] found that this location produced the best driver understanding and correct behavior. A local DOT agreed with the revision. Two State DOTs also agreed but suggested reducing the STANDARD to GUIDANCE because there are numerous existing signals that do not meet the criteria because of short mast arms. A State DOT and two local DOTs opposed the new STANDARD predominantly because of cost to upgrade existing signals and concerns about long masts arms in high wind areas. The FHWA disagrees because the state of the art for both guide signing and signals is to provide specific traffic control/movement information to each lane to reduce driver confusion, especially at complex intersections, and the research validates this practice for turn signals. The FHWA in this final rule adopts the language as proposed in the NPA.

In the NPA the FHWA also proposed to add a GUIDANCE statement that, for new or reconstructed signals, on an approach with an exclusive left-turn lane(s) and opposing vehicular traffic where a circular green signal indication is used for permissive left turns, signal faces containing a circular green signal indication should not be post-mounted on the far side median or located overhead above an exclusive left-turn lane or the extension of the lane. The FHWA proposed this change because NCHRP Report 493 [165] found that the circular green permissive left-turn indication is confusing to some left-turn drivers who assume it provides right-of-way during the permissive interval. The FHWA believes that placement of the circular green indication directly above or in line with an exclusive left-turn lane exacerbates the safety issues with this display. Research[166] found that found that displaying a circular green signal indication directly over an exclusive left-turn lane led to a higher left-turn crash rate than ''shared'' displays placed over the lane line between the left-turn lane and the adjacent through lane or to the right of that line. Placing the shared signal display over the lane line or to the right of it helps to promote the idea that the signal display with the circular green indication is being shared by the left-turn and through lanes. This can help reduce the infrequent but very dangerous occurrence of the circular green permissive indication being misunderstood as a protected ''go'' indication by left-turn drivers. The NCUTCD and a local DOT agreed with the proposed revision. A State DOT also agreed and recommended elevating the GUIDANCE to STANDARD to prohibit the use of circular green indications. A State DOT agreed and suggested revising the language to clarify that the GUIDANCE applies to all situations, not only where a permissive left turn opposes a protected left turn. Two local DOTs agreed with the revision but suggested an exception when the circular green indication is accompanied by an R10–12 sign. Six State DOTs, nine local agencies, an NCUTCD member, and a citizen opposed the new GUIDANCE based on their local experience and concerns about prohibiting variable mode left-turn phasing, and additional costs to agencies to modify existing signals. The FHWA disagrees because the FHWA believes the research supports the new GUIDANCE, because the FHWA did not propose it as a STANDARD, and because the GUIDANCE only applies to new and reconstructed signals. The FHWA in this final rule adopts the language as proposed in the NPA with minor editorial revisions.

381. The FHWA adopts the provisions in Section 4D.17 through 4D.20 (Sections 4D.06 and 4D.07 in the 2003 MUTCD) and elsewhere in Chapter 4D, as proposed in the NPA, that allow the use of flashing yellow arrow and flashing red arrow indications. The FHWA also adopts the NCUTCD recommendation to eliminate separate left-turn signal faces that include circular green indications for permissive left turns. Both changes are discussed above in item 366.

382. In Section 4D.17 (Section 4D.06 in the 2003 MUTCD) Signal Indications for Left-Turn Movements—General, a State DOT agreed with the proposed addition of flashing yellow arrows and also suggested allowing a four-signal indication display for protected/permissive left-turn mode with green arrow, steady yellow arrow, flashing red arrow, and steady red arrow in a ''T'' configuration so that the agency can retrofit existing signals with flashing red arrows. The FHWA disagrees and notes that the configuration suggested by the commenter is prohibited because a change interval must be displayed after the flashing red arrow and before the steady red arrow. Sections 4D.17 through 4D.20 require a steady yellow arrow change interval because the change from flashing red arrow to steady red arrow would not necessarily be noticed by road users and makes violators of those who enter the intersection on steady red arrow during the timed change interval.

A consultant suggested revising the definition of variable left-turn mode in paragraph 02, item D, so as to not imply that the service type must change during the day and as a result preclude the use of varying left-turn modes on specific days or for construction activities. The FHWA agrees and in this final rule adds ''or as traffic conditions change'' to this item D and also to comparable text in STANDARD paragraph 08. The FHWA also adopts similar changes for variable right-turn mode in Section 4D.20.

The FHWA in the NPA proposed a STANDARD statement specifying the requirements for signal indications on the opposing approach and for conflicting pedestrian movements during permissive and protected left-turn movements. The FHWA proposed this addition for consistency with other

[164] NCHRP Report 493, ''Evaluation of Traffic Signal Displays for Protected/Permissive Left-Turn Control,'' 2003, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_493.pdf.*

[165] NCHRP Report 493, ''Evaluation of Traffic Signal Displays for Protected/Permissive Left-Turn Control,'' 2003, page 57, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_493.pdf.*

[166] ''An Evaluation of Permissive Left-Turn Signal Phasing,'' by Kenneth R. Agent, ITE Journal, Vol. 51, No. 12, December 1981, pages 16–20, may be obtained from the Institute of Transportation Engineers at the following Web site: http://*www.ite.org.*

requirements in Part 4. A local DOT agreed with the addition, but suggested allowing an exemption for a green display for one direction only during preemption. In the commenter's jurisdiction a flashing UPRAISED HAND is shown during preemption and therefore it is not possible to display a green left-turn arrow because it conflicts with that pedestrian signal display. The FHWA notes that the NPA proposed provisions do not preclude the commenter's operation as long as a yellow trap is not created. A consultant agreed with the addition and suggested revising the language to emphasize how the provision may be used to avoid the yellow trap. The FHWA notes that similar provisions are provided in Section 4D.05 (NPA Section 4D.10) regarding the yellow trap and therefore, in this final rule adopts the language as proposed in the NPA.

In the NPA, the FHWA also proposed a STANDARD prohibiting the use of a protected-only mode left-turn phase which begins or ends at a different time than the adjacent through movements unless an exclusive left-turn lane is provided. The FHWA proposed this change because, without an exclusive left-turn lane, the operation of a protected-only mode left-turn phase forces left-turning vehicles to await the display of the protected green arrow while stopped in a lane used by through vehicles, causing many approaching through vehicles to abruptly change lanes to avoid delays, which can result in inefficient operations and rear-end and sideswipe type crashes.[167] If an exclusive left-turn lane is not present and a protected only mode is needed for the left-turn movement, ''split-phasing,'' in which the protected left-turn movement always begins and ends at the same times in the signal cycle as the adjacent through movement, can be used. The NCUTCD and a State DOT supported the prohibition, recognizing this is an unacceptable practice. Two State DOTs and four local agencies disagreed and suggested deleting the STANDARD or reducing it to GUIDANCE or OPTION because their experience has shown that this operation provides operational benefits in special circumstances. The FHWA disagrees, because this prohibition addresses the issue of unsafe last-second lane changing and the commenters have not provided supporting data to justify reducing the statement from a STANDARD. Accordingly, in this final rule the STANDARD is adopted as proposed in the NPA.

An NCUTCD member noted that a SUPPORT paragraph proposed in the NPA did not contain SUPPORT language. The FHWA agrees that the existing language can only be interpreted as prohibitory in nature and in this final rule adopts this statement as a STANDARD with editorial revisions. The intent of the language is to prohibit the display of the yellow change interval when the left-turn operation is changing from permissive mode to protected mode, consistent with other STANDARD provisions elsewhere in Chapter 4D.

383. The FHWA adopts in this final rule the NPA proposed new Section 4D.18 Signal Indications for Permissive Only Mode Left-Turn Movements with revisions to prohibit circular green indications for permissive left-turn movements in separate left-turn signal faces, as previously discussed in item 366. A State DOT suggested adding an OPTION to allow a circular red signal indication as a replacement to the red arrow for permissive only mode left turns as allowed by Interim Approval IA–10, Section 2, Signal Face Arrangement, item b. The FHWA disagrees because the Interim Approval allowed the option of circular red since, at the time the Interim Approval was issued, the 2003 MUTCD allowed that option for separate left-turn signal faces and there are a few States where red arrows have not been used. As discussed below regarding Section 4D.19, the FHWA eliminates the circular red in this final rule for separate left-turn faces and therefore declines to add it as an OPTION.

An anonymous commenter suggested adding a new STANDARD item permitting a ''Left Turn Yield on Flashing Yellow'' sign with the flashing yellow arrow signal face. The FHWA disagrees because the research [168] found that such a sign is not needed and therefore the FHWA does not want to encourage the use of a sign, but the FHWA also notes that Chapter 2B allows agencies to develop their own word message signs.

384. The FHWA proposed in the NPA a new Section 4D.19 Signal Indications for Protected Only Mode Left-Turn Movements. An NCUTCD member suggested deleting STANDARD item D because the shared protected-only left-turn face can only be used when the through and left-turn indications begin and terminate at the same time. The FHWA disagrees because this provision is necessary for intersections that have variable lane uses and signal phasing by time of day. The FHWA in this final rule adopts the language as proposed in the NPA.

An anonymous commenter suggested revising STANDARD paragraph 01 to allow a vertical green arrow for situations where a shared signal face is used for the protected only left-turn mode. The FHWA agrees and also adopts in this final rule an OPTION to allow a vertical arrow in place of the circular green display where right turns are not allowed. The FHWA also adopts a similar revision in the comparable paragraph regarding right turns in Section 4D.23.

The FHWA in the NPA proposed to eliminate the STANDARD allowing the use of protected-only mode signal faces with the combination of circular red, left-turn yellow arrow, and left-turn green arrow. The FHWA proposed this change to enhance uniformity by requiring States and municipal agencies to use a left-turn red arrow instead of a circular red for protected-only mode left-turn signals. Red arrow signal indications have been in use for over 35 years, are extensively implemented for protected turn movements in the majority of States, are well understood by road users, present an unequivocal message regarding what movement is prohibited when the red indication is displayed, and eliminate the need for the use of a supplemental R10–10 LEFT TURN SIGNAL sign. A local DOT agreed with the revision. An anonymous commenter suggested allowing a circular red indication for protected-only left turns from a one-way street onto another, at intersection approaches that have a gentle left turn with a 45-degree green arrow indication, such as single-point urban interchanges, and at approaches with shared left-turn/right-turn lanes and no through movements to be consistent with Section 4D.25. The FHWA disagrees because an R10–17a sign can be used with the red left arrow, the red arrow must match the green and yellow arrows for uniformity and consistency, and the T-intersection described does not apply to Section 4D.25, which addresses only the case of T-intersections with a shared left-turn/right-turn lane without a through movement. A State DOT opposed the revision and suggested adding an OPTION to allow the use of the circular red signal with a supplemental R10–10 sign because they believe the circular red signal provides better visibility and it allows agencies to stock one type of

[167] ''Signalized Intersections: Informational Guide'', FHWA publication number FHWA–HRT–04–091, August 2004, page 307, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/safety/pubs/04091/.*

[168] NCHRP Report 493, ''Evaluation of Traffic Signal Displays for Protected/Permissive Left-Turn Control,'' 2003, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_493.pdf.*

red signal display. The FHWA disagrees because allowing the option would be inconsistent with the MUTCD uniformity goals.

Two local DOTs suggested providing an OPTION to allow variable mode left-turn phasing, to be consistent with Section 4D.18. The NCUTCD also suggested adding OPTION statements to allow separate left-turn signal faces with a flashing left-turn yellow arrow and signal faces with flashing left-turn red arrows to operate in a variable turn mode. The FHWA agrees and adopts in this final rule the OPTION statements as recommended.

385. In new Section 4D.20 Signal Indications for Protected/Permissive Mode Left-Turn Movements, the FHWA adopts text as proposed in the NPA, but with revisions comparable to and consistent with those adopted in Sections 4D.17 through 4D.19.

A State DOT suggested revising the first STANDARD item A for shared signal faces to require terminating a green arrow and circular green indication with a combination steady yellow arrow and circular yellow. The FHWA disagrees because the proposed language is not applicable in a four-section signal face where no yellow arrow is provided. Also, the provision states that the yellow arrow ''shall not be required'' and therefore agencies can choose to display both the circular yellow and steady yellow arrow during the change interval. A State DOT suggested editorial revisions to STANDARD items A, B, C, and E for shared signal faces to consolidate the text, but the FHWA declines to make the changes because, although there is some overlap, all four items state different ideas.

In item C of the first STANDARD, the FHWA revises the text in this final rule to state that when the left-turn GREEN ARROW and CIRCULAR GREEN signal indications are being terminated together, the required display following the left-turn GREEN ARROW signal indication shall be either the display of a CIRCULAR YELLOW signal indication alone or the simultaneous display of the CIRCULAR YELLOW and left-turn YELLOW ARROW signal indications. This revision provides additional flexibility to jurisdictions to display both the steady yellow arrow and steady circular yellow simultaneously and reflects a common practice. The FHWA makes a similar revision in this final rule to comparable text for right turns in Section 4D.24.

An anonymous commenter suggested revising the second STANDARD item H for separate left-turn faces with a flashing yellow arrow to allow a three-section signal face where there are horizontal spacing limitations. The FHWA agrees and adopts in this final rule revised STANDARD text to allow lateral positioning limitations for horizontally-mounted signal faces and additional text to allow the same three-section face to include a dual-arrow section capable of alternately displaying steady green and flashing yellow arrows. The FHWA adopts a comparable change in similar provisions in Section 4D.24.

A local DOT opposed the proposed 2nd STANDARD item I for separate left-turn signal faces with a flashing yellow arrow because the language would suppress further research of viable and efficient ways to implement the flashing yellow arrow at protected only left-turn intersections. The commenter also stated that there is no research showing the prohibited method is unsafe or otherwise ineffective and that the new hybrid beacon allows this in the yellow signal. The FHWA disagrees because there has not been sufficient research or experimentation to justify allowing the displays suggested by the commenters.

An anonymous commenter agreed with the proposed 3rd STANDARD items E and F for separate left-turn signal faces with a flashing red arrow. The same commenter expressed concerns about requiring the display of flashing red arrow and steady red arrow signal indications in the same signal section because of color-blind driver concerns. The FHWA agrees with the commenter regarding the color blindness issue and adopts in this final rule an OPTION allowing side-by-side clustering of two red left arrows, one steady and one flashing. The FHWA also adopts this OPTION for comparable provisions in Section 4D.24.

386. In the NPA the FHWA proposed a new Section 4D.21 Signal Indications for Right-Turn Movements—General. The FHWA proposed revising the provisions to prohibit the display of a circular green for a permissive right-turn movement in a separate right-turn signal face over or in front of a right-turn lane to parallel the NCUTCD recommendation for separate left-turn signal faces. The FHWA proposal noted that this would not disallow the common use of a five-section face over the right turn lane, typically for a ''right turn overlap'' situation, as the five-section would be considered a ''shared face.'' Similarly, a three-section face over a right-turn lane, with all circular indications that always display the same color circular indications as the adjacent through signal faces would also be a ''shared'' face and would not be prohibited.

A local DOT suggested that the displays of right-turn indications with u-turn signal indications should be further clarified. The FHWA agrees and adopts in this final rule a new STANDARD paragraph to address the U-turn arrow signal indications.

The FHWA also proposed to add a STANDARD statement specifying the requirements for left-turn signal indications on the opposing approach and for conflicting pedestrian movements during permissive and protected right-turn movements. The FHWA proposed this addition for consistency with other requirements in Part 4. The FHWA proposal would also prohibit the use of a protected-only mode right-turn phase which begins or ends at a different time than the adjacent through movements unless an exclusive right-turn lane is provided. Similar to item 382 above for left turns, the FHWA proposed this change because, without an exclusive right-turn lane, the operation of a protected-only mode right-turn phase forces right-turning vehicles to await the display of the protected green arrow while stopped in a lane used by through vehicles, causing many approaching through vehicles to abruptly change lanes to avoid delays, and this can result in inefficient operations and rear-end and sideswipe type crashes. A local DOT and an anonymous commenter agreed. Two local DOTs suggested adding an exception to STANDARD paragraph 03 for applications where there is raised or painted channelization that prevents conflicts with opposing left-turn vehicles. The FHWA agrees with commenters if the right-turn movement and the opposing left-turn movement can depart from the intersection in their own dedicated lanes without conflict as described in Section 4D.05 (NPA Section 4D.10). The FHWA adopts in this final rule a reference to Section 4D.05 to clarify the protected right-turn operation.

377. In the NPA the FHWA proposed a new Section 4D.22 Signal Indications for Permissive Only Mode Right-Turn Movements with revisions prohibiting the use of circular green in a separate right turn signal face operating in permissive mode as previously discussed in item 366.

An anonymous commenter suggested deleting ''and the opposing right-turn signal faces display right-turn green arrow signal indications for a protected right-turn movement'' in STANDARD item E for separate right-turn signal faces with a flashing red arrow to clarify that the opposing right turn is not relevant in this situation. The FHWA agrees and in this final rule deletes the

phrase from the adopted item E as suggested.

388. In new Section 4D.23 Signal Indications for Protected-Only Mode Right-Turn Movements, the FHWA proposed in the NPA to retain the provision located in Section 4D.07 of the 2003 MUTCD that allows the use of protected only mode right-turn signal faces with the combination of circular red, right-turn yellow arrow, and right-turn green arrow. Although the use of circular red indications for protected-only mode left-turns has been eliminated for left-turn signal faces in item 384 above, the FHWA believes that circular red should be retained for use with protected-only mode right-turn movements because of the different meanings of the circular red and the right-turn red arrow signal indications regarding right-turn-on-red after stop. Circular red would be used in a protected-only mode right turn signal face if it is intended to allow right turns on red after stopping. The FHWA also proposed to add STANDARD statements for the use of flashing yellow arrow and flashing red arrow signal indications for protected only mode right-turn movements. The FHWA adopts in this final rule the language as proposed in the NPA with revisions incorporating the NCUTCD's recommendations in Section 4D.17 about consolidating all text regarding ''separate'' signal faces.

389. In new Section 4D.24 Signal Indications for Protected/Permissive Mode Right-Turn Movements, the FHWA adopts the text as proposed in the NPA, but with revisions for consistency with adopted text in Sections 4D.21 through 4D.22.

390. The FHWA also adopts several new figures that illustrate positioning and arrangements of signal sections in left turn signal faces (Figures 4D–6 to 4D–12) and right turn signal faces (Figures 4D–13 to 4D–19). The FHWA adopts these new figures in order to enhance understanding and correct application of the relatively complex requirements and options for turn signals. In this final rule, the FHWA adopts minor revisions to these figures to reflect changes in applicable text.

391. The FHWA adopts Section 4D.25 Signal Indications for Approaches With a Shared Left-Turn/Right-Turn Lane and No Through Movement, as proposed in the NPA but with editorial revisions for clarity. This new section contains SUPPORT, STANDARD, and OPTION statements regarding this type of lane that is shared by left-turn and right-turn movements on an approach that has no through movement, such as the stem of a T-intersection or where the opposite approach is a one-way roadway in the opposing direction. The FHWA includes this new section to provide explicit information regarding shared left-turn/right-turn lanes, which has not previously been included in the MUTCD, and to enhance uniformity of displays for this application. A local DOT agreed.

Another local DOT suggested allowing the use of a four-section signal face where a steady circular yellow follows both left-turn and right-turn green arrows instead of the five-section signal face, because this might save space in certain applications. The FHWA disagrees because the suggested signal display will require a yellow change interval that requires two different yellows being displayed simultaneously.

The commenter also suggested allowing for the option of a flashing left-turn yellow arrow and flashing right-turn yellow arrow being displayed simultaneously ''when the lack of vehicular conflict is because a red signal indication is being displayed to traffic on the opposing approach'' when there is a conflicting vehicular or pedestrian movement. The commenter believes this would serve to reinforce the DO NOT ENTER condition when a two-way street intersects a one-way street with the use of the two turn arrows as well as provide notice to motorists that they must yield when making either turn. The FHWA disagrees because the provisions require a five-section shared face with two steady yellow arrows, one for right turns and one for left turns. A single circular yellow would not be consistent with the steady yellow arrows used for the change interval in the faces for the exclusive turn lane(s) on the approach.

A State DOT and an anonymous commenter suggested adding figures to illustrate potential signal head configurations, particularly for situations with pedestrian accommodations because the text is difficult to interpret. The FHWA agrees and adopts a new Figure 4D–20 in this final rule.

An anonymous commenter noted that the provisions of this Section are an exception to the STANDARD in Section 4D.19 that requires the use of a red arrow indication for a protected only left-turn movement that is for a separately-controlled protected only left turn. The FHWA agrees and in this final rule adopts text indicating that the circular red displays required in Section 4D.25 are an exception to what would otherwise be required by Chapter 4D.

392. In Section 4D.26 (Section 4D.10 in the 2003 MUTCD) Yellow Change and Red Clearance Intervals, the FHWA proposed in the NPA to revise the first STANDARD regarding yellow change intervals to account for the introduction of the flashing yellow arrow and flashing red arrow for permissive turn phases. A State DOT and two local DOTs suggested revising the text to allow a green arrow to follow a flashing yellow arrow to be consistent with Section 4D.20. A local DOT also suggested exempting the change interval when going from the flashing red arrow to a green arrow. The FHWA agrees with the commenters and adopts in this final rule a revision in the 1st STANDARD to exempt the change interval between the permissive interval and the lagging protected interval in turn signals.

In the NPA, the FHWA proposed changing the first OPTION statement to a GUIDANCE, to recommend, rather than merely permit, that a yellow change interval should be followed by a red clearance interval to provide additional time before conflicting movements are released, when indicated by the application of engineering practices as discussed below. The FHWA proposed this change based on safety studies indicating the positive effect on safety of providing a red clearance interval and surveys indicating that use of a red clearance interval is a predominant practice by jurisdictions, as documented in the FHWA report ''Making Intersections Safer: Toolbox of Engineering Countermeasures to Reduce Red Light Running.'' [169] A State DOT agreed with the revision. Another State DOT and five local agencies opposed the revision because of concerns that there is a lack of evidence to support elevating this provision to GUIDANCE, laws about change intervals vary by State, and the GUIDANCE does not provide flexibility to use engineering judgment. The FHWA notes that the proposed text does not recommend red clearance intervals for all signals, only to provide them when it is indicated by the application of engineering practices, such as the ITE formulas. The FHWA disagrees with the commenters because studies [170] have shown safety benefits when yellow and red clearance times are used per the ITE

[169] Pages 35–36 of this report can be viewed at the following Internet Web site: *http://safety.fhwa.dot.gov/intersections/docs/rlrbook.pdf.*

[170] NCHRP Research Results Digest 299, November 2005, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rrd_299.pdf.* This digest includes data from the study ''Changes in Crash Risk Following Retiming of the Traffic Signal Change Intervals,'' by R.A. Retting, J.F. Chapline, and A.F. Williams, as published in Accident Analysis and Prevention, Volume 34, number 2, pages 215–220, available from Pergamon Press, Oxford, NY.

formulas. The FHWA adopts this final rule the language as proposed in the NPA.

The FHWA also proposed in the NPA to revise the second STANDARD statement to indicate that the durations of the yellow change interval and, when used, the red clearance interval, shall be determined using engineering practices, and also proposed to add a new SUPPORT statement to indicate that engineering practices for determining the durations of these intervals can be found in two publications from the ITE. The FHWA proposed this to enhance safety at signalized intersections by requiring that accepted engineering methods be used to determine the durations of these critical intervals rather than random or ''rule of thumb'' settings, and by recommending the provision of a red clearance interval when such accepted engineering practices indicate that a red clearance interval is needed. As documented in the FHWA report ''Signalized Intersections: Informational Guide,'' [171] a variety of studies from 1985 through 2002 have found significant safety benefits from using accepted engineering practices to determine the durations of yellow change and red clearance intervals. Recent safety studies [172] have further documented significant major reductions in crashes when jurisdictions have revised the durations of the yellow change and red clearance intervals using the accepted engineering practices. A State DOT and two local DOTs opposed the revision because their agencies have other methods for calculating red intervals and do not believe the ITE methods to be superior. The FHWA disagrees because the studies have shown significant safety benefits when red clearance times are provided per the ITE methods and therefore, adopts in this final rule the language as proposed in the NPA.

The FHWA also establishes a target compliance date of December 31, 2014 (approximately 5 years from the effective date of this final rule) or when timing adjustments are made to the individual intersection and/or corridor, whichever occurs first, for the durations of yellow change intervals and red clearance intervals at existing locations to be based on engineering practices. The FHWA establishes this target compliance date because of the demonstrated safety benefits, as discussed above, of proper engineering-based timing of these critical signal intervals. Traffic signals and signal control equipment have a very long service life (30 to 50 years is not uncommon) and very long intervals between signal retiming are typical at many traffic signal locations in many jurisdictions. The FHWA believes that relying on systematic upgrading provisions (23 CFR 655.603(d)(1)), based on service life, to achieve compliance with this critical timing need would take an inordinately long time, to the detriment of road user safety. State and local highway agencies and owners of private roads open to public travel can minimize any impact of this signal timing requirement by adopting a policy for determining durations of yellow change and red clearance intervals that is based on engineering practices as discussed in Section 4D.26 and then by applying that policy whenever an existing individual signal location or system of interconnected locations is being checked or adjusted for any reason, such as investigation of citizen complaints or routine maintenance.

The FHWA also proposed in the NPA to add a new STANDARD statement that requires the duration of the yellow change and red clearance intervals to be within the technical capabilities of the signal controller, and that they be consistent from cycle to cycle in the same timing plan. The FHWA proposed this change to accommodate the inherent limitations of some older mechanical controllers, but provide for consistency of interval timing. Two State DOTs suggested allowing red clearance interval extensions when a vehicle violating the red signal is detected entering the intersection on red. The FHWA agrees and adopts text in this final rule to allow a red clearance interval extension when a red light runner is detected.

Two local DOTs suggested adding an exception to allow red clearance intervals longer than 6 seconds for exceptionally large intersections such as at a single point urban interchange. The FHWA agrees and adopts in this final rule an exception for exceptionally large intersections

Finally, the FHWA proposed in the NPA to add a new STANDARD statement at the end of the section that prohibits the use at a signalized location of flashing green indications, countdown vehicular signals, or similar displays intended to provide a ''pre-yellow warning'' interval. Flashing beacons on advance warning signs on the approach to a signalized location are exempted from the prohibition. The FHWA proposed this change to make the MUTCD consistent with FHWA Official Interpretation #4–246.[173] The FHWA notes that it did not intend to include pedestrian countdown signals in the provision and therefore adopts in this final rule revised language to add ''vehicular'' before ''signal displays'' in order to exclude pedestrian countdown signals.

393. In Section 4D.27 (Section 4D.13 in the 2003 MUTCD) Preemption and Priority Control of Traffic Control Signals, the FHWA proposed in the NPA to add a GUIDANCE statement recommending that agencies provide back-up power supplies for signals with railroad preemption or that are coordinated with flashing-light signal systems, with the exception of traffic control signals interconnected with light rail transit systems. The FHWA proposed this change to ensure that the primary functions of the interconnected signal systems still function in a safe manner in the event of a power failure. Four State DOTs and a local DOT agreed with the addition. A State DOT and two local DOTs opposed the GUIDANCE because of concerns about the increased cost for installation and maintenance and that the large cabinet sizes might impact the right-of-way and their ability to meet ADA requirements. The FHWA disagrees and adopts in this final rule the language as proposed in the NPA because of the important safety benefits provided by back-up power at such locations.

In addition, the FHWA also adopts the proposed new OPTION allowing light rail transit signal indications to control preemption or priority control movements for public transit buses in ''queue jumper'' lanes or bus rapid transit in semi-exclusive or mixed-use alignments. The FHWA adopts this to incorporate clarification into the MUTCD consistent with FHWA Official Interpretation #10–59(I) and #10–66(I), and to provide additional flexibility to agencies seeking to reduce driver confusion with traffic signal indications intended to control only mass transit vehicles.[174] A local DOT agreed.

[171] ''Signalized Intersections: Informational Guide'', FHWA publication number FHWA–HRT–04–091, August 2004, pages 209–211, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/safety/pubs/04091/.*

[172] NCHRP Research Results Digest 299, November 2005, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rrd_299.pdf.* This digest includes data from the study ''Changes in Crash Risk Following Retiming of the Traffic Signal Change Intervals,'' by R.A. Retting, J.F. Chapline, and A.F. Williams, as published in Accident Analysis and Prevention, Volume 34, number 2, pages 215–220, available from Pergamon Press, Oxford, NY.

[173] Official Interpretation 4–246 can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/documents/pdf/4-246-I-NY-S.pdf.*

[174] FHWA's Official Interpretations 10–59(I), dated April 16, 2003, and 10–66(I), dated October

Continued

394. In Section 4D.28 Flashing Operation of Traffic Control Signals—General, the FHWA adopts the proposed new OPTION allowing traffic control signals to be operated in flashing mode on a scheduled basis during one or more periods of the day. The FHWA includes this change because more efficient operations might be achieved if the signal is set to flashing mode when steady mode (stop and go) operation is not needed. This change is consistent with a similar change in Section 4C.04 discussed in item 360 above.

395. In Section 4D.30 Flashing Operation—Signal Indications During Flashing Mode, the FHWA proposed in the NPA to include a paragraph in the STANDARD statement that prohibits green signal indications from being displayed when a traffic control signal is operated in the flashing mode, except for single-section green arrow signal indications as noted elsewhere in the section. The FHWA proposed including this paragraph to clarify proper displays during flashing mode. A State DOT requested clarification for pedestrian signal indications during flashing operation. The FHWA notes that this information is provided in Chapter 4E and adds a new reference in this final rule.

396. In Section 4D.31 Flashing Operation—Transition Out of Flashing Mode, a local DOT suggested adding a new provision to allow the signal operation to change from flashing mode to steady (stop-and-go) mode by servicing the minor street before the major street to go back into the coordinated cycle. The FHWA disagrees because this violates the existing MUTCD and no justification was provided to add the provision. The FHWA adopts Section 4D.31 as proposed in the NPA.

397. In Section 4D.34 (Section 4D.19 in the 2003) Use of Signs at Signalized Locations, the FHWA proposed in the NPA to add to the GUIDANCE statement a recommendation to use overhead lane control signs where lane drops, multiple-lane turns, shared through and turn lanes, or other lane-use regulations that might be unexpected by unfamiliar road users are present. The FHWA in this final rule does not adopt the proposed additional GUIDANCE text and instead adopts a reference to Section 2B.19, where the appropriate text is located.

6, 2006, can be viewed at the following Internet Web sites: *http://mutcd.fhwa.dot.gov/resources/interpretations/10_59.htm* and *http://mutcd.fhwa.dot.gov/resources/interpretations/10_66.htm.*

Discussion of Amendments Within Chapter 4E—General

398. The FHWA in this final rule is adopting a reorganization of the existing and NPA proposed content of Section 4E.06 Accessible Pedestrian Signals and Section 4E.09 Accessible Pedestrian Detectors. In doing so, the FHWA eliminates overlapping text and cross-references and consolidates the provisions into a clearer and more logical flow of the information, without changing its meaning. This reorganization is based on comments from an organization for the blind noting that accessible pedestrian signals require the use of pushbutton-integrated devices and having the various features of accessible pedestrian signals (APS) described piecemeal in two different sections can lead to confusion in installation. The FHWA agrees with this comment and believes that placing the material in one location with a more accurate grouping of features and functions of pushbutton-integrated APS will improve understanding by users of the MUTCD. The text of this consolidated content is reorganized into five new sections, Section 4E.09 Accessible Pedestrian Signals and Detectors—General, Section 4E.10 Accessible Pedestrian Signals and Detectors—Location, Section 4E.11 Accessible Pedestrian Signals and Detectors—Walk Indications, Section 4E.12 Accessible Pedestrian Signals and Detectors—Tactile Arrows and Locator Tones, and Section 4E.13 Accessible Pedestrian Signals and Detectors—Extended Pushbutton Press Features. The new sections also include adopted revisions to the text of former Sections 4E.06 and 4E.09, as discussed below.

399. The FHWA in this final rule is relocating Section 4E.10 in the 2003 MUTCD to a new Section 4E.06 because the content of this section, pedestrian intervals and signal phases, more appropriately follows the content of Sections 4E.04 and 4E.05 and should precede the information on countdown pedestrian signals, pedestrian detectors, and accessible pedestrian signals and detectors.

Discussion of Amendments Within Chapter 4E—Specific

400. In Section 4E.02 Meaning of Pedestrian Signal Head Indications, the FHWA proposed in the NPA to revise item B of the STANDARD that defines the meaning of the flashing UPRAISED HAND pedestrian signal indication to allow pedestrians that entered the intersection on a steady WALKING PERSON indication to proceed to the far side of the traveled way, unless otherwise directed by signs or signals to proceed only to a median or pedestrian refuge area. The FHWA proposed this change to allow pedestrians to cross an entire divided highway and not have to stop at the median if the signal has been timed to provide sufficient clearance time for pedestrians to cross the entire highway. In cases where the signal timing only provides enough time for pedestrians to cross to the median, signs or signals are required to be provided to direct pedestrians accordingly. The NCUTCD agreed with this change and also suggested an editorial revision, which the FHWA agrees with and adopts in this final rule. The FHWA also adopts revisions to Section 4E.06 (see item 403 below) for consistency with this change.

In the NPA, the FHWA proposed a second change in the meaning of the flashing orange UPRAISED HAND, to allow pedestrians to enter the intersection when a countdown pedestrian signal indication is shown with the flashing UPRAISED HAND if they are able to travel to the far side of the traveled way or to a median by the time the countdown display reaches zero. The FHWA proposed this change because many pedestrians walk faster than the walking speeds used to calculate the length of the pedestrian change interval; therefore, many pedestrians are easily able to begin their crossing after the flashing UPRAISED HAND and countdown period has started and complete their crossing during the displayed countdown period. In the NPA, the FHWA stated the belief that pedestrians should be permitted to make their own determination of whether or not they have sufficient time to begin and complete their crossing during the remaining pedestrian clearance time. The FHWA received comments agreeing with this proposed change from the NCUTCD, two local DOTs, a toll road authority, a local pedestrian advisory board, and a consultant. However, the FHWA received comments in opposition to this change from 4 State DOTs, 12 local DOTs, an NCUTCD member, a regional section of ITE, and a retired traffic engineer. The opponents expressed concerns that there would be two different meanings of the flashing UPRAISED HAND depending on whether or not a countdown display is present, and that this would be difficult to teach to young schoolchildren. The FHWA understands the concerns expressed about two meanings for the same indication and, as a result the FHWA does not adopt in this final rule the second proposed change in the

meaning of flashing UPRAISED HAND. However, the FHWA believes that ultimately countdown pedestrian displays will be nearly ubiquitous and that the countdown information does provide pedestrians with the information they need to make individual judgments on whether to start crossing during the countdown, based on their individual walking speeds. The FHWA encourages additional research and experimentation to evaluate the feasibility of removing the flashing UPRAISED HAND indication completely as the pedestrian clearance display and instead just displaying the countdown.

401. In the NPA the FHWA proposed minor editorial revisions to Section 4E.03 Application of Pedestrian Signal Heads. A local DOT agreed with the proposed revisions to Section 4E.03, but commented that there are conditions where pedestrian signal heads can be used that are not covered by any of the conditions for which this section either requires or recommends the use of pedestrian signal heads. The FHWA agrees and adopts in this final rule an OPTION statement after the GUIDANCE, indicating that pedestrian signal heads may be used under other conditions based on engineering judgment.

The FHWA proposed in the NPA to add a 2nd STANDARD statement at the end of the section to explicitly require a steady or flashing red signal indication to be shown to any conflicting vehicular movement perpendicular to a crosswalk with an associated pedestrian signal head displaying either a steady WALKING PERSON or flashing UPRAISED HAND indication, to reflect sound engineering practice. The NCUTCD agreed with this addition but suggested a minor editorial change. The FHWA adopts in this final rule this additional STANDARD statement with the minor editorial change suggested by the NCUTCD, but relocates this statement to Section 4E.06 Pedestrian Intervals and Signal Phases (Section 4E.10 in the 2003 MUTCD), because the subject matter is more logically located there.

402. In Section 4E.04 Size, Design, and Illumination of Pedestrian Signal Head Indications, the FHWA in the NPA proposed to revise the first STANDARD statement to allow the use of a one-section pedestrian signal head with the WALKING PERSON and UPRAISED HAND symbols overlaid upon each other or side by side. The FHWA proposed this change to reflect the Official Interpretation #4–303,[175] dated February 3, 2006, which provides that the light sources comprising the indications may be overlaid on each other, as long as the pedestrian signal head properly displays the individual indications, visible as distinctly separate indications that meet all other requirements, such as color, shape, and luminous intensity, etc. A State DOT opposed overlaid symbols on pedestrian signal heads, citing false indications from sun glare in some pedestrian signal units. The FHWA disagrees because pedestrian signal heads with overlaid symbols are in widespread use in many States and the FHWA is unaware of any significant issues with false indications from sun glare when compared to side-by-side symbols. Further, the use of overlaid symbols is optional and any highway agency can choose not to use them. The FHWA adopts in this final rule the revision to the first STANDARD statement and also adopts a revised Figure 4E–1 Typical Pedestrian Signal Indications to reflect this change. Further, based on comments about the figure from the NCUTCD, four State DOTs, and a consultant, the FHWA adopts additional illustrations to Figure 4E–1 to show a one-section unit with overlaid symbols and countdown numerals and a two-section unit with overlaid symbols in the top section and countdown numerals in the bottom section.

The FHWA also proposed in the NPA to add a paragraph to the GUIDANCE statement recommending that some form of automatic dimming be used to reduce the brilliance of the pedestrian signal indication if the indication is so bright as to cause excessive glare in nighttime conditions. The FHWA proposed this new recommendation to avoid glare conditions, which can reduce the visibility of the indications at night, similar to the existing GUIDANCE for vehicular signal indications in Chapter 4D. The NCUTCD agreed with this revision and suggested minor editorial changes for clarity, which the FHWA adopts in this final rule. An organization for the blind also agreed in concept with this revision, but suggested that it be a STANDARD rather than GUIDANCE, requiring pedestrian signal indications to be responsive to ambient light, brighter in bright conditions and dimmer in low light conditions. The FHWA disagrees because supporting data for such a mandatory requirement is not documented in any studies. A State DOT opposed the proposed GUIDANCE recommending dimming because of concern about operational and risk management problems. The FHWA disagrees because similar language regarding dimming of vehicular signal indications has been in the MUTCD for many decades and the FHWA is unaware of any significant issues with dimming of vehicular signals.

403. In Section 4E.06 Pedestrian Intervals and Signal Phases (Section 4E.10 in the 2003 MUTCD), the FHWA proposed in the NPA to revise the first STANDARD statement to require the steady UPRAISED HAND indication to be displayed during the yellow change interval and the red clearance interval if those intervals are used as part of the pedestrian clearance time, to be consistent with the change that was proposed in Section 4E.07 to require countdown pedestrian signal displays. The NPA also proposed revisions to the first OPTION statement that would allow both the vehicular yellow change interval time and the red clearance time to be used to satisfy the calculated duration of the pedestrian clearance time. The FHWA received comments from a city, a consultant, and a citizen opposing the allowable use of the red clearance time for this purpose because it results in the lack of any safety ''buffer'' for pedestrians before conflicting traffic receives a green signal indication. Also, the NCUTCD submitted a comment noting that there are significant disconnects and inconsistencies between the timing of pedestrian intervals and vehicular intervals, especially with the introduction of pedestrian countdown displays, that must be addressed in order to resolve inconsistency and present a logical and consistent message to pedestrians. The NCUTCD recommended that there should always be a minimum interval of at least 3 seconds between the end of the flashing UPRAISED HAND display (which coincides with the end of the pedestrian countdown display) and the release of any vehicular traffic that might be in conflict with the terminating pedestrian interval, and recommended calling this the pedestrian buffer interval. The NCUTCD recommended that a minimum rather than a fixed buffer interval be specified because vehicle actuated sequences and certain combinations of vehicle and pedestrian displays can result in buffer interval lengths that are determined by factors other than pedestrian considerations. The NCUTCD further recommended that the sum of the pedestrian change interval and the buffer interval must equal or exceed the calculated pedestrian clearance time. The FHWA

[175] Official Interpretation #4–303 can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/interpretations/pdf/4_303.pdf.*

agrees that this required buffer interval provides a margin of safety that allows a pedestrian who underestimates the time he or she needs to cross a roadway, with or without a countdown display, to better avoid a conflict with vehicles. The FHWA adopts in this final rule a revised section that incorporates the NCUTCD's recommendations.

As also recommended by NCUTCD, the FHWA also adopts an OPTION to allow the countdown pedestrian display with flashing UPRAISED HAND to extend into the yellow change interval, but terminate within the yellow change interval and be followed by a steady UPRAISED HAND and zero (followed by blank) countdown display for the remainder of the yellow change interval. This minimizes disruption of vehicular traffic, and also makes the pedestrian change interval more closely approximate the pedestrian clearance time. While the functionality of some current controller equipment might result in the UPRAISED HAND and countdown being displayed until the end of the yellow change interval, that would not be required by the adopted OPTION. The FHWA believes that future controller software will incorporate a timed pedestrian buffer interval between the end of the flashing UPRAISED HAND/countdown zero interval and the release of conflicting vehicular traffic, that the pedestrian buffer interval timing value will be a part of the pedestrian interval series of controller data inputs, and that the controller logic will be designed to implement the intention of the interval without any other data input. The FHWA also adopts a new Figure 4E–2 Pedestrian Intervals in this final rule to illustrate the pedestrian buffer interval and its relationship to other pedestrian and vehicular intervals, to enhance clarity and understanding. The subsequent figure numbering in Chapter 4E is changed accordingly.

The FHWA establishes a target compliance date of December 31, 2014 (approximately 5 years from the effective date of this final rule) or when timing adjustments are made to the individual intersection and/or corridor, whichever occurs first, for the display and timing of the pedestrian change interval as per the adopted text of Section 4E.06 at existing locations. The FHWA establishes this target compliance date because of the demonstrated safety issues associated with pedestrian crossings at traffic signals, the need for consistent display of signal indications for pedestrians, and the pedestrian confusion that would likely occur as a result of a long-term mixing of a variety of pedestrian signal displays associated with the pedestrian clearance interval. Traffic signals and signal control equipment have a very long service life (30 to 50 years is not uncommon) and very long intervals between signal retiming are typical at many traffic signal locations in many jurisdictions. The FHWA believes that relying on the systematic upgrading provisions of Section 655.603(d)(1) of title 23, Code of Federal Regulations, based on service life, to achieve compliance with this critical timing need would take an inordinately long time, to the detriment of pedestrian safety. State and local highway agencies and owners of private roads open to public travel can minimize any impact of this signal timing requirement by adopting a policy for timing and display of pedestrian change intervals in relation to vehicular intervals as discussed in Section 4E.06 and then by applying that policy whenever an existing individual signal location or system of interconnected locations is being checked or adjusted for any reason, such as investigation of citizen complaints or routine maintenance.

The FHWA also adopts revisions to the first GUIDANCE statement, as proposed in the NPA, to reduce the recommended walking speed for calculating pedestrian clearance times to 3.5 feet per second, except where extended pushbutton presses or passive pedestrian detection has been installed for slower pedestrians to request additional crossing time as noted in the OPTION. In this final rule, the FHWA also adds an OPTION paragraph to clarify that if crossing time is to be added based on an extended pushbutton press, it may be added to either the walk interval or the pedestrian change interval. The FHWA adopts these provisions to provide enhanced pedestrian safety, based on recent research [176] regarding pedestrian walking speeds. In addition, based on the same research, the FHWA adopts an additional GUIDANCE statement, as proposed in the NPA, recommending that the total of the walk phase and pedestrian clearance time should be long enough to allow a pedestrian to walk from the pedestrian detector to the opposite edge of the traveled way at a speed of 3 feet per second. The FHWA adopts this guidance to ensure that slower pedestrians can be accommodated at longer crosswalks if they start crossing at the beginning of the walk phase. The FHWA received comments in support of these changes in walking speed from four cities, a local DOT, several associations representing visually disabled pedestrians and pedestrians in general, a regional planning commission, a consultant, and many citizens. Some of these comments also requested that the GUIDANCE on walking speed be strengthened to a STANDARD. The FHWA disagrees with making this a STANDARD because the walking speed used to calculate pedestrian clearance time for signals has always been in the form of GUIDANCE, allowing highway agencies some flexibility in unusual circumstances and the FHWA believes that it is appropriate for such flexibility to be continued. Therefore, in this final rule the FHWA adopts the walking speeds as GUIDANCE.

The FHWA also received comments in opposition to some or all of the provisions for reduced walking speeds from 6 State DOTs, 21 cities, 3 counties, a regional signal system manager, and several citizens. The comments in opposition centered on impacts on signal timing that might reduce the vehicular capacity of intersections, where longer pedestrian intervals would reduce the available green time for vehicles or could necessitate using a longer cycle length, which in turn could impact numerous intersections in a coordinated signal system and could require considerable effort to implement in large systems. The FHWA recognizes that the recommended use of slower walking speeds in calculating pedestrian intervals will, in some cases, slightly reduce vehicular capacity and, for highway agencies with large numbers of signalized intersections, will require considerable time and effort to retime signals. However, the FHWA believes that the research has clearly demonstrated the need to reduce walking speeds to accommodate a larger percentage of the walking public and that the safety needs of pedestrians for adequate crossing time must outweigh potential vehicular capacity impacts. Further, this adopted section provides agencies with various optional ways to mitigate the impacts, such as by using the extended button press feature to only provide the longer time when it is called for by a pedestrian who needs it. The FHWA also believes that agencies can reduce the efforts needed to implement retiming of pedestrian

[176] Pedestrian walking speed research was included in ''Improving Pedestrian Safety at Unsignalized Pedestrian Crossings,'' TCRP Report 112/NCHRP Report 562, Transportation Research Board, 2006, which can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_562.pdf.* Also see the article ''The Continuing Evolution of Pedestrian Walking Speed Assumptions,'' by LaPlante and Kaeser, ITE Journal, September 2004, pages 32–40, available from the Institute of Transportation Engineers Web site: *http://www.ite.org.*

intervals by doing so in conjunction with regularly scheduled periodic reviews of all signal timings and operations at their signalized intersections, a practice that has long been recommended in many traffic engineering handbooks and publications.

The FHWA also adopts the NPA proposed revision of the existing GUIDANCE to a STANDARD, in order to require, rather than merely recommend, that median-mounted pedestrian signals, signing, and pushbuttons (if actuated) be provided when the pedestrian clearance time is sufficient only for crossing from the curb or shoulder to a median of sufficient width for a pedestrian to wait. The FHWA adopts this standard to assure that pedestrians who must wait on a median or island are provided with the means to actuate a pedestrian phase to complete the second half of their crossing. The FHWA received a comment from an organization for the blind agreeing with this change and also recommending that this STANDARD also require the provision of APS, because persons with low or no vision need this information as well. The FHWA does not agree with making APS a requirement under these conditions but, for consistency with other sections in Chapter 4E that recommend APS for various conditions, the FHWA adds GUIDANCE that APS should be considered for this condition.

The FHWA also adopts in this final rule the proposed OPTION statement that allows a leading pedestrian interval when a high volume of pedestrians and turning vehicles are present. As indicated in the FHWA report ''Signalized Intersections: Informational Guide,'' [177] several studies have demonstrated that leading pedestrian intervals can significantly reduce conflicts for pedestrians. In the NPA, the FHWA also proposed a GUIDANCE statement that gives a recommended minimum length of the leading pedestrian interval, reflecting recommendations from the Older Driver handbook,[178] and the traffic control devices that should be used to prevent turning vehicles from crossing the path of pedestrians during this leading interval. The FHWA received several comments from the NCUTCD and others about the needs of blind pedestrians, including concerns about the proposed recommendation that the leading interval should be timed to allow pedestrians to cross at least one lane of traffic before turning traffic is released, and concerns about the proposed recommendations on the methods that should be used to prohibit turns across the crosswalk during the leading interval. Based on these comments, the FHWA adopts the proposed GUIDANCE statement in this final rule but with clarifying revisions to recommend that: (1) When a leading pedestrian interval is used, the use of an APS should be considered; and, (2) in the case of a large corner radius, the leading pedestrian interval should be timed to allow pedestrians to establish their position ahead of turning traffic before it is released. The FHWA also removes the text about various specific methods of prohibiting turns and replaces it with a more general recommendation that consideration should be given to prohibiting turns across the crosswalk during a leading pedestrian interval, to give agencies more flexibility in how they implement such turn prohibitions.

In the NPA the FHWA proposed adding an OPTION statement to permit the green time for the concurrent vehicular movement to be set longer than the pedestrian change interval in order to allow vehicles to complete turns after the pedestrian phase. This treatment is used by many jurisdictions, and is recommended by the Older Driver handbook [179] to reduce conflicts between pedestrians and turning motor vehicles. Based on comments from the NCUTCD, the FHWA in this final rule revises the proposed OPTION statement to a SUPPORT statement.

404. In Section 4E.07 Countdown Pedestrian Signals, in the NPA the FHWA proposed changing the option of using pedestrian countdown displays to a requirement for new installations of pedestrian signals where the duration of the pedestrian change interval is more than 3 seconds. The FHWA proposed this to provide enhanced pedestrian safety because a multi-year research project involving crash data for hundreds of locations in San Francisco [180] showed significant overall safety benefits and substantial reductions in the number of pedestrian-vehicle crashes when countdown signals are used, as compared to locations that did not have the countdowns.

The FHWA received comments from the NCUTCD, a State DOT, a local DOT, a regional council of governments, a city pedestrian advisory board, a consultant, and a private citizen agreeing with this requirement, while five State DOTs, three cities, two counties, and a citizen agreed in concept, but requested that it be a recommendation, rather than a requirement. The FHWA received comments in opposition to anything more restrictive than an OPTION from six State DOTs, six cities, three counties, a consultant, and a citizen. Most of the comments in opposition centered on concerns about impacts on controller operation, drivers of vehicles using the pedestrian countdown information to decide to speed up when approaching the intersection, and financial impacts. The FHWA disagrees because pedestrian countdowns have been operating successfully with a wide variety of control equipment without significant problems, studies have found that drivers use the pedestrian countdown information to make better choices (*i.e.,* to start slowing to a stop, rather than speed up), and the safety benefits of pedestrian countdowns justify the requirement that they be used with new pedestrian signal installations. The FHWA does not adopt in this final rule the proposed sentence in this section that would have required highway agencies to add pedestrian countdown displays to all existing pedestrian signal heads within 10 years. As a result, existing pedestrian signals without the countdown displays can generally remain in place until the end of their useful service life under the systematic upgrading provisions of Section 655.603(d)(1) of title 23, Code of Federal Regulations, thus minimizing any impacts to highway agencies.

The FHWA also received comments from the NCUTCD, two State DOTs and two local DOTs recommending an increase in the threshold of the pedestrian change interval above which the countdown displays would be required, from more than 3 seconds (as proposed in the NPA) to more than 7 seconds, because countdowns of 7 seconds or less are so short that they could be missed. The FHWA agrees and adopts in this final rule the proposed increase in the threshold duration. Crosswalks needing a pedestrian clearance interval of 7 seconds or less are likely to be across relatively narrow streets where the countdown information is of less value to

[177] ''Signalized Intersections: Informational Guide'', FHWA publication number FHWA–HRT–04–091, August 2004, pages 197–198, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/safety/pubs/04091/.*

[178] ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' FHWA Report no. FHWA–RD–01–051, May 2001, can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/cover.htm.* Recommendation I.P(6).

[179] This 2001 report can be viewed at the following Internet Web site: *http://www.tfhrc.gov/humanfac/01105/01-051.pdf.*

[180] ''Pedestrian Countdown Signals: Experience With an Extensive Pilot Installation,'' by Markowitz, Sciortino, Fleck, and Yee, published in ITE Journal, January 2006, pages 43–48, is available from the Institute of Transportation Engineers at the following Internet Web site: *http://www.ite.org.*

pedestrians. The NCUTCD also recommended, and the FHWA agrees, to adopt in this final rule an OPTION statement allowing pedestrian countdown displays to be used with pedestrian change intervals of 7 seconds or less, to provide flexibility to highway agencies.

A comment from the NCUTCD recommended the addition of a sentence in the first STANDARD statement that when countdown pedestrian signals are used, the countdown shall always be displayed simultaneously with the flashing UPRAISED HAND signal indication displayed for that crosswalk. The FHWA agrees that this sentence, which reiterates existing requirements elsewhere in Chapter 4E, helps clarify the operation of the countdown and the FHWA adopts this requirement in this final rule.

The FHWA adopts in this final rule a revision the second sentence of STANDARD paragraph 06 to prohibit the pedestrian countdown display during the red clearance interval, rather than during the yellow change interval. This revision is necessary to be consistent with revisions adopted in Section 4E.06 Pedestrian Intervals and Signal Phases (Section 4E.10 in the 2003 MUTCD) regarding the display of pedestrian countdown displays during certain vehicular signal intervals. It also provides agencies more flexibility to extend the display of the flashing UPRAISED HAND and the accompanying countdown into the yellow interval, which would not have been allowed under the NPA language.

In the NPA, the FHWA proposed adding a new STANDARD after the first paragraph of the GUIDANCE to require that a pedestrian countdown signal be dark when the duration of the green interval for a concurrent vehicular movement has intentionally been set to continue beyond the end of the pedestrian change interval. The FHWA received comments from the NCUTCD noting that pedestrian countdown displays are required by other provisions in Chapter 4E to display the countdown only in conjunction with the flashing UPRAISED HAND indication and they are to be dark at all other times. The FHWA agrees and in this final rule does not adopt that proposed new STANDARD and the removes the existing last sentence of the first GUIDANCE paragraph.

405. Both the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act of 1990 require that facilities, programs and services be accessible to persons with disabilities. The FHWA in this final rule revises various sections in Chapter 4E of the MUTCD regarding communication of pedestrian signal information to pedestrians with vision, vision and hearing, or cognitive disabilities to reflect research [181] conducted under NCHRP 3–62, Accessible Pedestrian Signals, and a 5-year project on Blind Pedestrians' Access to Complex Intersections [182] sponsored by the National Eye Institute of the National Institutes of Health, that has demonstrated that certain techniques most accurately communicate information. The changes also result in making accessible pedestrian detectors easy to locate and actuate by persons with visual or mobility impairments. Significant changes to existing material are described below.

406. In Section 4E.08 Pedestrian Detectors, the FHWA proposed in the NPA to change the first GUIDANCE statement regarding the location of a pedestrian pushbutton to a STANDARD and to add criteria that would be required to be met for the location of pushbuttons, in order to make pedestrian pushbuttons more accessible to disabled pedestrians and to pedestrians in general. The FHWA received comments in favor of the proposal from many citizens, a consultant, a local DOT, and several associations representing visually disabled pedestrians and pedestrians in general. However, the FHWA received comments opposed to the proposal in general or to certain items of the pushbutton location criteria from a State DOT, 11 cities, and a county. The objections generally cited the cost impacts of moving pedestrian detectors and the inflexibility of a STANDARD under conditions that can sometimes make it impractical to meet the requirements. The FHWA believes that some of the concerns are valid and adopts the pushbutton location criteria as GUIDANCE in this final rule. This will still provide for improved accessibility of pushbuttons for all pedestrians while providing some latitude for engineering judgment to address unusual conditions.

The FHWA also adopts in this final rule the NPA proposed STANDARD, GUIDANCE, and OPTION statements that contain additional information for locations where physical constraints make meeting some of the criteria impractical. The FHWA also adopts the change of a GUIDANCE statement to a STANDARD to require that the positioning of the pushbuttons and legends on the signs clearly indicate which crosswalk signal is activated by which pushbutton. The FHWA adopts this change to eliminate ambiguity regarding which pushbutton a pedestrian must activate to cross a particular street. The FHWA also adopts the addition to the existing last STANDARD statement that a when a pilot light is used at an accessible pedestrian signal location, each actuation shall be accompanied by the speech message ''wait.'' The FHWA adopts this change to ensure that the activation confirmation is available to pedestrians with impaired vision.

The FHWA received comments from two manufacturers of pedestrian pushbuttons and two citizens in opposition to the existing provision that, if a pilot light is used with a pushbutton, once the button is actuated the pilot light shall remain illuminated until the walk signal or green indication is displayed. The comments generally cited the inability of certain brands of pushbutton equipment to meet the standard without expensive redesign. The FHWA did not propose a change in the NPA to this existing provision. The reason for keeping the pilot light illuminated after it is pushed is to mirror what people experience with elevator call buttons. If the pilot light goes off after the button is pushed, the pedestrian might feel that the call has been dropped and might be induced to cross without waiting for the walk signal. The FHWA declines to revise this provision in this final rule.

Finally, the FHWA adopts in this final rule a STANDARD statement at the end of the section requiring a sign if an extended pushbutton press will always provide additional crossing time, to ensure that pedestrians receive instructions of the use of this feature and are made aware of the feature's existence. In the NPA, the legend of this sign was proposed to be ''FOR MORE CROSSING TIME HOLD BUTTON DOWN FOR 2 SECONDS.'' The FHWA received a comment from the NCUTCD agreeing with the requirement for a sign but recommending that the legend be changed to ''PUSH BUTTON FOR 2 SECONDS FOR EXTRA CROSSING TIME'' because the button is not held down, as in with force applied toward the ground, it is pressed. The FHWA agrees and adopts the provision with the revised sign legend.

407. In new Section 4E.10 Accessible Pedestrian Signals and Detectors—Location, the FHWA adopts in this final rule the addition of a STANDARD, proposed in the NPA for Section 4E.09,

[181] Research reports on this topic can be viewed at the U.S. Access Board's Internet Web site at: *http://www.access-board.gov/research/aps.htm.*

[182] Information on this research can be viewed at the following Internet Web site: *http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/2a/26/bb.pdf.*

that requires locator tones, tactile arrows, speech walk messages, and a speech pushbutton informational message when two accessible pedestrian pushbuttons are placed less than 10 feet apart or on the same pole. The proposal was supported by the NCUTCD but opposed by a State DOT because of concerns about information overload. As noted above, the provision is supported by research and the FHWA adopts it as proposed. Additionally, the FHWA adopts the change from an existing GUIDANCE to a STANDARD, as proposed in the NPA for Section 4E.10, that if the clearance time is sufficient to only cross to the median of a divided highway, an accessible pedestrian detector shall, rather than should, be provided on the median. This change was supported by a consulting firm and the FHWA received no comments in opposition.

408. In new Section 4E.11 Accessible Pedestrian Signals and Detectors—Walk Indications, the FHWA adopts several changes based on NPA proposed revisions in Section 4E.06. The FHWA proposed to require both audible and vibrotactile walk indications, to add requirements on how audible and vibrotactile walk indications are to be provided, and to add language prohibiting audible indications during the pedestrian change interval because research [183] has found that visually disabled pedestrians need to concentrate on the sounds of traffic movement while they are crossing and audible indications of the flashing UPRAISED HAND interval would be distracting from that task. The FHWA received comments in opposition to the some or all of these changes from the two State DOTs, six cities, two manufacturers, and a few citizens, generally citing insufficient research. The FHWA disagrees with the comments in opposition because the changes are based on sound research, as discussed above. The FHWA received comments in favor of these changes from a city, a State DOT, a local DOT, a consultant, several organizations representing visually disabled pedestrians and pedestrians in general, and many citizens. Most of these comments also requested that APS be required for all locations where pedestrian signals are provided. The FHWA did not propose such a requirement in the NPA and declines to adopt it in this final rule. The U.S. Access Board is considering initiating proposed rulemaking to consider adopting Public Right of Way Accessibility Guidelines (PROWAG) that could possibly mandate APS at all new or renovated pedestrian signal locations. Once the United States Department of Justice has adopted any future Access Board public right of way guidelines as a standard, the FHWA will reconsider the matter for future revisions of the MUTCD.

The FHWA received comments from the NCUTCD and an organization for the blind recommending changes to some of the proposed requirements regarding how audible and vibrotactile walk indications are to be provided and operated, and to make the text clearer and consistent with other provisions. The FHWA agrees with these comments, which also address comments from others about inconsistencies in the text, and adopts in this final rule revisions to the second STANDARD statement of former Section 4E.06.

The FHWA also adopts the proposed addition to the STANDARD that an accessible walk signal shall have the same duration as the pedestrian walk signal unless the pedestrian signal rests in the walk interval and adopts subsequent GUIDANCE regarding the recommended duration and operation of the accessible walk signal if the pedestrian signal rests in the walk interval. The FHWA adopts this change to clarify that the duration of the accessible walk signal is dependent on whether the signal controller is set to rest in walk or steady don't walk in the absence of conflicting demands.

The FHWA also proposed in the NPA to change to a STANDARD the 4th GUIDANCE statements in former Section 4E.06 and former Section 4E.09 regarding the loudness of audible pedestrian walk signals and to base the loudness of an audible pedestrian walk signal on the ambient sound level and provide for louder volume adjustment in response to an extended pushbutton press. The FHWA proposed adopting these changes to allow the audible pedestrian walk signals to be heard over the ambient sound level, and to allow pedestrians with hearing impairments to receive a louder audible walk signal. The FHWA received comments from two manufacturers of APS equipment and from a local DOT opposing making the maximum loudness a STANDARD and citing technical problems with measurement of sound levels that make it impractical to comply precisely. The FHWA agrees and in this final rule revises the sentences about maximum loudness value for walk indications and pushbutton locator tones to GUIDANCE.

The FHWA also adopts added GUIDANCE, OPTION, and SUPPORT statements regarding the duration, tone, and speech messages of audible walk indications, as proposed in the NPA in Sections 4E.06 and 4E.09, in order to clarify their use and application. Further, the FHWA adopts the modifications (proposed in Section 4E.06) to the existing STANDARD to require that speech walk messages only be used where it is technically infeasible to install two accessible pedestrian signals at one corner with the minimum required separation. The STANDARD also contains requirements for what information is allowed in speech messages. The FHWA also adopts the addition of a GUIDANCE statement (proposed in Section 4E.06) that recommends that the speech messages not state or imply a command. The FHWA is adopting these changes to clarify when and under what circumstances speech walk messages are to be used.

409. In new Section 4E.12 Accessible Pedestrian Signals and Detectors—Tactile Arrows and Locator Tones the FHWA adopts in this final rule several changes based on the NPA proposed revisions to Section 4E.09. The FHWA adopts the proposed change to the first paragraph of the existing first GUIDANCE statement regarding tactile arrows to a STANDARD, relocates it within the section, and modifies the remainder of the GUIDANCE statement to reduce redundancy.

The FHWA proposed modifying the second STANDARD in former Section 4E.09, to require pushbutton locator tones at accessible pedestrian signals, and also proposed changing the following GUIDANCE statement to a STANDARD regarding locator tones. Based on comments from APS manufacturers and others, as discussed above, the FHWA adopts the proposed changes. The FHWA also received a comment from a city that the STANDARD sentence requiring locator tones to be deactivated when the signal is operating in a flashing mode is too restrictive in regard to traffic control signals or pedestrian hybrid beacons that are activated from a flashing or dark mode to a stop-and-go mode by pedestrian actuations. The FHWA agrees and adopts in this final rule a sentence exempting these situations from the STANDARD requirement.

410. In new Section 4E.13 Accessible Pedestrian Signals and Detectors—Extended Pushbutton Press Features the FHWA adopts in this final rule the NPA proposed changes to Section 4E.09. The FHWA adopts the addition of a paragraph to the existing 3rd OPTION statement allowing the use of an extended pushbutton press to activate

[183] Research reports on this topic can be viewed at the U.S. Access Board's Internet Web site at: *http://www.access-board.gov/research/aps.htm.*

additional accessible features at a pedestrian crosswalk and the addition of a new STANDARD statement to follow this new paragraph that sets requirements for the amount of time a pushbutton shall be pressed to activate the extra features.

The FHWA does not adopt in this final rule the last SUPPORT, STANDARD, and GUIDANCE statements from Section 4E.06 as proposed in the NPA, and replaces these with SUPPORT, GUIDANCE, OPTION, and STANDARD text regarding the use of audible beaconing and other additional features that may be provided as a result of an extended pushbutton press. The FHWA adopts this information, because while audible beaconing features can be valuable, activating audible beaconing features at multiple crosswalks at the same intersection can be confusing to visually disabled pedestrians, and therefore audible beaconing should be activated only when needed. The FHWA received comments from two local DOTs in opposition to the use of an extended pushbutton press to call for added crossing time because of concerns about misuse by pedestrians and impacts on signal controllers and pedestrian countdown operation. The FHWA declines to remove the ability of highway agencies to use this option, but does recognize that adding time to the pedestrian change interval via an extended pushbutton press could result in some issues with countdown displays until signal controller manufacturers incorporate countdown timing into their equipment and software.

The FHWA adopts the NPA proposed addition of a STANDARD statement at the end of the section requiring that speech pushbutton information messages only play when the walk interval is not timing. Requirements regarding the content of these messages are also contained in this new STANDARD. The FHWA adopts this change to promote uniformity in the content of speech messages. The FHWA received no significant comments on these proposals.

411. The FHWA received comments regarding the NPA proposed revision of Figure 4E–3 (Figure 4E–2 in the 2003 MUTCD) to show a general layout of recommended pushbutton locations from the NCUTCD and a consultant, suggesting that the title of the figure be revised to ''Pushbutton Location Area'' and that other editorial changes to the figure be made for consistency with the MUTCD text. The FHWA agrees and adopts in this final rule the figure with the suggested revisions, and with other minor editorial changes to address other comments on this figure.

412. The FHWA adopts in this final rule the proposed new ''Figure 4E–4 Typical Pushbutton Locations'' (Figure 4E–3 in the NPA) that shows eight examples of pushbutton locations for various sidewalk, ramp, and corner configurations, to help clarify appropriate locations under different geometric conditions. Based on comments received, the FHWA makes editorial revisions to this figure to improve clarity and accuracy.

Discussion of Amendments Within Chapters 4F Through 4L

413. The FHWA adopts in this final rule the NPA proposed addition of a new Chapter to Part 4, numbered and titled Chapter 4F Pedestrian Hybrid Beacons, with three sections that describe the application, design, and operation of pedestrian hybrid beacons, and with three new figures. Figures 4F–1 and 4F–2 contain guidelines for the justification of installation of pedestrian hybrid beacons on low-speed and high-speed roadways, respectively. Figure 4F–3 shows the sequence of intervals for a pedestrian hybrid beacon. The remaining Chapters in Part 4 are re-lettered accordingly. The FHWA adopts these sections to give agencies additional flexibility by providing an alternative method for control of pedestrian crosswalks that has been found by research[184] to be highly effective. This type of device offers significant benefits for providing enhanced safety of pedestrian crossings where normal traffic control signals would not be warranted.

The FHWA received comments in favor of adding the pedestrian hybrid beacon from a State DOT, eight cities, the NCUTCD, an organization for the blind, several organizations representing pedestrians, and many citizens. The FHWA also received comments in opposition to the addition of pedestrian hybrid beacons from five State DOTs, four cities, a county, a toll road authority, and some others. However, most of the objections related to the name for the device that was proposed in the NPA (pedestrian hybrid signal) and the concern that, because the device is dark between actuations, drivers would treat it as a 4-way stop in States where laws require such driver behavior at dark traffic signals. As discussed earlier in Section 1A.13 Definitions, based on these and other comments, the FHWA adopts pedestrian hybrid beacon as the revised name for the device. Many beacons are dark between activations and drivers are not required by laws to stop at dark beacons. Further, the unique arrangement of the hybrid beacon's indications make it appear very different from a normal traffic control signal, and the experiences of Tucson, AZ and the many other highway agencies that have successfully experimented with pedestrian hybrid beacons have not resulted in any adverse safety issues being brought to the FHWA's attention.

414. In Section 4F.01 Application of Pedestrian Hybrid Beacons, based on a comment from a city, in this final rule the FHWA does not adopt the first paragraph of the GUIDANCE statement that was proposed in the NPA and instead adds to the OPTION statement that a pedestrian hybrid beacon may, rather than should, be considered for a location that meets the pedestrian crossing or school crossing warrant for a traffic control signal but a decision is made to not install a traffic control signal.

415. In Section 4F.02 Design of Pedestrian Hybrid Beacons, in this final rule the FHWA adopts in the GUIDANCE statement a requirement that pedestrian hybrid beacons should be installed at least 100 feet from side streets or driveways that are controlled by STOP or YIELD signs, and does not adopt the final STANDARD paragraph of the section that was proposed in the NPA. The FHWA received several comments noting that Chapters 4C and 4D contain GUIDANCE that traffic signals justified by a pedestrian crossing or school crossing should be installed at least 100 feet from intersections with minor side streets or driveways controlled by STOP or YIELD signs and expressing concerns that pedestrian hybrid beacons should be subject to the same guidance. Because a traffic control signal and a pedestrian hybrid beacon both stop traffic on the major street to enable pedestrians to cross, if installed at an intersection, both of these types of devices generate the same issues involving the STOP or YIELD controlled side street traffic that caused the FHWA to prohibit ''half-signals'' several decades ago and that resulted in the recommendations adopted in Chapter 4C and 4D. Side street drivers controlled by only a STOP or YIELD sign often encounter delays because of high major street traffic volumes and they typically use the pedestrian-activated stoppage of major street traffic as their opportunity to turn onto or cross the major street. When doing so, these drivers often do

[184] ''Improving Pedestrian Safety at Unsignalized Pedestrian Crossings,'' TCRP Report 112/NCHRP Report 562, Transportation Research Board, 2006, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_562.pdf.*

not give adequate attention to pedestrians in their path. Because the purpose of a pedestrian hybrid beacon is to enhance the safety of pedestrian crossings, and because of similar provisions in Chapters 4C and 4D, the FHWA believes it is also inappropriate for pedestrian hybrid beacons to be used at or within 100 feet of intersections with STOP or YIELD sign controlled side streets, and the FHWA adopts the new GUIDANCE.

416. In Section 4F.03 Operation of Pedestrian Hybrid Beacons, the FHWA received several comments about flashing red indications proposed to be displayed by the hybrid beacon during the flashing UPRAISED HAND pedestrian change interval. Some comments expressed concern about drivers being allowed to proceed while a pedestrian could still be in the street. Experimentations with the hybrid beacon in Tucson and many other jurisdictions have not revealed any significant safety issues with the flashing red operation. Further, allowing drivers to proceed, after a full stop, if the pedestrian traffic has already cleared their half of the roadway is the major advantage of this device over a midblock pedestrian traffic control signal. The FHWA in this final rule declines to remove the proposed text on the flashing red operation for hybrid beacons.

The FHWA also received comments from the NCUTCD, five State DOTs, two cities, a county, and an NCUTCD member requesting that the alternating (''wig-wag'') pattern of the two flashing red indications that was proposed to be specified for the pedestrian hybrid beacon be changed to a simultaneous flashing of the two reds, because of concerns that the alternating flashing reds might be mistaken by drivers as the flashing-light signals used at highway-rail grade crossings, or that such use could diminish the impact of the flashing-light signals at grade crossings. However, the FHWA also received comments from a consultant and a State DOT in support of the alternating flashing reds for hybrid beacons, noting that there has been no research or experimentation with pedestrian hybrid beacons using simultaneous flashing reds, and therefore it is unknown whether the device would be as effective as it has been shown to be in the experimentations with the alternating flashing reds. The comments also noted that there has been no research indicating that drivers associate the alternating flashing red pattern as being unique to grade crossings. The consultant also pointed out that with simultaneous flashing reds, the display goes from double steady red to dark for a split second, before the flashing starts. With a wig-wag display, one of the red signals is always lit. Since motorists would see a dark signal for a moment, it might lead them to think that the signal has returned to its ''rest'' phase of being dark and this could result in less safety. Additionally, the FHWA believes that, because of context and a completely different sequence of signal displays, there is an extremely low possibility of the alternate flashing reds of the pedestrian hybrid beacon being mistaken as flashing-light signals of a highway-rail grade crossing or that it will diminish the impact or respect for those flashing-light signals. At a grade crossing, the flashing-light signals come on immediately from a dark condition when a train is detected as approaching the crossing. At a pedestrian hybrid beacon, the indications go from dark to flashing yellow for several seconds, followed by steady yellow for several seconds, and then to steady red for a typical duration of seven seconds, before the alternating flashing red display begins. In view of these factors, the FHWA agrees that alternating flashing red is appropriate for pedestrian hybrid beacons and adopts that provision in this final rule rather than changing it to simultaneous flashing.

417. The FHWA adopts in this final rule a change in the title of Chapter 4G proposed in the NPA to ''Traffic Control Signals and Hybrid Beacons for Emergency Vehicle Access'' in order to reflect the addition of hybrid beacons to this chapter. Additionally, in Section 4G.01 Application of Emergency-Vehicle Traffic Control Signals and Hybrid Beacons, the FHWA adopts the proposed addition of a paragraph to the OPTION statement to allow an emergency-vehicle hybrid beacon to be installed in place of an emergency-vehicle traffic control signal under the conditions described in Section 4G.04. The FHWA received no substantive comments other than those discussed below under Section 4G.04.

418. The FHWA adopts in this final rule the proposed new Section 4G.04 Emergency-Vehicle Hybrid Beacons containing provisions for this type of beacon for optional use in conjunction with signs to warn and control traffic at an unsignalized location where emergency vehicles enter or cross the street or highway and adopts new Figure 4G–1 illustrating the Emergency-Vehicle Hybrid Beacon.

The FHWA received some comments opposed to certain aspects of this device, for similar reasons as the comments opposed to the Pedestrian Hybrid Beacon (Chapter 4F). As discussed above regarding Chapter 4F and Sections 4F.01 through 4F.03, the change in name of the device to use the phrase ''hybrid beacon'' rather than ''hybrid signal'' addresses concerns about State laws requiring drivers to treat a dark signal as a 4-way stop. Also, similar to Section 4F.03, in the Section 4G.04 adopted in this final rule the FHWA adds to the GUIDANCE a statement that an emergency-vehicle hybrid beacon should not be installed at locations that are less than 100 feet from a side street or driveway that is controlled by STOP or YIELD signs. Some of the comments on Section 4G.04 concerned the issue of alternating versus simultaneous flashing red indications. For a discussion of this issue, see above under Section 4F.03. The FHWA also received a comment from a State DOT suggesting that an OPTION be added to Section 4G.04 allowing the use of a steady red clearance interval after the steady yellow interval and before the alternating flashing red interval. The FHWA agrees and adopts the additional OPTION in this final rule.

419. In Section 4I.02 Design of Freeway Entrance Ramp Control Signals (Section 4H.02 in the 2003 MUTCD), the FHWA proposed in the NPA to require the use of at least two signal faces per separately-controlled lane on a multiple lane ramp where green signal indications are not always displayed simultaneously to all of the lanes. The FHWA received comments from the NCUTCD, a State DOT, and a local DOT in opposition to this proposed requirement. The objections centered on physical challenges involving signal face mountings, especially when there are three or more separately-controlled lanes. A State DOT commented that, unlike a traffic signal at an intersection, there is little if any conflict or danger if a motorist inadvertently violates a red signal because of a burned-out lamp and the risk of burned-out lamp is low because of the common use of LED indications and the fact that ramp control signals typically operate only 3 hours a day. The commenter further stated that on metered ramps of two lanes or more they use overhead signal faces mounted directly in line with the lane that they control and thus the signals are highly visible to motorists. The NCUTCD commented that a single signal face per separately-controlled lane provides sufficient indications and permits installation location flexibility in these cases. The FHWA agrees with these comments and adopts in this final

rule Section 4I.02 with a revised STANDARD statement to require one signal face located over the approximate center of each separately-controlled lane when there are two or more separately-controlled lanes on the ramp. The FHWA also adopts a GUIDANCE statement that additional side-mounted signal faces should be considered for ramps with two or more separately-controlled lanes.

420. The FHWA adopts in this final rule a new Section 4I.03 (Section 4H.03 proposed in the NPA) Operation of Freeway Entrance Ramp Control Signals containing GUIDANCE recommending the operational strategies for ramp control signals. Based on comments on this section as well as on comparable text in Section 2C.37 the FHWA revises the GUIDANCE adopted in this final rule regarding the use of RAMP METERED WHEN FLASHING (W3–7) signs to be consistent with Section 2C.37.

421. The FHWA adopts in this final rule revisions to Section 4J.02 Design and Location of Movable Bridge Signals and Gates (Section 4I.02 in the 2003 MUTCD) and 4J.03 Operation of Movable Bridge Signals and Gates (Section 4I.03 in the 2003 MUTCD), as proposed in the NPA. The FHWA received no significant comments on these sections.

422. The FHWA adopts in this final rule a new chapter to Part 4 titled Chapter 4K Highway Traffic Signals at Toll Plazas, containing three sections. In the NPA, only Section 4K.01 was proposed to be included in Chapter 4K, dealing with traffic signals used at toll plazas to indicate a requirement to stop and pay a toll or to go after paying the toll, or to indicate a low account balance in electronic toll collection lanes. The FHWA received comments from the NCUTCD, a State DOT, and many toll road operators opposing the details regarding traffic signals at toll plazas. The NCUTCD recommended that the NPA text for Section 4K.01 Traffic Signals at Toll Plazas be deleted and be replaced with a STANDARD statement prohibiting the use of traffic control signals and devices that resemble traffic control devices with red or green circular indications at toll plazas. The NCUTCD stated that, although many toll facility operators currently use these types of indications at toll plazas, there are a variety of other devices, such as changeable message signs or other displays that do not resemble traffic signals that are also being successfully used by toll agencies for these purposes. The FHWA agrees that since other methods of communicating the desired messages are available and traffic control signals should be reserved for other more critical uses, the use of devices resembling traffic signals is inappropriate at toll plazas. The FHWA adopts Section 4K.01 in this final rule with a STANDARD statement prohibiting the use of traffic control signals and devices that resemble traffic control devices with red or green circular indications at toll plazas to indicate the open or closed status of a toll lane, and a GUIDANCE statement recommending that traffic control signals and devices that resemble traffic control devices with red or green circular indications should not be used for new or reconstructed installations at toll plazas to indicate the success or failure of electronic toll payments or to alternately direct drivers making cash toll payments to stop and then proceed.

423. The FHWA also adopts in Chapter 4K an additional section titled Section 4K.02 Lane-Use Control Signals at Toll Plazas, containing text on lane-use control signals at toll plazas that was proposed in the NPA as a part of Sections 4M.01 and 4M.03, but incorporating revisions based on comments on the material proposed in the NPA. In regard to the requirement to use lane-use control signals to indicate the open or closed status of toll plaza lanes, the FHWA received comments from two toll authorities in opposition to the requirement because of their longstanding use of circular traffic control signal indications for this purpose. The FHWA also received comments from the NCUTCD and three toll authorities agreeing with the requirement. The FHWA adopts the requirement because lane-use control signals have long been required by the MUTCD for all cases of indicating open-closed status of any lane and this standard display is appropriately extended to lanes at toll plazas.

The FHWA also received comments from two toll authorities stating that the use of lane-control signals to indicate the open or closed status of an Open Road Tolling lane is not appropriate unless it is in conjunction with other devices (such as signs, cones, other channelizing devices, and arrow boards) that are used to close a high-speed lane. The FHWA agrees and also notes that some freeways have or will have systems of successive lane-control signals along the freeway corridor and that ORT lanes might be established along such corridors. The FHWA in this final rule modifies the proposed OPTION statement to allow the use of lane-control signals to indicate the open or closed status of an Open Road Tolling lane in conjunction with other devices (such as signs, cones, other channelizing devices, and arrow boards) that are used to close a high-speed lane.

424. The FHWA also adopts in Chapter 4K an additional section titled Section 4K.03 Warning Beacons at Toll Plazas, containing text on warning beacons at toll plazas that was proposed in the NPA as Section 4L.03, but incorporating revisions based on comments on the material proposed. The FHWA received comments from two toll road operators requesting that warning beacons mounted on toll plaza islands or impact attenuators associated with such islands be allowed to operate in a steady rather than flashing yellow mode, to act as an enhanced conspicuity marker. The FHWA disagrees and declines to make the requested change in this final rule because all warning beacons are circular and operate only in a flashing mode, and because a steady circular yellow indication has a defined meaning for traffic signals that is not appropriate in the context of a toll booth island or attenuator.

425. In Section 4L.02 Intersection Control Beacon, the FHWA adopts the proposed addition to the STANDARD statement that two horizontally aligned red signal indications in an Intersection Control Beacon shall be flashed simultaneously, and two vertically aligned red signal indications shall be flashed alternately, to be consistent with the existing requirement for stop beacons in Section 4L.05.

426. The FHWA adopts in this final rule revisions to Section 4L.03 Warning Beacon as proposed in the NPA, except that the FHWA relocates toll plaza related text to Section 4K.03 (as discussed above) and further revises item D in the SUPPORT statement of Section 4L.03 to include WRONG WAY as an additional regulatory sign for which a warning beacon is not an appropriate supplement, for consistency with Section 4L.05.

427. The FHWA adopts Section 4L.05 Stop Beacon as proposed in the NPA, with minor editorial changes for clarity.

428. The FHWA adopts revisions to Section 4M.01 Application of Lane-Use Control Signals and Section 4M.03 Design of Lane-Use Control Signals as proposed in the NPA, except that the FHWA relocates toll plaza related text to Section 4K.02 (as discussed above) and makes minor editorial changes for clarity.

429. In Section 4N.01 Application of In-Roadway Lights, the FHWA adopts in this final rule the additions to the STANDARD statement proposed in the NPA that In-Roadway Lights shall only be used for applications described in this chapter and that In-Roadway Lights shall be flashed and not steadily

illuminated. The FHWA includes these changes to preclude the use of In-Roadway Lights for any purpose not included in this chapter because such uses have not yet been sufficiently tested to confirm their effectiveness and because steadily illuminated lights could be confused with internally illuminated raised pavement markings. The FHWA received comments from a device manufacturer and a transit agency requesting that in-roadway lights be allowed for use at highway-rail grade crossings and highway-light rail transit grade crossings. The FHWA disagrees and declines to adopt such an optional use, because there has been insufficient reported research showing the effectiveness of such uses at grade crossings.

430. The FHWA adopts revisions to Section 4N.02 In-Roadway Warning Lights at Crosswalks as proposed in the NPA, except that the FHWA also adopts an additional OPTION statement at the beginning of the section to indicate that in-roadway lights may be installed at certain marked crosswalks, based on an engineering study or engineering judgment, to provide additional warning to road users. The FHWA received a comment from a city recommending this text because there is no existing statement indicating that the use of in-roadway lights is optional. The FHWA agrees and also adopts the OPTION text.

Discussion of Amendments to Part 5—Traffic Control Devices for Low-Volume Roads

431. In Section 5A.01 Function, the FHWA proposed in the NPA to prohibit classifying a residential street in a neighborhood as a low-volume road for the purposes of Part 5 of the MUTCD. Two local DOTs agreed with the proposal. A State DOT and local DOT opposed the revision because many residential streets have lower ADT and operating speeds than some rural roads. The FHWA disagrees with the comment, because the change to paragraph 01 item B provides consistency with paragraph 01 item A, which states that low-volume roads shall be facilities lying outside the built-up areas of cities, towns, and communities. The FHWA adopts in this final rule the language as proposed in the NPA.

432. The FHWA received several comments regarding Table 5A–1 Sign and Plaque Sizes on Low-Volume Roads as proposed in the NPA. The NCUTCD recommended making the typical sign sizes the same size as for Conventional Roads, making the minimum sign sizes the next smaller size than Conventional Roads, and making the oversized sign sizes the next larger size than Conventional Roads. The Conventional Road sign sizes are based on Tables 2B–1, 2C–2, 6F–1, and 8B–1. The minimum and oversized sizes are based on the SHSM book. The FHWA agrees with the NCUTCD recommendations and adopts in this final rule revisions to Table 5A–1.

433. In Section 5B.04 Traffic Movement and Prohibition Signs, the FHWA proposed in the NPA to change an existing OPTION, which discusses the usefulness of these signs, to SUPPORT. A State DOT opposed the change and the FHWA agrees that this text is more appropriately stated as an OPTION. Accordingly, the FHWA does not adopt the proposed change in this final rule and retains paragraph 04 as an OPTION, as in the 2003 MUTCD.

434. As proposed in the NPA, the FHWA adopts in this final rule new Section 5C.14 Object Markers and Barricades to replace 2003 MUTCD Section 5E.05 Object Markers. The FHWA moves the information in order to locate the subject material with other sections in Part 5 that deal with signs. This change coincides with the adopted relocation of object markers and barricades from Part 3 to Part 2 of the MUTCD.

435. Although not proposed in the NPA, in Section 5E.02 Center Line Markings, the FHWA adopts in this final rule a new OPTION in paragraph 03 that permits center line markings to be placed on highways with or without edge line markings, based on a comment from a State DOT for consistency with Part 3. In addition, the FHWA adopts a modified GUIDANCE in paragraph 02 to clarify the application of center line markings for low-volume roads.

436. In Section 5F.02, the FHWA changes the title to ''Grade Crossing (Crossbuck) Sign and Number of Tracks Plaque,'' in the final rule. As proposed in the NPA, the FHWA revises the STANDARD in paragraph 04 to clarify that the strip of retroreflective material on each sign support at passive highway-rail grade crossings is measured from the Crossbuck sign or the Number of Tracks plaque to within 2 feet of the ground. The NCUTCD recommended additional text consisting of a SUPPORT statement and a minor revision to the existing STANDARD statement to make Part 5 consistent with revisions being made to Part 8. The FHWA agrees and adopts revisions to Section 5F.02 in this final rule to provide consistency with Part 8 as adopted herein.

437. In Section 5F.03 Grade Crossing Advance Warning Signs, the FHWA proposed in the NPA to require that a supplemental plaque describing the type of traffic control at a highway-rail grade crossing shall be used on all low-volume roads in advance of every crossing. Two State DOTs and a local DOT opposed the revision because the supplemental plaques are not necessary on low volume roads with familiar motorists. The FHWA agrees and does not adopt in this final rule the proposed requirement for the use of supplemental plaques, which is consistent with similar revisions being adopted in Part 8.

438. In Section 5F.04 STOP and YIELD Signs, the FHWA proposed in the NPA several changes regarding the use and application of STOP signs or YIELD signs at highway-rail grade crossings. A State DOT and a consultant opposed the proposal to require the placement of STOP or YIELD signs at all highway-rail grade crossings that are not equipped with automatic traffic control devices. The FHWA disagrees and adopts the STANDARD in paragraph 01 to be consistent with requirements adopted in Part 8. The NCUTCD and a State DOT opposed the proposed removal of the STANDARD requiring the use of STOP AHEAD and YIELD AHEAD signs in certain situations. The FHWA agrees and in this final rule restores paragraph 02 to be consistent with the requirements in Chapter 2C.

439. In Section 5G.02 Applications, as proposed in the NPA, the FHWA revises paragraph 02 from an OPTION to SUPPORT, which states that maintenance activities might not require extensive TTC if the traffic volumes and speeds are low. Based on recommendations from the NCUTCD and a State DOT, the FHWA also adds a SUPPORT statement referring to Table 6H–3, which provides the recommended distances between signs shown in the Typical Applications drawings in Part 6. The FHWA also adds an OPTION statement to specifically allow a reduced advance placement distance for traffic control devices on low-volume roadways that have speeds of less than or equal to 30 miles per hour. The FHWA adopts these revisions for consistency with provisions in Part 6.

440. The FHWA adopts a new chapter, numbered and titled Chapter 5H Traffic Control for School Areas, in the final rule. The NCUTCD and a State DOT recommended adding a new chapter to cover traffic control for low volume roads adjacent to schools, since schools do exist on low-volume rural roads and there is a need to refer readers of Part 5 to the applicable provisions of Part 7. The FHWA agrees and adds the new chapter, which consists of a SUPPORT paragraph that refers users to

Part 7 for more information and a STANDARD paragraph that merely requires compliance with applicable provisions in Part 7.

Discussion of Amendments to Part 6—Temporary Traffic Control—General

441. As proposed in the NPA, the FHWA revises the Code of Federal Regulations to delete title 23 CFR part 634 regarding Worker Visibility, in order to incorporate the provisions into the MUTCD, which is applicable to all public roads. As such, title 23 CFR part 634 is no longer needed because its requirements for high visibility garments are incorporated into the MUTCD in Sections 6D.03 and 6E.02 and are therefore applicable to all roads open to public travel in accordance with title 23 CFR part 655, not just applicable to Federal-aid highways.

442. The FHWA in this final rule updates the figures throughout Part 6 to reflect new or revised signs adopted in Part 2 that are applicable to Temporary Traffic Control Zones.

Discussion of Amendments Within Chapters 6A Through 6E

443. In Section 6B.01 Fundamental Principles of Temporary Traffic Control, the FHWA proposed in the NPA to modify the GUIDANCE in paragraph 07 item 2.C to recommend that provisions should be made for the continuous operation of work on roadways. The NCUTCD and four State DOTs opposed the use of the word ''continuous.'' The FHWA agrees and in this final rule revises item 2.C to recommend that provisions should be made to minimize the need for lane closures.

A State DOT suggested rewording the existing GUIDANCE in item 2.D that recommended that road users should use alternative routes that do not include TTC zones. The FHWA agrees and adopts in this final rule a revised item 2.D that also considers roadway capacity and type of roadway.

The FHWA proposed in the NPA to modify item 2.F in the GUIDANCE to recommend that roadway occupancy for TTC should be scheduled during off-peak hours ''on high-volume streets and highways'' to provide agencies with more flexibility in time periods for work on local residential streets and low-volume streets. A State DOT agreed with the proposal, but recommended additional language that included the removal of the term ''roadway occupancy.'' The FHWA agrees in part with the recommended modifications and adopts in this final rule a revised item 2.F that uses the term ''lane closures'' instead of ''roadway occupancy,'' recommends that lane closures on high-volume streets and highways should be scheduled during off-peak hours ''if work operations permit,'' and recommends that night work should be considered ''if the work can be accomplished with a series of short-term operations.''

444. In Section 6C.04 Advance Warning Area, the FHWA proposed in the NPA to add a new GUIDANCE regarding sign spacing that reinforced that the distances contained in Table 6C–1 are for guidance purposes and should be considered minimums. A local DOT agreed with the proposal. The NCUTCD, three State DOTs, and a transportation research institute recommended that the distances in Table 6C–1 be referred to as ''approximate'' and that shorter distances be allowed based on field conditions. The FHWA agrees with the comments and adopts in this final rule a modified paragraph 06 to recommend that the distances in Table 6C–1 should be adjusted for field conditions by increasing or decreasing the recommended distances.

445. In Section 6C.05 Transition Area, the FHWA proposed in the NPA an OPTION that stated that vehicle-mounted traffic control devices may be used instead of channelizing devices to establish a transition area. The NCUTCD opposed the proposal, while a State DOT and two local DOTs agreed with the proposal. A State DOT and a transportation research institute recommended that the statement be upgraded to GUIDANCE. The FHWA disagrees with changing this provision to GUIDANCE at this time but might consider proposing it for a future rulemaking. The FHWA in this final rule adopts paragraph 03 as an OPTION to allow the use of vehicle-mounted traffic control devices to establish a transition area because portable devices can be more practical for mobile operations.

446. In Section 6C.07 Termination Area, the FHWA proposed in the NPA to revise the STANDARD to clarify the use of a termination area. A State DOT and a transportation research institute opposed the existing STANDARD requiring that termination areas be used, because they are not required in all instances. The FHWA agrees with the comment and in this final rule changes the STANDARD to SUPPORT, because the termination area is not specific and is not used in all cases.

447. In Section 6C.08 Tapers, the FHWA proposed in the NPA to add GUIDANCE to recommend that the length of a short taper used with flagger operations should be a minimum of 50 feet. While a local DOT agreed with the revision, a State DOT opposed the change and suggested no set minimum taper length, in order to allow more flexibility on low-volume and low-speed local roads. The FHWA believes that a taper shorter than 50 feet long does not provide any guidance information to approaching road users, and therefore in this final rule adopts the proposed GUIDANCE in paragraph 15. The FHWA also adopts a recommended minimum taper length of 50 feet for one-lane, two-way traffic tapers in Table 6C–3 and illustrates the recommended minimum taper length in several figures in Part 6.

In addition, the FHWA proposed in the NPA to add GUIDANCE that a downstream taper with a length of approximately 100 feet should be used to guide traffic back into their original lane. Two State DOTs opposed the proposal because they believe a downstream taper is not always necessary. The FHWA notes that the statement only applies to flagger operations and this taper is very important to provide positive guidance to vehicles after they pass the lane closure. Based on comments from ATSSA, a State DOT, and a transportation research institute, the FHWA adopts a revised GUIDANCE in this final rule that does not include the word ''approximately'' as indicated above and recommends that a length of 100 feet should be used for a downstream taper.

448. In Section 6C.10 One-Lane, Two-Way Traffic Control, the FHWA proposed in the NPA to add an OPTION to explicitly allow for the movement of traffic to be self-regulating through a one-lane, two-way constriction, provided that the work space is short and is on a low-volume street or road, and that road users from both directions are able to see the traffic approaching from the opposite direction through and beyond the work site. The FHWA proposed this change to provide practitioners with more flexibility on low-volume, low-speed roads. While two local DOTs opposed the change, four State DOTs, a local DOT, and a transportation research institute agreed with the proposal. The FHWA adopts this proposal in this final rule, but acknowledges that, since this is an OPTION, an agency may prohibit the use of this OPTION within its jurisdiction. Based on comments from a State DOT and a transportation research institute, the FHWA also deletes a SUPPORT statement that was in the 2003 MUTCD because it is no longer necessary with the new OPTION adopted in paragraph 05.

449. In the NPA, the FHWA proposed to relocate the STANDARD in Section 6F.54 of the 2003 MUTCD regarding the PILOT CAR FOLLOW ME Sign and flaggers in activity areas where a pilot car is being used, to Section 6C.13 Pilot Car Method of One-Lane, Two-Way Traffic Control. In response to a comment from a State DOT, the FHWA adopts in this final rule a revised paragraph 04 to require that a flagger shall be stationed ''to control'' rather than ''to stop'' vehicular traffic until the pilot vehicle is available. The FHWA also retains Section 6F.58 PILOT CAR FOLLOW ME Sign in this final rule with the first sentence of the existing STANDARD and a reference to Section 6C.13, as discussed in item 475 below.

450. As proposed in the NPA, the FHWA in this final rule relocates several paragraphs related to accessible pedestrian facilities from Section 6D.01 Pedestrian Considerations to Section 6D.02 Accessibility Considerations, in order to consolidate related information into one section.

Based on a comment from the NCUTCD, the FHWA relocates an existing GUIDANCE from Section 6D.02 to Section 6D.01 that list the pedestrian considerations that should be addressed when temporary pedestrian pathways in TTC zones are designed or modified, in order to consolidate pedestrian consideration information into one section. In this final rule, paragraph 11 in Section 6D.01 contains the relocated GUIDANCE.

451. In Section 6D.01 Pedestrian Considerations, the FHWA proposed in the NPA to relocate a statement from Section 6G.11 of the 2003 MUTCD that accessibility and detectability shall be maintained along an alternate pedestrian route if a TTC zone affects an accessible and detectable pedestrian facility. This is an existing provision of the ADAAG.[185] The FHWA in this final rule adopts the proposed relocation. Based on a comment from the NCUTCD, the FHWA also retains the first sentence of paragraph 04, which states that adequate pedestrian access and walkways shall be provided if the TTC zone affects the movement of pedestrians.

452. In Section 6D.03 Worker Safety Considerations, the FHWA proposed in the NPA a new STANDARD to incorporate into the MUTCD the provisions of title 23 CFR part 634 regarding the use of high-visibility safety apparel by workers within the public right-of-way. The NCUTCD recommended revising paragraph 04 to clarify that the required use of high-visibility apparel also applied to emergency responders and that exposure of workers to ''work vehicles'' within the TTC zone also requires the use of high-visibility safety apparel. In this final rule, the FHWA adopts a revised STANDARD that incorporates into the MUTCD the provisions of title 23 CFR part 634 that were published as a Final Rule in the **Federal Register** on June 15, 2009 [186] and the recommended revisions by the NCUTCD. The FHWA also adopts a new OPTION as proposed in the NPA in paragraph 05 that allows first responders and law enforcement personnel to use safety apparel meeting a newly-developed American National Standards Institute (ANSI) standard for ''public safety vests,'' because this type of vest will better meet the special needs of these personnel. In the NPA, the FHWA referenced the provisions of title 23 CFR part 634 that were published in the **Federal Register** on November 24, 2006.[187] The NCUTCD, five State DOTs, two local DOTs, two fire departments, and a transportation research institute agreed with the proposal, but recommended modifications. Numerous firefighting associations and organizations, police associations, and citizens opposed the proposed change, primarily because of a concern that the safety apparel would have to be worn over turn-out gear during emergency operations that involve exposure to flame, fire, or other hazards. The 2006 **Federal Register** notice was amended with a Final Rule on June 15, 2009, to exempt firefighters from the requirement to use high-visibility safety apparel when they are exposed to hazardous conditions where the use of the apparel might increase the risk of injury to firefighter personnel. In this final rule, the FHWA revises the STANDARD in paragraph 07 and adds an OPTION in paragraph 08 that describes the exemption for firefighters from the requirement to use high-visibility safety apparel in certain conditions. The FHWA establishes a target compliance date of December 31, 2011 (approximately two years from the effective date of this final rule) for worker apparel on non-Federal-aid highways, which is consistent with the two-year compliance period that was provided for Federal-aid highways in title 23 CFR part 634. Required compliance of apparel for workers, including law enforcement officers, on Federal-aid highways has been in effect since November 24, 2008, pursuant to title 23 CFR part 634.

453. In Section 6E.02 High-Visibility Safety Apparel, the FHWA proposed in the NPA several changes regarding the use of high-visibility safety apparel by flaggers during daytime and nighttime activity, as well as by law enforcement personnel within a TTC zone, to reflect the provisions of title 23 CFR part 634 (see items 441 and 452 above). The NCUTCD and a local DOT recommended revising the reference to the ANSI 107 publication throughout the section to remove ''or equivalent revisions.'' The FHWA agrees and adopts in this final rule the reference to the ANSI 107–2004 publication, which is the latest version of the of the ANSI 107 standard. Based on a comment from a State DOT, the FHWA revises paragraph 01 to include a combination of orange-red and fluorescent yellow-green as an approved apparel background material color combination. The FHWA establishes a target compliance date of December 31, 2011 (approximately two years from the effective date of this final rule) for flagger apparel on non-Federal-aid highways. Required compliance of apparel for workers, including law enforcement officers, on Federal-aid highways has been in effect since November 24, 2008, pursuant to title 23 CFR part 634.

454. In Section 6E.03 Hand-Signaling Devices, the FHWA proposed in the NPA to add SUPPORT and GUIDANCE statements to clarify that it is recommended to place a STOP/SLOW paddle on a rigid staff, with a minimum length of 7 feet, in order to display a STOP or SLOW message that is stable and high enough to be seen by approaching or stopped traffic. A State DOT, three local DOTs, and a traffic control device manufacturer agreed with the proposal. The NCUTCD, ATSSA, 11 State DOTs, a transportation research institute, and an NCUTCD member opposed the proposed minimum recommended height, citing concerns about the ability of a flagger to control the paddle on such a long staff, especially in windy conditions. The FHWA agrees with these concerns and does not adopt in this final rule the proposed GUIDANCE that included a

[185] The Americans with Disabilities Accessibility Guidelines (ADAAG) can be viewed at the following Internet Web site: *http://www.access-board.gov/ada-aba/index.htm.*

[186] The **Federal Register** Notice for the Final Rule, dated June 15, 2009 (Volume 74, Number 113, Page 28160–28161) can be viewed at the following Internet Web site: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2009_register&docid=fr15jn09-7.pdf.*

[187] The **Federal Register** Notice for the Final Rule, dated November 24, 2006 (Volume 71, Number 226, Page 67792–67800) can be viewed at the following Internet Web site: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2006_register&docid=E6-19910.pdf.*

recommended specific minimum height of 7 feet. The FHWA adopts a SUPPORT in paragraph 04 to note that the optimum method of displaying a STOP or SLOW message is to place the STOP/SLOW paddle on a rigid staff that is tall enough to be seen by approaching or stopped traffic.

A contractor noted that flags for TTC are normally sold in a red/orange color instead of the red color that is required in the 2003 MUTCD. Based on the comment, the FHWA adopts a revised STANDARD in paragraph 09 that includes red or fluorescent orange/red as acceptable colors for flags.

The FHWA also proposed in the NPA an OPTION to allow the use of a flashlight with a red glow cone at night to supplement the STOP/SLOW paddle or flags. A State DOT opposed the proposal because of concerns that glow cones do not give positive guidance at night. A State DOT and a transportation research institute recommended revising the statement to specify that the flashlight is only to be used at night in an emergency operation when the flagger station is not illuminated. The FHWA agrees with the commenters and in this final rule adopts a revised paragraph 12, as recommended by the commenters. A State DOT and a transportation research institute recommended new language to describe methods of signaling with a flashlight in an emergency when the flagger station is not illuminated. The FHWA agrees and in this final rule adopts a new STANDARD with three methods of signaling with a flashlight to provide consistency with the other commonly used flagging procedures using other hand signaling devices. Signaling with a flashlight is an optional flagging procedure, but if a highway agency chooses to allow it, the FHWA believes that it is critical to include uniform methods of flashlight signaling so that road users are not confused in work zone flagging operations. The flashlight signaling methods are those that are in common use.

455. In the NPA, the FHWA proposed to add three new sections following Section 6E.03: Section 6E.04 Automated Flagger Assistance Devices, Section 6E.05 STOP/SLOW Automated Flagger Assistance Devices, and Section 6E.06 Red/Yellow Lens Automated Flagger Assistance Devices. Automated Flagger Assistance Devices (AFADs) are optional devices that enable a flagger(s) to be positioned out of the lane of traffic and are used to control road users through TTC zones. Four State DOTs, two local DOTs, ATSSA, and three construction-related companies agreed with the proposed addition of AFADs to the MUTCD. A State DOT, a local DOT, and an NCUTCD member opposed the inclusion of AFADs in the MUTCD because of a lack of experimentation and reliability. The FHWA disagrees and notes that this device has been used with an Interim Approval in many jurisdictions for approximately five years and no operational problems have ever been reported. The FHWA adopts in this final rule the AFAD sections into the MUTCD, based on FHWA's revised Interim Approval, dated January 28, 2005.[188]

456. In Section 6E.04 Automated Flagger Assistance Devices, the FHWA in the NPA proposed to allow the use of AFADs. The NCUTCD opposed the proposal to allow AFADs that use red and yellow lenses. Two State DOTs, a highway safety institute, eight construction-related companies, and an NCUTCD member recommended allowing AFADs that use red and yellow lenses and the FHWA agrees. Both types of AFADs have been used with the FHWA's revised Interim Approval, dated January 28, 2005,[189] and no operational problems have been reported with either device. The FHWA adopts the section including both types of AFADs into the MUTCD in this final rule.

The FHWA in this final rule does not adopt the NPA proposed GUIDANCE that recommended that AFADs should only be used after an engineering study determines they are appropriate. The NCUTCD, four State DOTs, a local DOT, and ATSSA recommended the removal of the statement and the FHWA agrees that an engineering study is not necessary for each individual use of AFADs.

The FHWA in the NPA proposed a STANDARD prohibiting AFADs from being a substitute for or a replacement for a continuously operating temporary traffic control signal. The NCUTCD opposed the proposed STANDARD. The FHWA disagrees and adopts the proposal in this final rule because it believes that paragraph 07 emphasizes the point that AFADs are to assist the flagger and not to be operated independently.

The FHWA does not adopt in this final rule the NPA proposed condition that AFADs be less than 800 feet apart to allow a single flagger to simultaneously operate two AFADs or simultaneously operate a single AFAD at one end while being a flagger at the other end of the TTC zone. A State DOT, ATSSA, and a construction-related company recommended that the distance be increased to 1,500 feet apart based on successful tests. The NCUTCD recommended that the proposed distance limitation be deleted. The FHWA disagrees with increasing the maximum distance to 1,500 feet because documentation of effects from such an increase has not been provided. However, the FHWA agrees with the NCUTCD that there is also no reason to have a specific number of feet as a maximum distance, because there is a wide variability of conditions under which AFADs are used and engineering judgment can suffice. Therefore, the FHWA adopts paragraph 14 without the item C that was proposed in the NPA.

The FHWA does not adopt in this final rule the NPA proposed GUIDANCE recommending that an AFAD be removed from its normal operating position when not in use. The NCUTCD and three State DOTs recommended that the statement be upgraded to a STANDARD. The FHWA notes that there is a STANDARD in Section 6B.01 that requires that TTC devices be removed or covered when work is suspended for short periods of time.

The FHWA proposed in the NPA to recommend that a State or local agency that elects to use AFADS should adopt a policy governing AFAD applications. Based on comments from the NCUTCD and a local DOT, the FHWA in this final rule adopts a revised paragraph 17 to add the phrase ''based on engineering judgment'' to recommend that a State or local agency that elects to use AFADs should adopt a policy, based on engineering judgment, governing AFAD applications.

457. In Section 6E.05 STOP/SLOW Automated Flagger Assistance Devices, the FHWA proposed in the NPA to provide STANDARDS and GUIDANCE for the use of a remotely controlled STOP/SLOW sign on either a trailer or a movable cart system and a gate arm. One flagging company opposed the STOP/SLOW variety of AFAD because it could present problematic situations. The FHWA disagrees and notes that this device has been used with an Interim Approval (as discussed above) for approximately five years and no operational problems have been reported. The FHWA adopts the section concerning the STOP/SLOW AFAD in the MUTCD in this final rule.

Four State DOTs commented on the proposed height of 6 feet to the bottom of the STOP/SLOW sign and recommended that it match the proposed height of 7 feet for the flagger paddle. As discussed above in item 454,

[188] The Revised Interim Approval notice can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/pdfs/ia_afads012705.pdf.*

[189] The Revised Interim Approval notice can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/pdfs/ia_afads012705.pdf.*

the FHWA does not adopt in this final rule a specific height for the flagger paddle, so consistency is no longer an issue. The FHWA adopts paragraph 02 as proposed in the NPA.

The NCUTCD and a State DOT recommended removing the Stop Beacon from the proposed list of active conspicuity devices that shall supplement the AFAD's STOP/SLOW sign. The FHWA disagrees and notes that the decision was made to keep the Stop Beacon rather than change to a steady burn red indication because the Stop Beacon is appropriate for use with a STOP sign, which is the sign used in this variety of AFAD. In this final rule, the FHWA adopts the Stop Beacon in the list of supplemental active conspicuity devices in paragraph 04 item B as proposed in the NPA.

In the NPA, the FHWA proposed a STANDARD to require that a gate arm, if used, shall be covered with alternating red and white retroreflective stripes at 6-inch intervals. The NCUTCD and four State DOTs recommended changes to the NPA proposed language for gate arms that should accompany the STOP/SLOW AFAD. Based on these comments, the FHWA adopts in this final rule a revised paragraph 11 to require that gate arms, if used, shall be fully retroreflectorized on both sides and that the retroreflective strips shall be spaced at 16-inch intervals. Similar changes are also adopted in Section 6E.06.

458. In Section 6E.06 Red/Yellow Lens Automated Flagger Assistance Devices, the FHWA in the NPA proposed a new section allowing the use of remotely controlled red and yellow lenses with a gate arm. The NCUTCD and an NCUTCD member opposed the proposed red/yellow lens type of AFADs. The FHWA disagrees and notes that this device has been used with an Interim Approval (as discussed above) for approximately five years and no operational problems have ever been reported. The FHWA adopts in this final rule the new section as proposed in the NPA with editorial changes.

459. In Section 6E.07 Flagger Procedures, the FHWA proposed in the NPA to add a STANDARD that flaggers shall use a STOP/SLOW paddle, flag, or an AFAD to control road users approaching a TTC zone, and that the use of hand movements alone is prohibited. This additional language was proposed to protect the safety of workers and road users, and reinforces that hand movements alone are not an acceptable flagging method. The NCUTCD and a local DOT opposed the reference to AFADs in the proposal. The FHWA notes that with the addition of AFADs to the MUTCD, an AFAD is an acceptable device for a flagger. Two local DOTs agreed with the prohibition of hand movements alone for flaggers. Four State DOTs, three local DOTs, a member of the U.S. House of Representatives, and an NCUTCD member opposed the prohibition of the use of hand movements alone and recommended an exemption for law enforcement and emergency situations. The FHWA in this final rule adopts a modified paragraph 02 that prohibits the use of hand movements alone, but establishes an exception for law enforcement personnel or emergency responders at incident scenes.

The FHWA also proposed in the NPA to revise a GUIDANCE to recommend that a flagger should stand alone, away from other workers. Based on a comment from a State DOT and for consistency with normal work zone worker safety practices, the FHWA in the final rule adopts paragraph 06 to also recommend that flaggers should stand away from work vehicles or equipment.

460. In Section 6E.08 Flagger Stations, the FHWA proposed in the NPA to add to the GUIDANCE that an escape route for flaggers should be identified. Based on comments from two State DOTs, the FHWA adopts in this final rule a revised paragraph 03 to state that the flagger should identify an escape route for protection from errant vehicles to clarify why the escape route is necessary.

Discussion of Amendments Within Chapter 6F

461. In Table 6F–1 Temporary Traffic Control Zone Sign and Plaque Sizes, the FHWA proposed in the NPA to adopt revised sign sizes in the Freeway or Expressway column and in the Minimum column for several signs. A State DOT, ATSSA, and a transportation research institute recommended additional sign size changes to make the signs more legible for drivers with 20/40 visual acuity and to assure that the signs are large enough to use for TTC on high-speed freeways. The FHWA agrees and in this final rule adopts the changes for consistency with the adopted sign sizes in Part 2.

A State DOT and a transportation research institute also recommended adding to the Freeway or Expressway column a sign size of 48 inches for the Stop sign and 24 inches for the Stop sign on a Stop/Slow Paddle because there are applications for Stop signs in freeway/expressway TTC applications. The FHWA agrees that this is appropriate and consistent with provisions in Chapter 2B and revises the table in this final rule.

462. In Section 6F.02 General Characteristics of Signs, the FHWA proposed in the NPA to expand a STANDARD to require that the minimum sign sizes shown in Table 6F–1 shall only be used on local streets or roadways where the 85th percentile speed or posted speed limit is less than 35 mph. A State DOT agreed with the change. A local DOT recommended that the 85th percentile speed be used exclusively. The FHWA disagrees because relying only on the 85th percentile speed would require an agency to do a speed study on all streets and roadways, which is impractical. The FHWA adopts in this final rule paragraph 09 as proposed in the NPA.

463. In Section 6F.03 Sign Placement, the FHWA proposed in the NPA to add additional language discussing the minimum mounting heights for TTC signs. A State DOT, two local DOTs, and an NCUTCD member questioned why the mounting height requirements were not consistent with Part 2. Based on the comments, the FHWA in this final rule adopts revisions to paragraphs 04, 05, and 06 to match the language from Section 2A.18 for consistency.

464. In Section 6F.04 Sign Maintenance, a State DOT and a consultant recommended that the existing STANDARD statement be revised to GUIDANCE to be consistent with Section 2A.22 and that Section 2A.08 be referenced concerning minimum retroreflectivity. The FHWA agrees and adopts paragraphs 01 and 02 as GUIDANCE and adds a SUPPORT that references Section 2A.08 in this final rule.

465. The FHWA proposed in the NPA a new section numbered and titled Section 6F.12 Work Zone and Higher Fines Signs and Plaques, which describes the use of the plaques supplementing a Speed Limit sign to emphasize that a reduced speed limit is in effect within a TTC zone and that increased fines are imposed for traffic violations within the TTC zone. Based on comments from two State DOTs, the FHWA revises one of the proposed OPTIONS to a GUIDANCE to recommend, rather than merely allow, that a BEGIN HIGHER FINES ZONE sign should be installed at the upstream end of a work zone where increased fines are imposed for traffic violations and an END HIGHER FINES ZONE sign should be installed at the downstream end of the work zone. The FHWA adopts this language in this final rule consistent with the language adopted in Sections 2B.17 and 7B.10.

466. In Section 6F.23 CENTER LANE CLOSED AHEAD Sign, a State DOT and a transportation research institute

recommended removing the existing Center Lane Closed Ahead (W9–3a) symbol sign because the symbol sign was confusing in its meaning. Although this was not proposed in the NPA, the FHWA agrees and in this final rule removes the OPTION for using the sign and revises the title of the section. This symbol has not undergone human factors testing to confirm that its meaning can be comprehended by road users. The FHWA also removes the symbol sign from Figures 6F–4 and 6H–38 in this final rule.

467. In the NPA, the FHWA proposed to add a new section numbered and titled Section 6F.30 NEW TRAFFIC PATTERN AHEAD Sign, which describes the optional use of the NEW TRAFFIC PATTERN AHEAD sign to provide advance warning of a change in traffic patterns, such as revised lane usage, roadway geometry, or signal phasing. A local DOT and ATSSA supported the addition of the new sign. A State DOT and a consultant opposed the new sign and preferred signs that are more descriptive. The FHWA disagrees and notes that a more specific word message can be used if appropriate. The FHWA in this final rule adopts the proposed OPTION in paragraph 01. Based on comments from two DOTs that a maximum time limit on display of the sign is needed, the FHWA adopts in this final rule a new GUIDANCE in paragraph 02 to recommend that, in order to retain its effectiveness, the sign should be displayed for up to 2 weeks and then be removed.

468. In Section 6F.31 Flagger Signs, the FHWA proposed in the NPA to add an OPTION to allow Flagger signs to remain displayed to road users for up to 15 minutes when flagging operations are not occurring under certain circumstances. While two State DOTs and a local DOT agreed with the proposal, three other State DOTs and another local DOT opposed the proposal. In addition, a State DOT, ATSSA, and a transportation research institute recommended that the proposed 15-minute time period should be increased to 30 minutes. The FHWA decides not to adopt the proposed OPTION in this final rule and also deletes an existing STANDARD that stated that the Flagger sign shall be removed, covered, or turned away from road users when the flagging operations are not occurring. The FHWA notes that this sign is no different from other TTC signs and there is an existing provision in Section 6B.01 that addresses removal of signs that are no longer applicable.

469. In Section 6F.44 Shoulder Signs and Plaque, the FHWA proposed in the NPA a Shoulder Drop-Off symbol (W8–17) sign with a SHOULDER DROP-OFF (W8–17p) supplemental plaque. Consistent with the adopted changes to Chapter 2C, the FHWA in this final rule adopts the W8–17 symbol sign as the Shoulder Drop-Off warning sign with a SHOULDER DROP-OFF (W8–17p) supplemental plaque and deletes the SHOULDER DROP-OFF word message sign (W8–9a in the 2003 MUTCD).

470. In Section 6F.45 UNEVEN LANES Sign, the FHWA proposed in the NPA an optional Shoulder Drop-Off symbol sign (W8–17) with an UNEVEN LANES supplemental plaque that could be used instead of the UNEVEN LANES word sign. Two State DOTs, a local DOT, and ATSSA agreed with the proposal. Three other State DOTs, three local DOTs, and an NCUTCD member opposed the new sign because the meaning was unclear. Consistent with the adopted changes to Chapter 2C, the FHWA in this final rule adopts the W8–17 symbol sign as the Shoulder Drop-Off warning sign. The FHWA in this final rule does not adopt the UNEVEN LANES (W8–11p) supplemental plaque that was proposed in the NPA, and retains the existing W8–11 UNEVEN LANES word message sign.

471. The FHWA proposed in the NPA to add a new STEEL PLATE ON PAVEMENT (W8–24) sign in Section 6F.45. A State DOT recommended that a separate section be added specifically for this sign. The FHWA agrees and in this final rule renames the sign and relocates the text to a new section, numbered and titled Section 6F.46 STEEL PLATE AHEAD Sign.

472. In Section 6F.47 NO CENTER LINE Sign (numbered Section 6F.46 in the NPA), a State DOT recommended revising the existing title and sign name from NO CENTER STRIPE to NO CENTER LINE to better describe what the sign is used for. The FHWA agrees and adopts a revised name for the title and sign, for consistency with similar adopted changes in Chapter 2C. The FHWA also adopts revisions to the sign in Figure 6F–4.

473. In the NPA the FHWA proposed a new section, numbered and titled Section 6F.48 Reverse Curve Signs (numbered Section 6F.47 in the NPA), that contained OPTION and STANDARD statements describing the use of the Reverse Curve signs to give road users advance notice of a lane shift. The NCUTCD, five State DOTs, two local DOTs, a transportation research institute, and three NCUTCD members recommended changes to the proposed section, including changing the proposed STANDARD to GUIDANCE, and limiting the number of lanes displayed on the multi-lane versions of the sign. Based on the comments, the FHWA adopts in this final rule the proposed section, adds an OPTION to allow the use of a new ALL LANES (W24–1cP) plaque with the W1–4 sign, and adds an OPTION to allow a rectangular version of the multi-lane sign if there are more than three lanes being shifted. The FHWA also adopts a new GUIDANCE that recommends the Reverse Turn (W1–3) sign if the design speed of the curve is 30 mph or less to be consistent with the existing GUIDANCE for Typical Applications in Chapter 6H. The FHWA in this final rule also adopts revised language in Section 6F.49 Double Reverse Curve Signs that match the adopted language in Section 6F.48. The FHWA revises Figure 6F–4 to include the new ALL LANES plaque.

474. In Figure 6F–4 Warning Signs in Temporary Traffic Control Zones, the FHWA adopts in the final rule revisions to warning signs and plaques in the figure based on adopted changes to Chapter 6F and Part 2.

475. In the NPA, the FHWA proposed to relocate all of the information from Section 6F.58 PILOT CAR FOLLOW ME Sign (numbered Section 6F.54 in the 2003 MUTCD), to Section 6C.13, because the information is related specifically to pilot cars, which are covered in Section 6C.13. A State DOT opposed the proposed deletion of the section from Chapter 6F. In this final rule, the FHWA retains the first sentence of the existing STANDARD in Section 6F.58 and adds a reference to Section 6C.13 for details on the usage of this sign.

476. In Section 6F.60 Portable Changeable Message Signs (numbered Section 6F.57 in the NPA) the FHWA proposed in the NPA to change paragraph 01 from STANDARD to SUPPORT because this statement just provides information, rather than requirements. The FHWA proposed to change paragraph 07 from GUIDANCE to STANDARD in order to require that Portable Changeable Message signs comply with specific chapters and tables in the MUTCD. The FHWA proposed to revise several GUIDANCE paragraphs to clarify the recommendations for messages and phases, and to clarify that Portable Changeable Message signs should be placed off the shoulder of the roadway and behind a traffic barrier. The FHWA also proposed to delete the existing OPTION allowing smaller letter sizes on Portable Changeable Message signs and multiple signs to display an entire message because the proposed GUIDANCE updates this information. The FHWA proposed a new

STANDARD in the NPA, but adopts it as GUIDANCE in paragraph 17 in this final rule to recommend, rather than require, the number of phases and number of lines, placement of message within each line, techniques for message display, and interaction between signs if more than one is simultaneously visible to road users. The FHWA adopts the other changes proposed for this section in the NPA in this final rule to be consistent with the adopted changes for permanent Changeable Message signs in new Chapter 2L, but with differences to suit the special nature of Portable Changeable Message Signs. These changes are based on extensive research on changeable message sign legibility, messaging, and operations conducted over a period of many years by the Texas Transportation Institute.[190] The FHWA did not receive any comments on the proposed changes to this section.

477. In Section 6F.61 Arrow Boards (numbered Section 6F.58 in the NPA), the FHWA proposed to revise the GUIDANCE in paragraph 09 to clarify the measurement for the minimum mounting height of an arrow board. A State DOT recommended replacing the word ''panel'' with ''board.'' The FHWA agrees and in this final rule replaces the word ''panel'' with ''board'' throughout the section, including in the title because the device is most commonly known by that term and because ''panel'' is defined in the adopted definitions in Section 1A.13 as applying to static signs.

A local DOT recommended revising the existing STANDARD that prohibited the use of arrow boards from being used to laterally shift traffic because the existing language is confusing. The FHWA agrees and adopts in this final rule a modified paragraph 25 to require that arrow boards shall only be used to indicate a lane closure and that they shall not be used for lane shifts, for consistency with other requirements.

A State DOT requested that the ''Alternating Diamond'' mode be added to the approved list of mode selections on an arrow board for consistency with the addition of this type of display in Figure 6F–6, as discussed below. The FHWA agrees and adopts a modified paragraph 16 item C to include the Alternating Diamond mode.

478. In Figure 6F–6 Advance Warning Arrow Board Display Specifications, the FHWA proposed in the NPA the Alternating Diamond display as one of the options for a Flashing Caution display. Two State DOTs and a local DOT agreed with the proposal. A State DOT and a local DOT opposed the proposed change because they believe the display could cause driver confusion and because the symbol is already used for HOV facilities and could create an inconsistent message. The FHWA disagrees and notes that experimentation did not identify this issue as a problem and that it is only an option for an agency to use. The FHWA adopts the Alternating Diamond in this final rule as an option for a Flashing Caution display.

479. In Section 6F.63 Channelizing Devices (numbered Section 6F.60 in the NPA), the FHWA proposed in the NPA to add a STANDARD in paragraph 01 that all channelizing devices shall be crashworthy. A local DOT agreed with the change. The FHWA adopts in this final rule the STANDARD as proposed in the NPA. Based on a comment from a State DOT and a transportation research institute, the FHWA also deletes an existing GUIDANCE stating that channelizing devices should be crashworthy because it would be contradictory to the new STANDARD.

The NCUTCD, two State DOTs, and an NCUTCD member suggesting revised language for the STANDARD in paragraph 05 concerning channelizing devices used to channelize pedestrians to be consistent with the STANDARD proposed in Section 6F.68. Another State DOT commented that the proposed text in paragraph 05 on channelizing pedestrians was ambiguous. The NCUTCD, a State DOT, and an NCUTCD member also recommended retaining an existing OPTION in Section 6F.60, which the FHWA proposed in the NPA to relocate to Section 6F.68, regarding the height of the gap between the bottom rail and the ground surface that may be used to facilitate drainage in the section, and recommended revising the allowable gap from 6 inches to 2 inches. The FHWA agrees with all of these comments and in this final rule adopts a revised paragraph 05 that relocates to Section 6F.63 the STANDARD that was proposed in Section 6F.68 to simplify the requirements for the placement of channelizing devices for channelizing pedestrians. The FHWA also adopts a revised OPTION that allows a gap of up to 2 inches to comply with Section 6F.74 and relocates to Section 6F.63 the OPTION that was proposed in Section 6F.68.

480. In Section 6F.64 Cones (numbered Section 6F.61 in the NPA), the NCUTCD recommended deleting the existing GUIDANCE concerning the use of cones for pedestrian channelization or pedestrian barriers in TTC zones, to be consistent with adopted language in Section 6D.01. The FHWA agrees and removes the GUIDANCE in this final rule.

481. In Section 6F.65 Tubular Markers (Section 6F.62 in the NPA), the FHWA in the NPA proposed to revise the STANDARD in paragraph 03 to expand the requirements for reflectorization bands on tubular markers. The NCUTCD and a State DOT suggested increasing the maximum distance from the orange band to the top of the tubular marker from 4 inches to 6 inches to be consistent with the requirement for retroreflective stripes on drums. The FHWA agrees and adopts in this final rule a revised STANDARD to be consistent with the retroreflective striping of other devices.

The NCUTCD recommended deleting the existing GUIDANCE concerning the use of tubular markers for pedestrian channelization or as pedestrian barriers in TTC zones, to be consistent with the language adopted in Section 6D.01. The FHWA agrees and deletes the GUIDANCE in this final rule.

A State DOT suggested deleting the existing STANDARD that described the use of a noncylindrical tubular marker, because it was redundant and conflicted with the previous STANDARD. The FHWA agrees and in this final rule removes the paragraph as suggested.

482. In Section 6F.66 Vertical Panels (Section 6F.63 in the NPA), the FHWA proposed in the NPA to require that the dimensions listed in the section refer to the ''retroreflective material'' on the vertical panels. The FHWA adopts the STANDARDS in the final rule with additional revisions that better clarify the intent of the section.

In the NPA, the FHWA proposed to change an OPTION to a STANDARD to require, rather than merely permit, a panel stripe width of 4 inches to be used where the height of the reflective material on a vertical panel is 36 inches or less. Based on comments from a State DOT and an NCUTCD member that the proposed requirement was too restrictive, the FHWA in this final rule maintains the use of 4-inch wide panel stripes as an OPTION for vertical panels that are 36 inches in height or less.

483. In Section 6F.67 Drums (numbered Section 6F.64 in the NPA), the FHWA proposed in the NPA to change a GUIDANCE to a STANDARD to prohibit weighting drums with sand, water, or any material to the extent that would make them hazardous to road users or workers when struck. As part of this change, the FHWA also proposed to delete another GUIDANCE discussing the use of drain holes to prevent water

[190] Information on the many research projects on changeable message signs conducted by the Texas Transportation Institute (TTI) can be accessed via TTI's Internet Web site at: *http://tti.tamu.edu/*.

from accumulating and freezing. This recommendation is not necessary since there is a STANDARD that requires drums to have a closed top, thus reducing the possibility of any water actually accumulating in the device. A local DOT supported the proposal. Two State DOTs, five local DOTs, and a consultant opposed the proposed changes because the word ''hazardous'' is too subjective for a STANDARD statement. The FHWA in this final rule retains the existing text from the 2003 MUTCD in paragraph 04 and does not adopt the proposed changes. Based on a comment from the NCUTCD, the FHWA deletes an existing GUIDANCE concerning the use of drums for pedestrian channelization or pedestrian barriers in TTC zones, to be consistent with language adopted in Section 6D.01.

484. In Section 6F.68 Type 1, 2, or 3 Barricades (Section 6F.65 in the NPA), the FHWA proposed in the NPA a new STANDARD requiring continuous detectible bottom and top rails with no gaps on barricades that are used to channelize pedestrians. The FHWA also proposed to relocate an OPTION from Section 6F.63 to allow a gap of up to 6 inches between the bottom rail and the ground surface to facilitate drainage. Based on comments from a State DOT and a transportation research institute, the FHWA in this final rule revises the allowable gap in the OPTION to 2 inches to comply with Section 6F.74. Based on comments from the NCUTCD and a State DOT, the FHWA adopts and relocates the proposed STANDARD and OPTION statements to Section 6F.63, as described in item 479 above.

The NCUTCD, two State DOTs, a transportation research institute, and two local DOTs opposed the proposed STANDARD regarding barricade placement in conformance with application and installation requirements. The FHWA agrees and in this final rule does not adopt the proposed statement.

Based on comments from the NCUTCD and a State DOT, the FHWA in this final rule deletes an existing STANDARD and does not adopt the proposed GUIDANCE that discussed the use of ballasts. The FHWA agrees with the commenters that the information is already adequately covered elsewhere in Chapter 6F and does not need to be repeated in this section.

485. In Section 6F.70 Temporary Traffic Barriers as Channelizing Devices (numbered Section 6F.67 in the NPA), the FHWA proposed in the NPA to delete the STANDARD requiring that temporary traffic barriers be supplemented with delineation, pavement markings, or channelizing devices. A State DOT and a transportation research institute opposed the revision because the temporary barrier will be difficult to see at night without those traffic control devices. The FHWA agrees and in this final rule retains the existing provision.

In the NPA, the FHWA proposed to change a GUIDANCE to a STANDARD in order to prohibit, rather than discourage, the use of temporary traffic barriers for a merging taper, except in low-speed urban areas. The FHWA proposed this change to provide consistency on the use of temporary traffic barriers within this section. A State DOT opposed the proposed change. The FHWA agrees and retains the provision as GUIDANCE in this final rule due to inconsistency with other provisions. The FHWA notes that this section allows temporary traffic barriers to be used for a merging taper in low-speed urban conditions or for a constricted/restricted TTC zone.

The FHWA also proposed to add a new STANDARD that temporary traffic barriers shall be placed in conformance with the application and installation requirements for the specific device being used. The NCUTCD, two State DOTs, and a transportation research institute commented that this statement is not needed because, if a device is not in compliance with the application, then it is not in compliance with the MUTCD. The FHWA believes that the statement does not add anything to the meaning of the section and does not adopt the proposal in this final rule.

The FHWA proposed a new STANDARD statement requiring that temporary traffic barriers that are used to channelize pedestrians meet specific criteria that aid pedestrians with visual disabilities, to be consistent with requirements elsewhere in Part 6. The NCUTCD and a State DOT suggested deleting this provision because it is repetitive of Section 6F.74 while ATSSA suggested revising the provision to be consistent with Section 6F.74. The FHWA does not adopt proposed STANDARD in this final rule because it is repetitive of the language in Section 6F.74.

486. As proposed in the NPA, the FHWA in this final rule retitles Section 6F.71 (numbered Section 6F.68 in the NPA) to ''Longitudinal Channelizing Devices,'' to expand the section to include additional devices besides barricades that serve this purpose. The FHWA proposed in the NPA to remove an OPTION that allowed the devices to be hollow and filled with water as ballast. The NCUTCD, a State DOT, and six traffic control device companies opposed the proposed change because these devices are water filled devices. The FHWA agrees and in this final rule maintains the OPTION statement in the Manual.

The NCUTCD, two State DOTs, and a transportation research institute opposed a proposed STANDARD requiring that longitudinal channelizing devices be placed in compliance with the application and installation requirements of the device. Similar to the same issue discussed above in Section 6F.70, the FHWA does not adopt the proposed STANDARD because the FHWA decides that the proposed statement does not add any meaningful information to the section.

A State DOT and a transportation research institute recommended revising an existing statement to require, instead of recommend, that channelizing devices be interlocked if used for pedestrian control. The FHWA agrees and revises paragraph 07 from GUIDANCE to STANDARD in this final rule to be consistent with the adopted language in Section 6F.63.

Based on a comment from a State DOT, the FHWA adopts in the final rule paragraph 03 to recommend the use of retroreflective material or delineation on longitudinal channelizing devices when used to channelize vehicular traffic at night, consistent with similar provisions elsewhere in Part 6.

487. In the NPA, the FHWA proposed to add a new section, numbered and titled Section 6F.72 Temporary Lane Separators (numbered Section 6F.70 in the NPA), which describes the use of these optional devices that may be used to channelize road users, to divide opposing vehicular traffic lanes, to divide lanes when two or more lanes are open in the same direction, and to provide continuous pedestrian channelization. ATSSA and a traffic control device manufacturer agreed with the proposal. A State DOT, two local DOTs, a pedestrian/bicyclist organization, an NCUTCD member, and three citizens opposed the proposed section because they believe that temporary lane separators are not compatible with bicycle travel. The FHWA disagrees with the comments and notes that the device is optional and the agencies should determine whether or not to use it if there are problems with bicycle interaction. The FHWA adopts the proposed text in this final rule and relocates this section to be Section 6F.72, so it will precede Section 6F.73 Other Channelizing Devices (numbered Section 6F.69 in the NPA) for better organization of the chapter.

The FHWA also proposed in the NPA a STANDARD to restrict temporary lane separators to a maximum of 4 inches in

height and 1 foot in width. A local DOT agreed with the proposal. The NCUTCD, a State DOT, and an NCUTCD member recommended a minimum height of 2.5 inches for the devices. A traffic control device manufacturer opposed the recommendation from the NCUTCD and agreed with the NPA proposal. The FHWA decides to adopt in this final rule paragraph 02 as proposed in the NPA and notes that no reasoning was given for the proposed minimum height, which could eliminate devices currently in use.

The FHWA also proposed an OPTION to allow the use of approved channelizing devices to supplement temporary lane dividers. ATSSA recommended this statement be upgraded to GUIDANCE. A State DOT, a transportation research institute, and a traffic device manufacturer recommended this statement be upgraded to a STANDARD. The FHWA disagrees and notes that paragraph 03 addresses the visibility of temporary lane separators if supplemental channelizing devices are not used. The FHWA adopts the OPTION as proposed in the NPA.

A State DOT and a transportation research institute recommended a new STANDARD to require an opening in temporary lane dividers at pedestrian crossing locations. The FHWA agrees and adds paragraph 06 for consistency with ADAAG, which requires at least a 60-inch wide pathway for the crossing pedestrian.

488. In Section 6F.75 Temporary Raised Islands (numbered Section 6F.72 in the NPA), the FHWA proposed in the NPA to change the recommended width of temporary raised islands from at least 18 inches to at least 12 inches. This change facilitates the use of existing devices that have been successfully used in many applications. The NCUTCD recommended a width of 10 inches. The FHWA disagrees because no reasoning was provided for a smaller width than 12 inches. The FHWA adopts in this final rule the change to paragraph 04 as proposed in the NPA.

489. In Section 6F.77 Pavement Markings (numbered Section 6F.74 in the 2003 NPA), the FHWA proposed in the NPA to differentiate the usage of pavement markings in long-term stationary temporary traffic control zones from those used in intermediate-term and short-term temporary traffic control zones. For long-term stationary operations, the FHWA proposed to revise the existing STANDARD in paragraph 04 to require that obliteration of markings in the temporary traveled way that are no longer applicable shall remove ''all of the non-applicable pavement marking material, and the obliteration method(s) shall minimize pavement scarring.'' The NCUTCD and an NCUTCD member opposed the proposed change and recommended the statement be changed to GUIDANCE. The FHWA disagrees with the commenters and believes that removal of conflicting markings is essential for safety and that the NPA language is easier to understand. A State DOT opposed the use of the words ''all of'' because it is not practical. The FHWA agrees with the State DOT and in this final rule adopts the revised STANDARD in paragraph 04 as proposed in the NPA, with the exception of the words ''all of,'' which the FHWA does not adopt in this final rule.

490. In Section 6F.78 Temporary Markings (Section 6F.75 in the NPA), the FHWA proposed in the NPA in paragraph 02 to recommend that temporary pavement markings should not remain in place for more than 14 days after the application of the pavement surface treatment or the construction of the final pavement surface on new roadways or over existing pavements unless justified by an engineering study. Based on comments from the NCUTCD, two State DOTs, and an NCUTCD member, the FHWA replaces ''an engineering study'' with ''engineering judgment'' in the GUIDANCE adopted in this final rule to allow more flexibility.

In the NPA, the FHWA proposed to relocate an existing STANDARD from Section 6F.77 to Section 6F.78 that requires that all pavement markings and devices used to delineate road user paths shall be carefully reviewed during daytime and nighttime periods. The NCUTCD and an NCUTCD member recommended changing the STANDARD to GUIDANCE and removing the word ''carefully'' from the statement. The FHWA agrees that mandatory language is too restrictive in this case and adopts paragraph 06 in this final rule as GUIDANCE and removes the word ''carefully'' from the statement.

Based on a comment from a State DOT, the FHWA adopts a new GUIDANCE statement that recommends that the NO CENTER LINE sign, if used, should be placed in accordance with Section 6F.47. The FHWA adds paragraph 10 in this final rule to be consistent with the adopted GUIDANCE in Section 6F.47 that recommends the placement of the NO CENTER LINE sign at the beginning of the TTC zone and repeated at 2-mile intervals in long TTC zones when the work obliterates the center line pavement markings.

491. In Section 6F.79 Temporary Raised Pavement Markers (numbered Section 6F.76 in the NPA), the FHWA in the NPA proposed to add new STANDARD and GUIDANCE requiring the color of the raised pavement markers to simulate the color of the markings for which they substitute and that the pattern of the raised pavement markers should simulate the pattern of the markings for which they substitute. A local DOT agreed with the proposal. In this final rule, the FHWA adopts the two statements as a combined STANDARD in paragraph 02 to require that the color and pattern of the raised pavement markers to simulate the color and pattern of the markings for which they substitute, for consistency with similar provisions in Chapter 3B.

In the NPA, the FHWA proposed a STANDARD to describe the use of temporary raised pavement markers as a substitute for solid lines. The NCUTCD opposed the revision. The FHWA disagrees and believes that the proposed STANDARD in paragraph 04 improves clarity and in this final rule adopts the language as proposed in the NPA.

In the NPA, the FHWA proposed to allow the optional use of a less expensive pattern of raised pavement markers to substitute for a broken line marking and recommend that temporary raised pavement markers should not be in place for more than 14 days. A local DOT agreed with the proposal. The NCUTCD opposed the proposed OPTION. The FHWA disagrees and notes that the statement was removed from an existing STANDARD to make it an optional exception to the requirements of the STANDARD. A State DOT opposed the proposed GUIDANCE recommending a limit of 14 days for the devices. The FHWA disagrees and notes that it is consistent with the adopted language in Section 6F.78. The FHWA adopts in this final rule paragraphs 05 and 06 as proposed in the NPA.

492. In the NPA, the FHWA proposed to delete Section 6F.82 Floodlights (numbered Section 6F.76 in the 2003 MUTCD), because the FHWA believes that floodlights are not traffic control devices. Although a local DOT agreed with the proposal, the NCUTCD, three State DOTs, ATSSA, and a transportation research institute opposed the proposed deletion of the section because they believe the section provides useful information to the practitioner. The FHWA agrees to leave these types of devices in the MUTCD until a clear definition of traffic control devices is established in a future edition and in this final rule maintains the section as Section 6F.82 Floodlights,

with the same text from the 2003 MUTCD.

493. As proposed in the NPA, the FHWA in this final rule deletes Section 6F.77 (as numbered in the 2003 MUTCD) Flashing Warning Beacons. Two State DOTs and ATSSA opposed the proposal because they did not want the language regarding the device to be removed from the Manual. The FHWA disagrees with the commenters and notes that the material is already covered in Chapter 4L and does not need to be repeated in Part 6.

494. In Section 6F.83 Warning Lights (numbered Section 6F.79 in the NPA), the FHWA proposed in the NPA to revise a STANDARD to require that the 30-inch minimum mounting height for warning lights be measured vertically from the bottom of the lens to the elevation of the near edge of the pavement. Two State DOTs and a transportation research institute opposed the change because it would preclude the use of warning lights on drums. The FHWA agrees and in this final rule retains paragraph 11 with the language from the 2003 MUTCD.

495. The FHWA in this final rule deletes Section 6F.79 (as numbered in the 2003 MUTCD) Steady-Burn Electric Lamps, as proposed in the NPA. A local DOT agreed with the change. A State DOT and a transportation research institute opposed the change because the device has appropriate applications. The FHWA disagrees and notes that the only difference between other warning lights and the steady burn electric lamp is the power source and that it is not necessary to include both in the Manual.

496. In Section 6F.84 Temporary Traffic Control Signals (numbered Section 6F.80 in the NPA), the FHWA proposed in the NPA a new STANDARD requiring temporary traffic signals placed within 200 feet of a highway-rail grade crossing or a highway-light rail transit grade crossing to have preemption unless arrangements are made to prevent traffic from queuing across the tracks. A State DOT and a local DOT supported the proposal. Based on comments from a State DOT, a transportation research institute, a local DOT, and an NCUTCD member, the FHWA in this final rule adopts a modified paragraph 13 to require that a uniformed officer or flagger shall be required at the crossing to prevent vehicles from stopping within the crossing if the temporary traffic control signal is not provided with preemption.

497. The FHWA proposed in the NPA to delete Section 6F.86 Crash Cushions (numbered Section 6F.82 in the 2003 MUTCD) because the FHWA believes that crash cushions are not traffic control devices and that adequate and appropriate guidance on crash cushions and vehicle arresting systems is readily available in a variety of FHWA, AASHTO, ITE, and industry publications and Web sites. A local DOT agreed with the proposal. The NCUTCD, five State DOTs, ATSSA, and a transportation research institute opposed the deletion of the section because they believe it provides important information on the topic. The FHWA agrees to leave these types of devices in the MUTCD until a clear definition of traffic control devices is established in a future edition and in this final rule maintains the section as Section 6F.86 Crash Cushions with the 2003 MUTCD text.

498. As proposed in the NPA, the FHWA in this final rule deletes Section 6F.83 (as numbered in the 2003 MUTCD) Vehicle Arresting Systems because they are not traffic control devices. A local DOT agreed with the proposal. The NCUTCD, a State DOT, ATSSA, and a local DOT opposed the deletion of the section because they did not want the information removed from the Manual. The FHWA disagrees and believes that the section does not provide any useful traffic control device information for practitioners.

499. The FHWA proposed in the NPA to delete Section 6F.88 Screens (numbered Section 6F.85 in the 2003 MUTCD), because the FHWA believes that glare screens are not traffic control devices. A local DOT agreed with the proposal. The NCUTCD, four State DOTs, a local DOT, a transportation research institute, a consultant, and a citizen opposed the deletion of the section because it provides information about screens that is not provided elsewhere. The FHWA agrees to leave these types of devices in the MUTCD until a clear definition of traffic control devices is established in a future edition and in this final rule maintains the section as Section 6F.88 Screens with the text from the 2003 MUTCD.

500. As proposed in the NPA, the FHWA in this final rule deletes Section 6F.86 (as numbered in the 2003 MUTCD) Future and Experimental Devices, because such devices are already covered in Part 1. The NCUTCD agreed with the change. A State DOT, a local DOT, and a transportation research institute opposed the change because the public needs to understand that new TTC devices must go through an experimentation process before being used. The FHWA disagrees and notes that the information is already contained in Section 1A.10.

Discussion of Final Rule Amendments Within Chapters 6G Through 6I

501. In Section 6G.01 Typical Applications, the FHWA proposed in the NPA to add GUIDANCE in paragraph 04 recommending that a TTC plan should be developed for all planned special events in conjunction with and approved by the highway agency or agencies having jurisdiction over the affected roadways. The NCUTCD and a local DOT supported the language as proposed. A State DOT and four other local DOTs noted that law enforcement agencies approve traffic control plans in their area. To address this concern, the FHWA adopts in this final rule revised language that removes the specification that ''highway'' agencies approve TTC plans, leaving it flexible to have the appropriate agency having jurisdiction approve TTC plans. Two State DOTs, two local DOTs, an NCUTCD member, a transportation research institute, a pedestrian/bicyclist association, and three citizens opposed the language proposed in the NPA requiring that ''all'' special planned events have TTC plans. The commenters suggested that such language was too inclusive and should be limited only to those events affecting traffic operations. The FHWA agrees in part and adopts revised language in this final rule accordingly. For those events that will not have traffic impacts, the TCC plan will be minimal. The FHWA adopts these changes to help assure that proper traffic controls are installed when planned special events, such as parades, street fairs, farmers' markets, etc., impact traffic, and to respond to a National Transportation Safety Board (NTSB) report on this subject.[191]

502. In Section 6G.02 Work Duration, a State DOT requested clarification of the existing STANDARD and OPTION paragraphs on the treatments of mobile operations at speeds between 3 mph and 20 mph because it is unclear if the existing language applies to these speeds. The FHWA agrees that clarification is necessary and in this final rule revises the STANDARD in paragraph 22 to apply to the treatments of mobile operations for all speeds and deletes the last two OPTION paragraphs in the 2003 MUTCD.

503. In Section 6G.04 Modifications to Fulfill Special Needs, the FHWA proposed to remove the last GUIDANCE statement recommending that typical

[191] NTSB Report HAR–04/04, ''Rear End Collision and Subsequent Vehicle Intrusion into Pedestrian Space at Certified Farmers' Market, Santa Monica, California, July 16, 2003,'' dated August 3, 2004, can be viewed at the following Internet Web site: *http://ntsb.gov/publictn/2004/HAR0404.pdf.*

applications be modified where pedestrian or bicycle usage is high. A State DOT opposed the revision because it is a good reminder regarding accommodation of bicyclists and pedestrians. The FHWA agrees and in this final rule adopts revisions to the GUIDANCE in paragraph 03 to include pedestrian routes as item F and bicycle diversions as item G in the list of conditions when typical applications should be modified.

504. In Section 6G.11 Work Within the Traveled Way of Urban Streets, the FHWA proposed to relocate the first paragraph of the first STANDARD in the 2003 MUTCD to Section 6D.01 because the information about maintaining accessibility and detectability along pedestrian routes is most appropriately covered in Section 6D.01. The FHWA adopts the proposed relocation in this final rule.

A State DOT recommended modifying the existing STANDARD in paragraph 05 to require that both pedestrian and vehicular access be provided to transit stops that are affected and relocated because of work activity. The FHWA adopts this change in this final rule to clarify and reiterate that full accessibility to transit stops is required during work activity, consistent with provisions in Chapter 6D.

505. In Section 6G.12 Work Within the Traveled Way of Multi-Lane, Non-Access Controlled Highways, a State DOT recommended a new OPTION to allow a single continuous taper to be used where operating speeds are 40 mph or less and the space approaching the work area does not permit moving traffic over one lane at a time. The FHWA agrees that this flexibility is needed and can be appropriately applied in lower speed conditions and in this final rule adopts the new OPTION in paragraph 13.

506. In Section 6G.13 Work Within the Traveled Way at an Intersection, the FHWA proposed in the NPA to modify the existing GUIDANCE in paragraph 04 to recommend, among other things, the relocation of signal heads to provide improved visibility. The NCUTCD and an NCUTCD member recommended changing ''improved'' to ''adequate'' visibility, for consistency with the other conditions in the sentence. The FHWA agrees and in this final rule adopts the proposed revision and also references Part 4 for the description of adequate visibility for signal heads.

507. In the NPA, the FHWA proposed to reverse the order of Chapters 6H and 6I of the 2003 MUTCD so that Chapter 6H would be Control of Traffic Through Traffic Incident Management Areas and Chapter 6I would be Typical Applications. The FHWA proposed this change so that the numerous Typical Application diagrams would be at the end of Part 6 and to place the text and figures on incident management closer to the other sections in Part 6. The NCUTCD, ATSSA, and two State DOTs opposed this change, primarily because they believe Chapter 6I is best left as the designated chapter for Incident Management, in part because it is referred to in a number of important documents. The FHWA agrees and in this final rule retains the Typical Application diagrams in Chapter 6H and retains Chapter 6I as Incident Management, consistent with the 2003 MUTCD.

508. The FHWA received several general comments and suggestions on Chapter 6H Typical Applications (numbered Chapter 6I in the NPA). A State DOT, a local DOT, five bicyclist-related associations, an NCUTCD member, and two citizens suggested adding an OPTION to use the adopted Bicycles May Use Full Lane (R4–11) sign and adding a reference to Section 9B.06 in all Typical Applications where the lanes are narrowed to 10 feet in TTC zones to remind MUTCD users to consider bicyclists. The FHWA disagrees with the suggested addition because narrow lane widths are allowed in many permanent conditions, so it is not unrealistic to allow it in TTC situations. An agency can address specific bicycle accommodations in a project's TTC plan.

509. In Table 6H–3 Meaning of Letter Codes on Typical Application Diagrams (numbered Table 6I–3 in the NPA), a State DOT and a transportation research institute suggested adding a fifth road type classification ''Local (very low speed)'' with a suggested sign spacing of 100 feet. The FHWA disagrees and notes that the suggested spacing is already indicated for ''Urban (low speed)''. If an agency wants to use the shorter spacing for signs on rural low-speed facilities, they can apply the low-speed criteria and use the same values as the Urban. The commenters also suggested increasing the sign spacing for Urban (low speed) to 200 feet because the existing 100-foot spacing is inadequate on a 35 mph street. The FHWA disagrees and notes that the 100-foot spacing is usually adequate for urban low-speed applications and allows more signs to be located between city blocks, thereby eliminating the need for duplication. The FHWA adopts Table 6H–3 in this final rule as proposed in the NPA.

510. In Section 6H.01 Typical Applications, the FHWA adopts in this final rule the SUPPORT, as proposed in the NPA, that, except for the notes (which are clearly classified using headings as being Standard, Guidance, Option, or Support), the information presented in the typical applications can generally be regarded as Guidance. The FHWA also adopts in this final rule changes in the Typical Applications to reflect the changes to all parts of the MUTCD with particular reference to Part 6 text and figure changes.

Additionally, the FHWA adopts the figures and corresponding notes proposed in the NPA with the following changes and responses to comments received:

a. Notes for Figure 6H–4: In the NPA, the FHWA proposed to add a new note 4 allowing stationary signs to be omitted if the work is mobile because the use of such signs is often not practical with mobile operations. Two local DOTs agreed with the proposed revision. The FHWA in this final rule adopts a revised note 4 to read ''Stationary warning signs may be omitted for short duration or mobile operations if the work vehicle displays high-intensity rotating, flashing, oscillating, or strobe lights,'' to be consistent with Section 6G.02. The FHWA also deletes existing note 5 (as numbered in the NPA) because the information is incorporated in the adopted note 4. In the NPA, the FHWA proposed a new STANDARD note stating that vehicle-mounted signs shall be mounted in a manner not obscured by equipment or supplies, and that sign legends on vehicle-mounted signs shall be covered or turned from view when work is not in progress, for consistency with similar provisions in the Notes for Figure 6H–17. A local DOT agreed with the revision and the FHWA adopts note 8 in this final rule as proposed in the NPA. A State DOT suggested adding new GUIDANCE to describe when a shadow vehicle should be used. The FHWA disagrees since the suggested information is contained in Section 6F.03.

b. In Figure 6H–4, a State DOT suggested revisions to the existing figure, including removing the leading truck, making the trailing truck optional, making the SHOULDER WORK sign optional, and allowing reduced traffic control requirements for short duration operations less than 60 minutes. The FHWA disagrees because the existing provisions are consistent with other Typical Applications for Mobile Operations and Section 6G.02. The FHWA in this final rule adds a ''Work Vehicle'' tag to the lead truck for clarification.

c. In Figure 6H–5, a State DOT suggested revisions to the existing figure, including adding a lateral

clearance marker at the barrier angle point and an object marker at the nose of the attenuator. The FHWA disagrees because the use of channelizing devices to close the lane should provide delineation for the barrier. An agency can add additional devices if they believe conditions warrant it.

d. In the Notes for Figure 6H–6, a State DOT and a transportation research institute suggested adding two new STANDARDS describing the requirements for the mounting of vehicle-mounted signs and the display of high-intensity lights on shadow and work vehicles. The FHWA agrees and adds notes 11 and 12 as STANDARDS in this final rule, which are identical to existing adopted STANDARDS from the Notes for Figure 6H–17.

e. In the Notes for Figure 6H–7, the FHWA proposed in the NPA to reword note 3 to clarify that required pavement markings no longer applicable shall be removed or obliterated as soon as practical. A State DOT and a transportation research institute suggested revising the note to remove the word ''practical'' and instead require that the pavement markings that are no longer applicable be removed once the TTC diversion is complete. The FHWA agrees with the comment and in this final rule revises note 3 to read ''Pavement markings no longer applicable to the traffic pattern of the roadway shall be removed or obliterated before any new traffic patterns are open to traffic.''

f. In Figure 6H–7, a local DOT suggested revising the existing figure to delete the ROAD CLOSED sign because it might imply that travel is not possible in that direction. The FHWA agrees and deletes the sign in this final rule. A State DOT asked what NCHRP 350 approved sign assembly is available to accommodate the warning sign with supplemental plaque shown in the figure on a portable sign stand and still maintain the 5-foot minimum sign height to the lowest sign. The FHWA responds that this Typical Application would not typically be used for periods of less than three days, thus signs would not be on portable mountings and therefore no revisions to the figure are necessary.

g. In Notes for Figure 6H–9, an NCUTCD member suggested revising existing GUIDANCE note 3 to include YIELD signs. The FHWA agrees that this is appropriate for consistency with Part 2 and adopts in this final rule a revised note 3 that recommends that STOP or YIELD signs displayed to side roads should be installed as needed along the temporary route.

h. In Figure 6H–10, the FHWA proposed in the NPA to revise the upstream taper dimension from ''100 ft MAX'' to ''50 to 100 ft.'' A State DOT opposed the proposed revision and recommended that the upstream taper dimension remain as a maximum of 100 feet and also recommended deleting the 50-foot minimum. The FHWA disagrees because adopted Section 6C.08 includes a minimum taper length of 50 feet and the figure reflects this change. The FHWA also proposed in the NPA to revise the downstream taper dimension from ''100 ft MAX'' to ''50 to 100 ft.'' A State DOT and a transportation research institute suggested retaining the existing ''100 ft MAX'' dimension for the downstream taper in order to comply with Figure 6C–3 and suggested deleting the existing note about buffer space because the information is contained in note 4 of the accompanying Notes section. The FHWA agrees with the comments and adopts the suggested revisions in this final rule.

i. In Figure 6H–12, the FHWA proposed in the NPA to revise the maximum distance between the nearest signal face for each approach and the stop line from 150 feet to 180 feet, for consistency with provisions of Part 4. A State DOT suggested revising the figure to include a dimension between the end of the downstream taper and the location of the opposing temporary signal because the distance is critical to provide enough distance for traffic to return to its own lane prior to the stop line for the opposing traffic. The FHWA notes the concern of the commenter, but declines to revise the figure because this dimension is left up to the agency to determine based upon the geometrics of the project and design speed through the TTC zone. The FHWA adopts in this final rule Figure 6H–12 as proposed in the NPA. The FHWA also adopts in this final rule the same revision to the maximum distance in Figure 6H–14, as proposed in the NPA.

j. In Figure 6H–13, a State DOT and a transportation research institute suggested revising the existing figure to make the BE PREPARED TO STOP sign mandatory instead of optional. The FHWA disagrees because the use of the sign should be dictated by the conditions for the project, such as volume and speed of traffic, length, and frequency of closure.

k. In Figure 6H–14, the FHWA proposed in the NPA to add a note that the maximum distance from the stop line to signal indication is 150 feet if 8-inch signal indications are used. A State DOT and a transportation research institute suggested deleting the asterisked note because the use of 8-inch signal displays should not be suggested since additional traffic control emphasis is needed in temporary traffic control applications. The FHWA agrees with the comment and also notes that the adopted revisions to Part 4 only allow the use of 8-inch indications for very low speed roads, and therefore the FHWA in this final rule removes the note. An NCUTCD member suggested replacing the existing symbolic DO NOT PASS sign with the word message sign, for clarity. The FHWA agrees and adopts in this final rule the suggested revision for this figure and throughout Chapter 6H, for consistency with adopted text in Chapter 2B.

l. In Notes for Figure 6H–15, the FHWA proposed in the NPA to change an existing GUIDANCE to a STANDARD, to require, instead of recommend, that workers in the roadway shall wear high-visibility safety apparel as described in Section 6D.03. A State DOT and a transportation research institute suggested deleting the proposed STANDARD because the statement is now unnecessary as a result of the adopted changes in Section 6D.03. The FHWA agrees and in this final rule deletes the statement from Notes for Figure 6H–15 and from Notes for Figure 6H–16. As described in Section 6D.03, workers within the public right-of-way are now required to wear high-visibility safety apparel, except for firefighters exposed to hazardous heat conditions and law enforcement personnel when performing non-traffic related activities. The commenters also suggested revising this and other Typical Applications for low-volume roads to also apply to low-speed roads. The FHWA disagrees because there have been no other comments received noting problems with this operation and agencies have the option to require additional measures for these situations.

m. In Notes for Figure 6H–16, the FHWA proposed in the NPA to add a new note 1 to the GUIDANCE indicating that all lanes should be a minimum of 10 feet in width, to be consistent with guidance in other applications. A local DOT agreed with the proposal, while the NCUTCD opposed the proposal but did not provide a reason for the objection. The FHWA adopts in this final rule the proposed note because the text is consistent with existing GUIDANCE in Notes for Figure 6H–6.

n. In Figure 6H–16, the FHWA proposed in the NPA to include a dimension showing a 10-foot minimum width for all lanes. A State DOT asked if traffic can be moved to the shoulder in this Typical Application. The FHWA responds that this Typical Application

should allow shoulder use if necessary and adopts in this final rule a revised note in Figure 6H–16 identical to the adopted note in Figure 6H–15 that indicates a 10-foot minimum width to the edge of pavement or outside edge of paved shoulder.

o. In Figure 6H–20, a State DOT and a transportation institute recommended revisions to the existing figure to add NO LEFT TURN signs, NO RIGHT TURN signs, and Main Street South Detour signs to provide guidance for drivers arriving from the east and west. The FHWA agrees and adopts a revised Figure 6H–20 that incorporates the recommended signs for added clarification because the intent is to provide guidance to road users on all approaches to the work zone.

p. In Figure 6H–23, a State DOT and a transportation research institute suggested revisions to the existing figure to add channelization devices along the double yellow center line to be consistent with adopted provisions in Section 6G.12. The FHWA agrees and adopts the suggested revision in this final rule. An NCUTCD member suggested deleting the LEFT LANE MUST TURN LEFT sign outside of the curb. The FHWA disagrees with the comment because this sign complies with provisions in Chapter 2B and the sign needs to be displayed to inform road users of the temporary left-turn lane established by closing the left lane.

q. In Notes for Figure 6H–27, a State DOT and a transportation research institute suggested elevating existing note 4 (as numbered in the NPA) from OPTION to GUIDANCE to recommend that ONE LANE ROAD AHEAD signs be used to provide adequate advance warning for this Typical Application. The FHWA agrees that the signs should be used in this situation, and in this final rule changes the statement to GUIDANCE and renumbers the statement as note 8. The FHWA adopts the change for consistency with other Typical Applications that indicate that the ONE LANE ROAD sign should be used when one lane of a two-lane roadway is closed. The commenters also recommended that the ONE LANE ROAD AHEAD sign be added to each approach in Figure 6H–27. The FHWA agrees and adopts in this final rule the suggested revisions to Figure 6H–27.

r. In Figure 6H–28, a State DOT and a transportation research institute suggested revising the existing figure to replace the symbols for channelization devices because Type 3 barricades should not be used for channelization between road users and pedestrians. The FHWA agrees and adopts a new symbol to represent a longitudinal channelizing device and revises Figure 6H–28 and Table 6H–2 accordingly.

s. In Figure 6H–29, a State DOT and a transportation research institute suggested revising the existing figure to remove the ''(optional)'' note from the ROAD WORK AHEAD sign so that the sign is a recommendation and not an option. The FHWA agrees and adopts the suggested revision in this final rule to be consistent with all other Typical Applications that recommend the ROAD WORK AHEAD sign whenever work is occurring within the roadway. The commenters also suggested replacing the cones used to close the sidewalk with a Type 3 channelizing device. The FHWA agrees and adopts the suggested revision in this final rule.

t. In Notes for Figure 6H–32, a State DOT and a transportation research institute suggested revising existing GUIDANCE note 4 because the figure and text were not consistent for the placement of the Reverse Curve signs. The FHWA agrees and adopts in this final rule a revised note 4 to match Figure 6H–32. The commenters also asked why existing note 9 (as numbered in the NPA) was not a STANDARD similar to provisions in the Notes for Figure 6H–46. The FHWA in this final rule removes notes 6, 7, 8, and 9 (as numbered in the NPA) because the provisions regarding grade crossings are addressed in Figure 6H–46 and do not need to be repeated in the Notes for Figure 6H–32. The FHWA also renumbers note 10 (as numbered in the NPA) as note 6 in this final rule.

u. In Figure 6H–32, a State DOT and a transportation research institute suggested revising the second warning sign distance measurements from miles to feet in the figure since the illustration does not depict a freeway application and the measurements in feet are more practical than miles. The FHWA agrees and in this final rule revises Figure 6H–32 to modify the legend on the second warning sign on each approach from ''XX MILES'' to ''XX FT.''

v. In Notes for Figure 6H–33, a State DOT and a transportation research institute suggested adding a new STANDARD requiring arrow boards for each lane of a freeway lane closure. The FHWA agrees and adopts in this final rule a new STANDARD note 6 identical to the adopted language in other Typical Applications involving multi-lane freeway lane closures (see item 510.z. below).

w. In Figure 6H–34, a State DOT and a transportation research institute suggested revising the existing figure to remove the ''(optional)'' label for the shoulder taper to comply with GUIDANCE note 3 of the Notes for Figure 6H–33. The FHWA agrees and adopts the suggested revision in this final rule.

x. In Notes for Figure 6H–35, a State DOT and a transportation research institute suggested adding two new STANDARDS describing the requirements for the mounting of vehicle-mounted signs and the display of high-intensity lights on shadow and work vehicles. The FHWA agrees and adds notes 2 and 3 as STANDARDS in this final rule, which are identical to existing adopted STANDARDS from Notes for Figure 6H–17 The FHWA also adopts a revised GUIDANCE note 5 to remove ''high-intensity rotating, flashing, oscillating, or strobe lights'' since they are included in the new STANDARD note 3. The commenters also suggested adding a new STANDARD requiring arrow boards for each lane of a freeway lane closure. The FHWA agrees and adopts in this final rule a new STANDARD note 4 identical to the adopted language in other Typical Applications involving multi-lane freeway lane closures (see item 510.z. below.)

y. In Notes for Figure 6H–36, the FHWA proposed in the NPA to add a STANDARD describing the use of the Reverse Curve signs and also delete the OPTION regarding the ALL LANES THRU supplemental plaque because the Reverse Curve signs graphically indicate that message. A State DOT suggested reducing the proposed STANDARD to GUIDANCE. The FHWA disagrees and adopts the proposed STANDARD as note 7 in this final rule to be consistent with the STANDARD adopted in Section 6F.48 Reverse Curve Signs. The FHWA also adopts in this final rule two new OPTIONS as notes 8 and 9 that are identical to adopted OPTIONS in Section 6F.48 that describe signs that may be used when multiple lanes are being shifted. A State DOT and a transportation research institute suggested adding a new STANDARD prohibiting the use of barriers along the shifting taper. The FHWA agrees and adopts the recommended STANDARD in the Notes for Figure 6H–36 and in the Notes for Figure 6H–38 to be consistent with the adopted STANDARD in the Notes for Figure 6H–34. A State DOT and a transportation research institute suggested revising existing note 12 in the NPA from OPTION to GUIDANCE to recommend that trucks should be directed to use the travel lanes if the shoulder cannot adequately accommodate trucks. The FHWA agrees and adopts the suggested revision as GUIDANCE note 15 in this final rule. An agency can make the determination whether or not the shoulder has

adequate structural capacity to handle trucks and that an agency is not being required to alter their procedures with this GUIDANCE.

z. In Notes for Figures 6H–37, 6H–38, 6H–39, 6H–42, and 6H–44, the FHWA proposed in the NPA to add a STANDARD note to require that an arrow board be used on all freeway lane closures, and that a separate arrow board be used for each closed lane when more than one freeway lane is closed. The FHWA believes that an arrow board is essential for safety at all lane closures on freeways because of the high speeds. A local DOT agreed with the proposed STANDARD. A second local DOT suggested reducing the statement to GUIDANCE because it might not always be feasible to have an arrow board available depending on the amount of time the roadway is closed, if it is scheduled or emergency, and how many work zones are underway at the same time. The FHWA disagrees because the safety benefit of using an arrow board on freeway lane closures warrants this provision as a STANDARD. The FHWA adopts in this final rule the new STANDARD note as proposed in the NPA.

aa. In Notes for Figure 6H–37 and Notes for Figure 6H–38, a State DOT and a transportation research institute suggested elevating an existing OPTION to GUIDANCE to recommend that trucks should be directed to use the travel lanes if the shoulder cannot adequately accommodate trucks. The FHWA agrees and adopts the suggested revision in this final rule as GUIDANCE note 6 in Notes for Figure 6H–37 and GUIDANCE note 14 in Notes for Figure 6H–38 to be consistent with the adopted change to Notes for Figure 6H–36 (see item 510.z. below).

bb. In Notes for Figure 6H–38, a State DOT and a transportation research institute suggested adding a new STANDARD to require removing existing conflicting pavement markings and installing temporary markings before traffic patterns are changed. The FHWA agrees and adopts new STANDARD note 4 in this final rule for consistency with multiple figures in Chapter 6H that show temporary markings and pavement markings that should be removed for a long-term project. The commenters also suggested elevating OPTION note 7 (as numbered in the NPA) to GUIDANCE because of concern about creating driver confusion with two arrow boards that are visible at the same time. The FHWA agrees that a consistent application of the devices in this Typical Application is needed and in this final rule deletes the OPTION and replaces it with new GUIDANCE note 7 to recommend that the 2L distance between the end of the merging taper and beginning of the shifting taper should be extended so that road users can focus on one arrow board at a time if the two arrow boards create confusion.

cc. In Notes for Figure 6H–45, the NCUTCD suggested adding three OPTIONS to allow a work vehicle or shadow vehicle to be equipped with a truck-mounted attenuator, to allow a longitudinal buffer space to be used to separate opposing vehicular traffic, and to allow the reversible lane to be changed between the peak periods of vehicular traffic, to be consistent with Figure 6H–31. The NCUTCD also suggested a STANDARD requiring arrow boards for each lane of a freeway lane closure, to be consistent with the adopted STANDARD in Figure 6H–37. The FHWA agrees and adopts the suggested OPTIONS and STANDARD in this final rule. These provisions are identical to existing language in the Notes for Figures 6H–31 and 6H–37.

511. As discussed previously, the FHWA proposed in the NPA to renumber Chapter 6I as Chapter 6H. Based on comments, the FHWA in this final rule decides not to adopt the proposed renumbering of the chapters and therefore retains the same numbering for these two chapters as in the 2003 MUTCD.

512. In Section 6I.01 General, the FHWA proposed in the NPA to add a STANDARD that the Incident Command System (ICS) as required by the National Incident Management System (NIMS) be implemented in traffic incident management areas. The FHWA proposed including this language because the Department of Homeland Security and Presidential Directives (DHSPD) #5 and #8 [192] require the adoption of the National Incident Management System and the Incident Command System by all Federal, State, tribal, and local governments. These two systems are required for all planned and unplanned incidents in the United States. Although a local DOT supported this language, a State DOT and an NCUTCD member opposed the requirement, stating that the NIMS/ICS are not directly related to traffic control devices, and therefore it is inappropriate that MUTCD text require their use. The FHWA agrees and does not adopt the STANDARD in this final rule, and instead adopts information about NIMS/ICS in a SUPPORT in paragraph 01.

In the NPA, the FHWA proposed to expand existing GUIDANCE regarding TTC practices for on-scene responders and add new GUIDANCE regarding TTC practices for placement of emergency vehicles. A local DOT agreed with the proposal. Two State DOTs, a local DOT, ATSSA, and an NCUTCD member suggested revised language, including adding that on-scene responder organizations should train their personnel in the requirements for traffic incident management and revising the GUIDANCE on positioning of emergency vehicles to optimize traffic flow through the incident scene. The FHWA agrees with the comments in part and adopts in this final rule a revised GUIDANCE in paragraph 07 to recommend that on-scene responder organizations should train their personnel ''in the requirements for traffic incident management contained in this Manual'' and also adopts a revised GUIDANCE in paragraph 08 to recommend that emergency vehicles be safe-positioned such that traffic flow through the incident scene is optimized.

Finally, a State DOT and a local DOT recommended deleting the existing GUIDANCE of the 15-minute time provision for responders arriving on-scene at a traffic incident to estimate the magnitude of the traffic incident, the expected time duration of the traffic incident, and the expected vehicle queue length, and to set up the appropriate temporary traffic controls based on these estimates. The FHWA agrees that 15 minutes is unrealistic in some circumstances and deletes the phrase ''within 15 minutes of arrival on-scene'' in this final rule.

513. In Section 6I.02 Major Traffic Incidents and Section 6I.03 Intermediate Traffic Incidents, the FHWA proposed to revise a GUIDANCE related to when flares are used to initiate TTC at traffic incidents and add a new OPTION related to the use of light sticks to initiate TTC at traffic incidents. The FHWA proposed the OPTION to reflect the increasingly common use of light sticks by emergency responders as a more convenient and effective device than flares. A local DOT agreed with the proposal. Three State DOTs, ATSSA, and an NCUTCD member recommended several changes, including rewording the language to remove the word ''initiate'' and allowing flares to supplement instead of replace channelizing devices as TTC. The FHWA agrees with the comments in part and adopts in this final rule a revised GUIDANCE in paragraph 11 of Section 6I.02 and paragraph 07 of

[192] The Department of Homeland Security and Presidential Directives (DHSPD) #5 and 8 can be viewed at the following Internet Web site addresses: *http://www.whitehouse.gov/news/releases/2003/02/20030228–9.html* and *http://www.whitehouse.gov/news/releases/2003/12/20031217–6.html.*

Section 6I.03 to recommend that ''when lights sticks or flares are used to establish the initial traffic control at incident scenes, channelizing devices should be installed as soon thereafter as practical.'' The FHWA also adopts a revised OPTION in each section that follows the GUIDANCE, which allows light sticks or flares to remain in place if they are being used to supplement the channelizing devices.

A State DOT recommended revising an existing GUIDANCE to also encourage early diversion to an appropriate route as a reason for TTC at a traffic incident. The FHWA agrees that this is appropriate and highly useful to road users and adds ''to encourage early diversion to an appropriate alternate route'' as a reason for TTC at a traffic incident to paragraph 07 in Section 6I.02 and paragraph 03 in Section 6I.03 in this final rule.

514. The NCUTCD, ATSSA, two State DOTs, a local DOT, and an NCUTCD member suggested that FHWA include Typical Incident Management Application (TIMA) illustrations in Chapter 6I, similar to those provided in Chapter 6H for TTC. The FHWA did not propose including TIMAs in the NPA. The commenters recommended that the illustrations, which were developed with input from the National Traffic Incident Management Coalition, AASHTO, and ATSSA, under the oversight of the NCUTCD, be included because many incident management responders are already using parts of the TIMAs, and these illustrations should be made available to all incident management responders. The International Association of Police Chiefs and a local police department submitted letters opposing placing TIMAs in the MUTCD, because they felt that the TIMAs should be used voluntarily, rather than included in the MUTCD where they conceivably could be interpreted as standards, rather than practices. The FHWA agrees that requiring these specific TIMAs for incidents, which are, by nature, unique, could have significant negative consequences. The FHWA and practitioners need to educate and partner with law enforcement to achieve the goal of increasing the appropriate use of the typical applications, rather than establishing requirements at this time without having a clear understanding of all of the issues involved.

Discussion of Amendments to Part 7—Traffic Controls for School Areas

Discussion of Amendments Within Part 7—General

515. As proposed in the NPA, the FHWA deletes in this final rule Sections 7A.05 through 7A.10 of the 2003 MUTCD. The subjects of those sections are already covered in other parts of the Manual. In their place, the FHWA adopts paragraph 02 in Section 7A.04, which provides cross-references to the appropriate sections.

516. In Chapter 7C Markings, the FHWA in this final rule deletes the text in Sections 7C.02 through 7C.06 of the 2003 MUTCD that was repetitive of comparable sections in Chapter 3B, and instead adopts references to the appropriate sections in Chapter 3B. As a result, the FHWA adopts Chapter 7C with only three sections, Section 7C.01 Functions and Limitations, Section 7C.02 Crosswalk Markings, and Section 7C.03 Pavement Word, Symbol, and Arrow Markings.

Discussion of Amendments Within Part 7—Specific

517. In the NPA, the FHWA proposed to move all of the information from Chapter 7F Grade-Separated Crossings in the 2003 MUTCD to a new section numbered and titled Section 7A.05 Grade-Separated School Crossings. The proposed section contained a SUPPORT statement regarding the use of grade-separated crossings for school pedestrian traffic. A local DOT agreed with the proposal. The NCUTCD, a State DOT, and an NCUTCD member disagreed with the proposed section because it did not address traffic control devices. A local DOT opposed the listed preference of overpasses to underpasses for grade-separated school crossings. The FHWA agrees that grade-separated school crossings are not traffic control devices and in this final rule does not adopt Section 7A.05 as proposed in the NPA. The FHWA also removes Chapter 7F, as numbered in the 2003 MUTCD, from the Manual and removes the reference to grade-separated crossings from STANDARD paragraph 01 in Section 7A.04.

518. In Section 7B.01 Size of School Signs, the FHWA proposed in the NPA to revise the STANDARD in paragraph 03 to require that speeds be less than 35 mph in order to use the minimum sign sizes. The NCUTCD, two State DOTs, and a local DOT commented on the proposed wording of the STANDARD. The FHWA in this final rule adopts a revised paragraph 03 based on the comments, to clarify that the application of the minimum sizes to the identified signs is only where there are low traffic volumes and speeds are 30 mph or lower. Based on a recommendation from a State DOT, the FHWA adopts paragraphs 05 and 06 to provide GUIDANCE and OPTION statements, respectively, on the use of oversized school signs, for consistency with provisions in Part 2 for sizes of regulatory and warning signs on multilane roadways.

519. The NCUTCD, a State DOT, and a school district recommended changes to the NPA proposed Table 7B–1 to include three additional plaques that can be used with school area signs. The NCUTCD also recommended that the minimum sign sizes for multi-lane conventional roads be based on the Conventional Road sign size. The FHWA agrees with the comments and adopts in this final rule the recommended changes to Table 7B–1 for consistency with Part 2 provisions.

520. In Section 7B.03 Position of Signs, the NCUTCD, a State DOT, and an NCUTCD member recommended the deletion of existing text that was a repeat of information in Part 2. The FHWA agrees and in this final rule deletes the GUIDANCE and OPTION statements of the 2003 MUTCD. The FHWA also adopts two SUPPORT statements that reference sections in Chapter 2A for information regarding the placement and location of signs. As proposed in the NPA, the FHWA adopts an OPTION that states that in-roadway signs for school traffic control areas may be used consistent with the requirement of Sections 2B.12, 7B.08, and 7B.12.

521. In Section 7B.07 Sign Color for School Warning Signs, the FHWA proposed in the NPA to require, instead of merely allow, the use of fluorescent yellow-green as the background color for all school warning signs and plaques. A State DOT, ATSSA, and a local DOT agreed with the proposal. Four State DOTs, a local DOT, two NCUTCD members, and a citizen opposed the required use of fluorescent yellow-green and recommended that the fluorescent yellow-green color be an OPTION or GUIDANCE because of the increased cost over the yellow background and a lack of research showing additional benefit. The FHWA proposed these changes because the use of fluorescent yellow-green has become the predominant practice in most jurisdictions. Fluorescent yellow-green provides enhanced conspicuity for these critical signs, especially in dusk and dawn periods, and the FHWA believes that uniform use of this background color for all school warning signs and plaques will enhance safety and road user recognition. Consistent with Part 2

as adopted in this final rule, the FHWA adopts the required use of fluorescent yellow-green for school warning signs and plaques as proposed in the NPA.

522. As proposed in the NPA, the FHWA in this final rule adopts a new section numbered and titled Section 7B.08 School Sign and Plaques, which replaces 2003 MUTCD Section 7B.08 School Advance Warning Assembly. A local DOT opposed the introduction of the term ''school area'' proposed in the NPA because it could lead to confusion. A local school district requested clarification on the use of signs in school areas versus school zones. A State DOT and a local DOT recommended changes to the proposed list of applications for the School Sign. Based on the comments, and in concert with the adopted definition of ''school zone'' as discussed in Section 1A.13, the FHWA adopts an expanded paragraph 02 to clarify the four specific applications of the School Sign (S1–1) (School Area, School Zone, School Advance Crossing, and School Crossing) in order to provide flexibility to States and local governments in applying standard school signing in accordance with their State laws and local ordinances. For consistency with the adopted OPTION described in item 523 below, the FHWA also adopts paragraph 03 in this final rule which allows the use of a School sign with a supplemental arrow plaque to be provided on a cross street in close proximity to the intersection within a school area.

523. The FHWA in this final rule adopts a new section numbered and titled Section 7B.09 School Zone Sign and Plaques and END SCHOOL ZONE Sign. The FHWA in the NPA proposed language permitting the use of a supplemental arrow plaque on a School (S1–1) sign at locations where a school zone is located on a cross street less than 125 feet from the edge of a street or highway. The FHWA proposed the change to provide jurisdictions with flexibility for installing signs where there is not sufficient distance for advance signing. A local DOT agreed with the proposal. The NCUTCD agreed with the proposal, but recommended that a specific maximum distance be removed from the statement. The FHWA agrees with the NCUTCD and in this final rule adopts a modified paragraph 05 to allow the use of the School sign with a supplemental arrow plaque on a cross street ''in close proximity to the intersection.'' The FHWA also modifies Figure 7B–3 to demonstrate typical cross street signage for a School Zone sign with a supplemental arrow plaque.

The FHWA also adopts a new plaque, ''ALL YEAR'' (S4–7P) that may be used to supplement the School Zone Sign (S1–1), based on comments from an NCUTCD member. The FHWA adopts paragraph 03 in Section 7B.09 to describe the optional use and modifies Figure 7B–1 and Table 7B–1 to include the new plaque.

524. The FHWA in this final rule adopts a new section numbered and titled Section 7B.10 Higher Fines Zone Signs and Plaques, and relocates to this section applicable information that was proposed in the NPA for Section 7B.09 School Area or School Zone Sign and Section 7B.16 END SCHOOL ZONE Sign. The FHWA also adopts the BEGIN HIGHER FINES ZONE (R2–10) sign, END HIGHER FINES ZONE (R2–11) sign, and FINES HIGHER (R2–6P) plaque and incorporates these signs into Figure 7B–1 and Table 7B–1.

To illustrate the use of the signs in Section 7B.10, the FHWA in this final rule revises the title of Figure 7B–2, as proposed in the NPA, to ''Example of Signing for a Higher Fines School Zone without a School Crossing'' and adopts a new figure, numbered and titled ''Figure 7B–5 Example of Signing for a Higher Fines School Zone with a School Speed Limit.''

525. The FHWA in this final rule revises the title of Figure 7B–3 to ''Example of Signing for a School Crossing Outside of a School Zone'' and Figure 7B–4 to ''Example of Signing for a School Zone with a School Speed Limit and a School Crossing.'' The NCUTCD and a State DOT recommended the changes to the titles for clarification and the FHWA agrees. The FHWA also makes editorial changes to the NPA proposed figures based on recommendations from several commenters.

526. In Section 7B.11 School Advance Crossing Assembly (numbered Section 7B.10 in the NPA) the FHWA in this final rule adopts revisions to the section proposed in the NPA. Consistent with a similar change discussed in item 523 above, the FHWA adopts a modified paragraph 04 to allow the use of the School Advance Crossing assembly on a street when a school crosswalk is located on the cross street in close proximity to an intersection.

527. In Section 7B.12 School Crossing Assembly (numbered Section 7B.11 in the NPA), the FHWA proposed in the NPA to remove a statement recommending the School Crossing assembly at marked crosswalks including signalized locations. A local school district opposed the revision and requested that the signs still be allowed at signalized intersections. Two State DOTs recommended that language be added to prohibit the use of the School Crossing assembly at signalized intersections. The FHWA notes that the School Crossing assembly is still allowed at school crossings, including those that are signal controlled, but is not allowed on stop or yield controlled approaches. The FHWA adopts in this final rule the language as proposed in the NPA.

A local DOT recommended that the School Crossing assembly be prohibited on approaches controlled by a YIELD sign in addition to those controlled by a STOP sign. The FHWA agrees that this is necessary to provide consistency with the final rule for STOP and YIELD sign applications in Section 2B.04 Right-of-Way at Intersections. Accordingly, the FHWA adopts in this final rule a modified paragraph 03 to prohibit the School Crossing assembly on approaches controlled by a STOP or YIELD sign.

528. In Section 7B.13 School Bus Stop Ahead Sign (numbered Section 7B.12 in the NPA), the FHWA proposed in the NPA to revise the GUIDANCE statement by removing the specific distance of 500 feet that a stopped school bus should be visible to road users, and in its place proposed inserting a reference to distances given in Table 2C–4. A State DOT and two local DOTs agreed with the proposal. The NCUTCD, a local DOT, and a consultant opposed the reference to Table 2C–4. The FHWA agrees with the NCUTCD that using Table 2C–4 is unnecessary for this particular sign because the visibility of the high mounted red flashers located at the top of the rear of the school bus are much more readily visible for the School Bus Stop Ahead (S3–1) sign than for a bus with no flashers activated for the SCHOOL BUS TURN AHEAD (S3–2) sign. The FHWA in this final rule adopts a modified paragraph 01 to recommend the use of the School Bus Stop Ahead sign when a stopped school bus is not visible to road users for ''an adequate distance.''

The FHWA proposed in the NPA to replace the existing School Bus Stop Ahead (S3–1) word message sign with a symbol sign as shown in Figure 7B–1. The FHWA proposed this new sign based on positive experiences in West Virginia, where a symbol sign for this message has been used for 25 to 30 years [193] and in Canada, where it has

[193] For additional information on West Virginia's successful experience with this symbol sign, contact Mr. Ray Lewis, Staff Engineer—Traffic Research and Special Projects Traffic Engineering Division, West Virginia DOT, Division of Highways, phone: 304–558–8912, e-mail: *lewisr@dot.state.wv.us.*

also been used since the 1970s. The FHWA proposed to use a symbol that is similar to the Canadian MUTCD [194] standard WC–9 symbol. The proposed symbol featured a school bus with a depiction of red flashing lights, a bus-mounted STOP sign, and students getting on or off the bus. ATSSA and a local DOT agreed with the proposal. A State DOT recommended changing the symbols of the children to be consistent with the symbols of children used in the School (S1–1) sign and the FHWA agrees. The NCUTCD, two State DOTs, and a citizen agreed with the proposal, but recommended various changes in the design of the sign. The FHWA declines to incorporate the commenters' recommended changes, because a recent human factors evaluation [195] of the symbol proposed in the NPA along with three alternative symbol designs and the current word version warning sign found that the understanding of the meaning of the symbol design as proposed in the NPA was equal to that of two alternative symbol designs tested. The study also found that the NPA symbol design has a greater legibility distance than the other symbol alternatives evaluated and equal legibility distance to the existing word version design. Seven State DOTs, six local DOTs, an NCUTCD member, and a citizen opposed the proposed symbol sign, primarily because of anticipated confusion over the symbolic representation. The FHWA disagrees with the comments and adopts in this final rule the sign as proposed in the NPA but with a minor adjustment to the symbols of children to make them consistent with those in the S1–1 sign. As noted above, the study found that the symbol sign was clearly understood by the vast majority of the test subjects. The FHWA believes that the replacement of selected word message signs with well-designed symbol signs will improve safety in view of increasing globalization and the number of non-English speaking road users in the United States.

529. The FHWA adopts in this final rule a new section numbered and titled Section 7B.14 SCHOOL BUS TURN AHEAD Sign (numbered Section 7B.13 in the NPA.) This new section contains the NPA proposed OPTION statement about the use of this new sign that can be installed in advance of locations where there is a school bus turn around on a roadway at a location not visible to approaching users for a distance as determined in Table 2C–4. The NCUTCD, three State DOTs, and a local DOT agreed with the proposal, but recommended changes to the proposed language, including the reference to Table 2C–4. A local DOT opposed the section and questioned the need for the proposed sign. A State DOT, a local DOT, and a consultant opposed the use of Table 2C–4. The FHWA disagrees with the objection to the use of Table 2C–4 and notes that Condition B does provide adequate stopping distances, especially considering that a school bus is a taller vehicle that can be seen for a greater distance away than a normal passenger vehicle. The FHWA adopts the language as proposed in the NPA.

The FHWA illustrated the proposed new sign, SCHOOL BUS TURN AHEAD (S3–2), in Figure 7B–1 of the NPA. ATSSA and a local DOT agreed with the proposed sign. A State DOT opposed the proposed sign. Four State DOTs, three local DOTs, and two citizens recommended modifications to the proposed sign, including changing the name of the sign to ''SCHOOL BUS TURN AROUND'' and changing the color to yellow instead of fluorescent yellow-green. The FHWA disagrees with the proposed changes and adopts the new sign as proposed in the NPA. This new sign provides a standard sign for applications that fit this need, with a legend that is appropriate for the condition.

530. In Section 7B.15 (numbered Section 7B.14 in the NPA), the FHWA changes the title to ''School Speed Limit Assembly and END SCHOOL SPEED LIMIT Sign'' in this final rule to reflect the addition of a new sign, END SCHOOL SPEED LIMIT (S5–3), which is illustrated in Figure 7B–1. The FHWA adopts this sign, which clarifies the location that a reduced speed limit for a school zone is concluded, consistent with comparable provisions for other reduced speed limits in Chapter 2B.

The FHWA in this final rule relocates one of the STANDARD statements proposed in the NPA from Section 7B.09 to Section 7B.15 because the content regarding reduced speed zones is more appropriate in that section. A local DOT supported the NPA proposal to require the use of the School (S1–1) sign in advance of a reduced speed zone for a school area, while a different local DOT opposed the proposal. The FHWA adopts in this final rule paragraph 02 requiring the use of the School sign in advance of a reduced speed zone for a school area. The FHWA also clarifies the application of higher fines zones in school speed limit zones by adding paragraph 03 that is consistent with the adopted Chapter 2B.

Numerous agencies opposed the proposed requirement (in Section 7B.16 of the NPA) to clarify that the end of a designated school zone shall be marked with both an END SCHOOL ZONE sign and a Speed Limit sign for the section of highway that follows. The FHWA in this final rule retains the requirement but relocates it to Section 7B.15. It is important and sometimes legally necessary to mark the end points of designated school zones. The use of a Speed Limit sign showing the speed limit for the following section of highway is required by existing language in Section 2B.13. In response to comments, the FHWA also adds an OPTION statement to provide flexibility in mounting the END SCHOOL ZONE sign when a Speed Limit sign or END HIGHER FINES sign is also required at the same location.

Two State DOTs and a consultant opposed the existing GUIDANCE that the reduced speed zone should begin either 200 feet from the crosswalk or 100 feet from the school property line. The FHWA in this final rule revises paragraph 07 to recommend that the beginning point of a reduced school speed limit zone should be at least 200 feet in advance of the school grounds, a school crossing, or other school related activities. The FHWA also recommends that the 200-foot distance should be increased where the school speed limit is 30 mph or higher. These changes are based on recently published research[196] by the Texas Transportation Institute concerning speeds in school zones. The FHWA notes that the distances are recommendations that can be adjusted based on State law and local ordinances.

The FHWA also proposed in the NPA to require, rather than merely permit, fluorescent yellow-green pixels to be used when the ''SCHOOL'' message is displayed on a changeable message sign for a school speed limit. Two State DOTs and two local DOTs recommended the statement be changed to GUIDANCE. Three State DOTs and three traffic control device manufacturers opposed the proposal and recommended the statement remain as an OPTION because the requirement

[194] The Manual of Uniform Traffic Control Devices for Canada, 4th Edition, is available for purchase from the Transportation Association of Canada, 2323 St. Laurent Boulevard, Ottawa, Ontario K1G 4J8 Canada, Web site *http://www.tac-atc.ca.*

[195] ''Design and Evaluations of Symbol Signs,'' Final Report, May, 2008, conducted by Bryan Katz, Gene Hawkins, Jason Kennedy, and Heather Rigdon Howard, for the Traffic Control Devices Pooled Fund Study, can be viewed at the following Internet Web site: *http://www.pooledfund.org/documents/TPF-5_065/symbol_sign_report_final.pdf.*

[196] ''Speeds in School Zones,'' Report number FHWA/TX–09/0–5470–1, February, 2009, by Kay Fitzpatrick, et al., Texas Transportation Institute, can be viewed at the following Internet Web site: *http://tti.tamu.edu/documents/0-5470-1.pdf.*

will make obsolete many of the existing changeable message signs. The FHWA disagrees with the commenters and notes that the fluorescent yellow-green color is required for consistency with the general requirements for colors used on changeable message signs in Chapters 2A and 2L and for school area warning signs in Section 7B.07. The STANDARD is adopted in this final rule as proposed in the NPA.

The NCUTCD and a State DOT recommended removal of the existing OPTION statement that allows the use of the signal indications of the Speed Limit Sign Beacon to be positioned within the face of the School Speed Limit (S5–1) sign. This statement mirrors a similar OPTION in Section 4L.04 Speed Limit Sign Beacon. This sign is the only instance where beacons are allowed within a sign face. Under certain light and weather conditions, the flashing beacon causes halation that obscures the sign message. The FHWA agrees that this is an obsolete practice but declines to remove the option at this time. The FHWA might consider this for a future rulemaking. However, the FHWA removes the OPTION from Section 7B.15 and instead provides a cross-reference to Section 4L.04 in this final rule.

531. The FHWA does not adopt Section 7B.16 END SCHOOL ZONE Sign that was proposed in the NPA, but maintains the existing END SCHOOL ZONE Sign (S5–2) and requirements for its use, as discussed above in Section 7B.15.

532. In Section 7B.16 (Section 7B.15 in the NPA) Reduced School Speed Limit Ahead Sign, in this final rule the FHWA revises the OPTION statement to a GUIDANCE statement to recommend, rather than merely allow, the use of this sign where the speed limit is being reduced by more than 10 mph, or where engineering judgment indicates that advance notice would be appropriate. The FHWA makes this change for consistency with similar GUIDANCE for advance warning of other reduced speed limits as adopted in Sections 2B.13 and 2C.38

533. In Section 7C.02 Crosswalk Markings (numbered Section 7C.03 in the NPA), the FHWA proposed in the NPA to add a GUIDANCE statement recommending that warning signs be installed for marked crosswalks at nonintersection locations, and that adequate visibility for students be provided by implementing parking prohibitions. A State DOT recommended changing the statement to a STANDARD. The FHWA disagrees because some flexibility is needed and mandatory language is not appropriate in this case. The NCUTCD recommended adding ''or other appropriate measures'' in addition to implementing parking prohibitions to provide adequate visibility of students. The FHWA agrees and adopts in this final rule a modified paragraph 03 as GUIDANCE.

Two local DOTs opposed the NPA proposal to change the word ''pedestrian'' to ''student'' when discussing conflicting movements with motorists and bicyclists. The commenters noted that students are not the only people to use a crosswalk. The FHWA disagrees with the comment because the crosswalk markings discussed in Part 7 are for school crossings. The FHWA adopts in this final rule the change as proposed in the NPA.

534. The FHWA in this final rule removes Chapter 7D Signals of the 2003 MUTCD, because it is a small chapter whose only purpose was to provide references to Part 4 and Section 4C.06. The FHWA incorporates the references in Section 7A.04 instead.

535. In the NPA, the FHWA proposed to delete the information pertaining to student patrols from the MUTCD except for a SUPPORT statement in Section 7D.01 Types of Crossing Supervision, which acknowledged the use of student patrols and referenced the ''AAA School Safety Patrol Operations Manual.'' [197] Two State DOTs and a local DOT opposed the deletion of all the material on student patrols. The FHWA disagrees with the commenters. The FHWA believes that student patrols do not control vehicular traffic and provisions relating to student patrols are not appropriate for the MUTCD. The FHWA in this final rule removes the mention of student patrols in Section 7D.04. The FHWA also removes Sections 7E.07, 7E.08, and 7E.09 that were in the 2003 MUTCD because these sections pertained to student patrols, and removes the reference to student patrols from STANDARD paragraph 01 in Section 7A.04.

536. In Section 7D.03 Qualifications of Adult Crossing Guards, the FHWA proposed in the NPA to revise the GUIDANCE statement to indicate that the list represents the minimum qualifications of adult crossing guards. The FHWA proposed three additional qualifications (items C, D, and E in paragraph 02) that are similar to applicable provisions in Section 6E.01 for flaggers. Three State DOTs and an NCUTCD member recommended substantive revisions to the language. The FHWA adopts the text as proposed in the NPA. The FHWA might consider the suggested revisions in a future rulemaking.

537. In Section 7D.04 Uniform of Adult Crossing Guards, the FHWA adopts in this final rule a revised paragraph 01 to reflect that law enforcement officers performing school crossing supervision shall use high-visibility safety apparel labeled as ANSI 107–2004. This change incorporates into the MUTCD the provisions of 23 CFR part 634 that were published in the **Federal Register** on November 24, 2006.[198] The NCUTCD and a State DOT recommended editorial changes to the proposed statement and the FHWA agrees and adopts a revised STANDARD. The FHWA establishes a target compliance date of December 31, 2011 (approximately two years from the effective date of this final rule) for adult crossing guard apparel on non-Federal-aid highways. Required compliance of apparel for workers, including law enforcement officers, on Federal-aid highways has been in effect since November 24, 2008, pursuant to 23 CFR part 634.

538. In Section 7D.05 Operating Procedures for Adult Crossing Guards, the FHWA proposed in the NPA to require, rather than recommend, that adult crossing guards shall not direct traffic but rather select opportune times to create a sufficient gap in the traffic flow and stand in the roadway to indicate that pedestrians are about to use or are using the crosswalk and that all vehicular traffic must stop. Two State DOTs, a local DOT, and an NCUTCD member opposed the proposed change because they believe that adult crossing guards do have some traffic control powers and the new language could increase the likelihood of litigation. The FHWA disagrees with the commenters because the laws of many States do not grant police power to direct traffic to school crossing guards. Because the safety of school children is paramount, it is important that adult crossing guards follow specific requirements when controlling traffic for the purpose of assisting schoolchildren, to minimize the exposure of schoolchildren to vehicles that fail to stop. Therefore, the FHWA adopts in this final rule paragraph 01 as proposed in the NPA.

[197] This 2004 publication can be viewed at the following Internet Web site: *http://www.aaa.com/aaa/049/PublicAffairs/SSPManual.pdf.*

[198] The **Federal Register** Notice was published in the **Federal Register** on November 24, 2006 (Volume 71, Number 226, Pages 67792–67800) and can be viewed at the following Internet Web site: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2006_register&docid=E6-19910.pdf.*

In addition, the FHWA proposed to require, rather than recommend, that adult crossing guards use a STOP paddle. A State DOT opposed the change because it would prohibit the use of flags. The FHWA adopts the change to paragraph 02 as proposed in the NPA to increase the level of consistency for motorists approaching school crosswalks.

Discussion of Amendments to Part 8—Traffic Controls for Railroad and Light Rail Transit (LRT) Grade Crossings

539. Although it was not proposed in the NPA, the FHWA relocates the information contained in Part 10 of the 2003 MUTCD and the revisions thereto proposed in the NPA and editorially combines it with Part 8 into the retitled Part 8 Traffic Control for Railroad and Light Rail Transit (LRT) Grade Crossings. The FHWA combines the information because of the similarities between the topics, to reduce the amount of redundant material and cross-referencing, and based on comments received by a State DOT and an NCUTCD member. In most cases Parts 8 and 10 of the 2003 MUTCD and the proposed revisions to those Parts in the NPA contained virtually identical provisions. In combining the two Parts, the FHWA identifies all provisions from former Part 10 that are specifically applicable only to light-rail transit grade crossings, identifies all provisions that are specifically applicable only to railroad grade crossings, and uses the generic term ''grade crossing'' for provisions that are applicable to both railroad grade crossings and light-rail grade crossings. The FHWA also adopts ''LRT'' as a new abbreviation for light-rail transit since this is a common industry abbreviation and it will reduce the amount of text in the MUTCD.

540. In Section 8A.01 Introduction, in this final rule the FHWA relocates light-rail transit grade crossing information contained in Section 10A.01 in the 2003 MUTCD to Section 8A.01 with revisions to the language as proposed in the NPA. The FHWA also adds definitions of various terms as proposed in the NPA for Sections 8A.01 and 10A.01, but relocates them to Section 1A.13, as previously discussed.

A State DOT suggested revising the proposed ''Constant Warning Time Train Detection'' definition to add ''track circuitry'' and ''determines the time of arrival of a train at a crossing'' and suggested other editorial revisions. The FHWA disagrees because the suggested language does not include important elements including ''uniform waiting time'' and ''not accelerating or decelerating'' and therefore the FHWA adopts the definition as proposed in the NPA and relocates it to Section 1A.13.

The FHWA received comments suggesting removing the ''Diagnostic Team'' definition and the use of the term ''diagnostic team'' from the MUTCD because it may inadvertently increase the scope of the MUTCD and this term is provided in other reference materials. The FHWA agrees and deletes the proposed ''Diagnostic Team'' definition and deletes the use of ''diagnostic team'' in the various places that it had been proposed to be added in Part 8.

A State DOT also suggested removing the terms ''train whistle,'' ''locomotive whistle,'' and ''train horn'' from the NPA proposed ''Locomotive Horn'' definition to promote uniformity. The FHWA agrees that the terms should not be used interchangeably in the MUTCD. The FHWA believes that the most appropriate term to consistently use in the MUTCD is ''locomotive horn'' to be consistent with Federal Railroad Administration (FRA) terminology, and the FHWA adopts the use of that term in this final rule.

An NCUTCD member suggested revising the existing ''pre-signal'' definition to clarify that supplemental near-side traffic control signal faces for the highway-highway intersection are not considered pre-signals and that pre-signals are typically used where the clear storage distance is insufficient to store one or more design vehicles. The FHWA agrees and adopts the definition as suggested by the commenter with editorial revisions in this final rule.

A State railroad operator suggested revising the existing ''Vehicle Intrusion Detection Devices'' definition to replace ''Intrusion'' with ''Presence'' because the highway industry typically refers to devices that detect automobiles along the roadways as vehicle presence detectors. The FHWA notes that the term is used only once in the MUTCD and therefore a definition is not needed. The FHWA deletes the existing definition and relocates the elements of the definition to the text in Section 8C.06.

A State DOT opposed the proposed new ''Wayside Horn'' definition in the NPA because it is not beneficial for motorists, only for pedestrians. The FHWA disagrees because the horns can be made loud enough to be heard by occupants of motor vehicles. The NCUTCD suggested revising the proposed ''Wayside Horn'' definition by replacing the term ''oncoming motorist'' with ''road users'' and to include the whole wayside horn system, not just the horns. The FWHA agrees because the wayside horns are a part of the wayside horn system and the FHWA adopts the NCUTCD suggested revisions to the proposed definition in the NPA in this final rule.

The NCUTCD also suggested adding new definitions for ''Entrance Gate'' and ''Exit Gate.'' The FHWA agrees because the suggested new definitions clarify existing terms used in the MUTCD and adds the new definitions recommended by the NCUTCD in Section 1A.13 with editorial revisions.

The NCUTCD and a State railroad operator suggested adding a new definition for ''Swing Gate'' since it is mentioned in several locations in the MUTCD. The FHWA disagrees because Section 8C.13 already covers the characteristics of a swing gate and adding a definition would be repetitive and unnecessary.

541. In Section 8A.02, Use of Standard Devices, Systems, and Practices at Highway-Rail Grade Crossings, a State DOT opposed the NPA proposed revisions to the GUIDANCE because the term ''road user'' gives too much weight to pedestrians and the commenter believes that pedestrians should not be in the road. The FHWA disagrees because the devices described in Part 8 also control pedestrians and bicyclists, so ''road user'' is the appropriate term and therefore in this final rule adopts the language as proposed in the NPA.

542. The FHWA relocates Section 10A.02 of the 2003 MUTCD, with revisions as proposed in the NPA, to new Section 8A.03 Use of Standard Devices, Systems, and Practices at Highway-LRT Grade Crossings in this final rule. This new section contains provisions specifically applicable only to light-rail grade crossings.

543. In Section 8A.04, Uniform Provisions (Section 8A.03 in the 2003 MUTCD), a State DOT suggested revising the existing 2nd STANDARD statement to remove a conflict with AASHTO guidance on crash cushions. The commenter notes that when placing a crash cushion in front of the sign or signal, AASHTO recommends that there not be a curb in front of the crash cushion for high speeds. The commenter suggested changing the language to require either a raised island or a crash cushion to protect a center mounted sign or signal. The FHWA agrees and adopts the suggested revision to the existing provision in this final rule. This revision provides agencies with more flexibility in the placement of signs and signals and provides consistency with AASHTO guidance.

544. The FHWA adopts a new Section 8A.06 Illumination at Grade Crossings (section 8A.05 in the NPA) containing

information previously included in Chapter 8C of the 2003 MUTCD in this final rule. The FHWA adopts the text in this section as SUPPORT statements as proposed in the NPA because illumination is not a traffic control device and thus should not be regulated by GUIDANCE and OPTION statements. The FHWA believes that adequate and appropriate guidance on illumination of highway-rail grade crossings is readily available from other sources, such as the ANSI's Practice for Roadway Lighting RP–8, available from the Illuminating Engineering Society of North America.[199] The NCUTCD and two State DOTs agreed and suggested editorial text revisions for clarification. The FHWA adopts the language as proposed in the NPA with editorial revisions recommended by the commenters.

545. The FHWA adopts a new Section 8A.07 (Chapter 8D in the NPA) Quiet Zone Treatments at Highway-Rail Grade Crossings. The FHWA adopts the contents of NPA proposed Chapter 8D in a new Section 8A.07 based on recommendations from a State DOT and a city. The purpose of this new section is to add language to support and directly refer to regulations adopted by Federal Railroad Administration regarding quiet zones established in conjunction with restrictions on locomotive horns at certain highway-rail grade crossings (49 CFR part 222).[200] The NCUTCD, two State DOTs, a railroad operator, an NCUTCD member, and a vendor opposed the proposed language because they believe it fails to provide the guidance necessary to implement the installation of required traffic control devices in quiet zones. The NCUTCD suggested including new STANDARD, GUIDANCE, and SUPPORT text. The FHWA disagrees because there has been no confusion on the part of practitioners on how to install the traffic control devices for quiet zones, even though the FRA regulation has been in effect for three years without any specific treatments or procedures specified in the MUTCD. Provisions regarding the traffic control devices that might be used in a quiet zone have been available in the 2003 MUTCD without any advice on how to specifically apply these in a quiet zone.

In the NPA, the FHWA proposed language in Chapter 10E regarding Quiet Zone treatments at light-rail transit grade crossings, comparable to that proposed in Part 8 for railroad grade crossings. The NCUTCD and a State railroad operator opposed the new language because Quiet Zones do not apply to light rail transit crossings in the FRA regulations. The FHWA agrees with the commenters and in this final rule deletes the language that was proposed in Chapter 10E in the NPA.

546. In Section 8A.08 (Section 8A.05 in the 2003 MUTCD), Temporary Traffic Control Zones, a State railroad operator suggested adding a new cross reference to Figure 6H–46, which shows an example of a temporary traffic control zone at a highway-rail grade crossing. Although not proposed in the NPA, the FHWA agrees and in this final rule adopts the suggested change as a SUPPORT statement that also clarifies that the example is only one of many situations that might be encountered. The FHWA also combines information contained in Section 10A.05 in the 2003 MUTCD into Section 8A.08 in this final rule, with editorial revisions to the language as proposed in the NPA.

547. The FHWA adopts several NPA proposed changes throughout Chapter 8B Signs and Markings in this final rule, to require the installation of a YIELD sign or STOP sign at all passive highway-rail grade crossings. The FHWA adopts this change to incorporate information into the MUTCD from FHWA's Policy Memorandum, ''Guidance for Use of YIELD or STOP Signs with the Crossbuck Sign at Passive Highway-Rail Grade Crossings,'' [201] dated March 17, 2006. The FHWA adopts the language as a STANDARD in the MUTCD to require, rather than merely recommend as in the Policy Memorandum, the use of YIELD or STOP signs in conjunction with the Crossbuck sign at all passive crossings. While the Crossbuck sign is in fact a regulatory sign that requires vehicles to yield to trains and stop if necessary, recent research [202] indicates insufficient road user understanding of and compliance with that regulatory requirement when just the Crossbuck sign is present at passive crossings.

A local DOT and ATSSA agreed with the proposed new STANDARD requiring a STOP or YIELD sign. The NCUTCD also agreed and suggested revising the exception for situations ''where an authorized person on the ground directs road users not to enter the crossing prior to a train occupying the crossing.'' A State DOT suggested deleting the exception. The FHWA disagrees with deleting the exception because there is no need for the additional YIELD or STOP sign at a crossing where road users are always given clear instructions as to when it is not safe to cross the track. Nine State DOTs, 12 local agencies, 3 associations, the University of Kansas, an NCUTCD member, a former NCUTCD member, and 3 consultants opposed the proposed new STANDARD because of concerns that the STOP or YIELD signs will be redundant to the Crossbuck regulatory sign and will result in confusion about the installation and maintenance responsibilities between agencies and railroad companies, sign clutter, potential for increased rear-end crashes, the adoption in most crossings of a STOP sign instead of YIELD, lack of respect for the new signs by drivers, and additional expense for sign installation. The commenters also indicated the lack of field research studies supporting the adoption of these signs. Several of the commenters suggested retaining the 2003 MUTCD text or making the proposed STANDARD statement an OPTION. The FHWA responds to the commenters by noting that the requirement of a YIELD or STOP sign in conjunction with the Crossbuck sign at passive grade crossings resulted from research [203] that showed that road users do not fully comprehend the message being communicated by a Crossbuck sign alone. The same Crossbuck sign is used at active and passive grade crossings. At active grade crossings, road users perceive the Crossbuck sign to be marking the location of the grade crossing and the gates and lights as the traffic control devices that control their actions. At passive grade crossings, road users sometimes think that the Crossbuck sign merely marks the location of the grade crossing, when in fact it also needs to convey the regulatory message of ''yield to trains.'' Furthermore, the Crossbuck sign design,

[199] Information on obtaining this publication can be viewed on the following Internet Web site: *https://www.iesna.org/.*

[200] The **Federal Register** Notice was published on December 18, 2003 (Volume 68, Number 243, Page 70586–70687) and can be viewed at the following Internet Web site: *http://www.fra.dot.gov/downloads/Safety/train_horn_rule/fed_reg_trainhorns_final.pdf.*

[201] FHWA's Policy Memorandum, ''Guidance for Use of YIELD or STOP Signs with the Crossbuck Sign at Passive Highway-Rail Grade Crossings,'' dated March 17, 2006, can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/resources/policy/yieldstop_guidememo/yieldstop_policy.htm.*

[202] National Cooperative Highway Research Report 470 titled ''Traffic Control Devices for Passive Railroad-Highway Grade Crossings,'' Transportation Research Board, 2002, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_470-a.pdf.*

[203] National Cooperative Highway Research Report 470 titled ''Traffic Control Devices for Passive Railroad-Highway Grade Crossings,'' Transportation Research Board, 2002, can be viewed at the following Internet Web site: *http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_470-a.pdf.*

although unique in shape, does not always sufficiently attract the attention of road users, especially at night and when they are turning onto the grade crossing from a street that is parallel to the track. The use of a YIELD sign (and occasionally a STOP sign when justified by an engineering study) can improve the safety of passive grade crossings without requiring any action by road users beyond that which is already required of them. The FHWA adopts the language as proposed in the NPA with editorial revisions suggested by the NCUTCD in this final rule.

A railroad operator and a railroad association suggested revising the proposed requirement to allow the use of engineering judgment instead of an engineering study to determine when STOP signs should be used at passive grade crossings. The FHWA disagrees and believes that the decision to stop all vehicles that approach a grade crossing is so important that it should be documented in a study. The NCUTCD suggested adding text to the STANDARD that the determination to include a STOP sign in a Crossbuck Assembly shall be made by the regulatory agency or highway authority having jurisdiction over the roadway approach. The FHWA agrees because the decision to stop all vehicles should be made by the highway authority and not the railroad or light-rail transit authority. The FHWA adopts the NCUTCD suggested revision to clarify the proposed STANDARD statement in this final rule.

A railroad association suggested allowing an exception for requiring an engineering study for existing highway rail grade crossings with STOP signs. The FHWA disagrees because if a STOP sign is in place at a crossing and an engineering study justifying its use is already on file, then a new study would not be necessary. However, if no such study is on file because it was lost or because engineering judgment was used to determine the need for the STOP sign, then a new study should be conducted and placed in the file. If the new study does not justify the STOP sign, then the STOP sign should be replaced with a YIELD sign.

The FHWA establishes a target compliance date of December 31, 2019 (approximately 10 years from the effective date of this final rule) or when adjustments are made to the individual grade crossing and/or corridor, whichever occurs first, for implementing the new requirements for YIELD or STOP signs at existing passive crossings. The FHWA establishes this target compliance date to promote increased safety at passive grade crossings, especially during nighttime hours. Because the new requirements involve conducting engineering studies and installing signs that do not currently exist at existing grade crossings, the FHWA believes that relying on the systematic upgrading processes that highway agencies typically use to replace existing signs at the end of their service lives would result in an excessively long time period for installation of YIELD or STOP signs at existing passive grade crossings. The FHWA anticipates that installation of the required additional signs at existing locations will provide significant safety benefits to road users.

548. In Section 8B.01 Purpose, the FHWA relocates existing SUPPORT and STANDARD statements from Section 10C.01 of the 2003 MUTCD with editorial revisions as proposed in the NPA in this final rule.

549. In retitled Table 8B–1 Grade Crossing Sign and Plaque Minimum Sizes, the NCUTCD suggested reducing the existing dimension for the I–13 sign (I–13a in the 2003 MUTCD) to 12 inches x 9 inches. The FHWA decides to delete the size information for the I–13 sign from Table 8B–1, to eliminate any potential inconsistencies with an anticipated future rulemaking for this item by the FRA.

A consultant questioned why the W10–14P, W10–14aP, and W10–15P plaques were proposed to increase in size from 24 inches x 18 inches to 30 inches x 24 inches, noting that sign sizes for other plaques (W10–5P, W10–9P, and proposed W10–10P) remained at 24 inches x 18 inches size. The FHWA in this final rule adopts increases in the size of the W10–5P and W10–9P plaques to 30 inches x 24 inches to provide consistency with the other adopted revisions that increase the lettering height to 5 inches for all railroad crossing warning plaques, to assure adequate legibility for drivers with 20/40 visual acuity.

550. In retitled Section 8B.03 Grade Crossing (Crossbuck) Sign (R15–1) and Number of Tracks Plaque (R15–2P) at Active and Passive Grade Crossings, the FHWA proposed in the NPA an OPTION statement that allowed the Crossbuck sign at non-signalized crossings to have reflectorized red lettering, rather than the standard black lettering. While a local DOT agreed with the proposal, five State DOTs, three local agencies, ATSSA, an NCUTCD member, and a consultant opposed it because of concerns that the red letters will fade quickly, the need for uniformity, and the red color might imply that a vehicle needs to stop. The FHWA agrees with these comments and does not adopt the proposed OPTION in this final rule, in order to promote uniformity.

Two State DOTs suggested revising the proposed SUPPORT statement to note that the Crossbuck sign functions similar to a YIELD sign. The FHWA agrees and in this final rule adopts the revisions to the SUPPORT statement proposed by the commenters. The FHWA also revises the SUPPORT to state that Crossbuck signs function similar to a YIELD sign ''in most States'' based on information provided by the FRA.

The FHWA also relocates to this section the existing OPTION from Section 10C.02 in the 2003 MUTCD to use a Crossbuck sign on a highway approach to a highway-light rail transit grade crossing on a semi-exclusive or mixed-use alignment.

A State railroad operator suggested revising the existing STANDARD statement to require the R15–2P plaque at all multi-track crossings, not just at crossings without automatic gates, based on concerns about the potential for second train incidents. These concerns are present at multi-track crossings, independent of whether gate arms are installed. The FHWA notes this comment and might consider including this suggestion in a future NPA.

The NCUTCD suggested adding the word ''vertical'' to the existing STANDARD in Section 8B.03 to clarify the orientation of the retroreflective white strip material on the support for a YIELD or STOP sign. The FHWA agrees and makes the suggested revision and relocates the language to Section 8B.04.

551. The FHWA adopts the retitled Figure 8B–1 (Figure 8B–3 in the 2003 MUTCD) Regulatory Signs and Plaques for Grade Crossings in this final rule, which combines Figure 8B–3 and Figure 10C–2 in the 2003 MUTCD and incorporates the NPA proposed R8–10a and R10–6a signs. ATSSA supported the new signs while an NCUTCD member opposed them stating that these smaller signs were not necessary. The FHWA disagrees because the smaller alternate signs are needed for situations when vertical space is limited.

A State railroad operator and local DOT suggested using the symbolic turn restriction blank-out signs instead of the text messages for the R3–1a and R3–2a signs, similar to the California MUTCD provisions. The FHWA notes that the Section 8B.08 text does not prevent blank-out symbolic signs from being used. The text gives the OPTION of using the word message signs for this purpose; the text does not mandate only

the use of the word message signs for this situation.

552. The FHWA also adopts the revised Section 8B.04 (Section 8B.08 in the 2003 MUTCD) Crossbuck Assemblies with YIELD or STOP Signs at Passive Grade Crossings in this final rule. The FHWA replaces all of the existing text with new STANDARD, GUIDANCE, SUPPORT, and OPTION statements proposed in Section 8B.05 the NPA combined with new language proposed in Section 10C.02 in the NPA that describes the use of STOP and YIELD signs at passive grade crossings. The FHWA also relocates a STANDARD from Section 8B.03 and makes several editorial revisions to the language as proposed in the NPA to remove inconsistencies and redundancies with Section 8B.03 based on several comments received. The remaining sections are renumbered accordingly.

The FHWA also adopts the NPA proposed deletion from the STANDARD statement of the requirement that Crossbuck signs be used on each highway approach to every highway-light rail transit grade crossing on a semi-exclusive alignment. The FHWA adopts this change to reflect the standard practice of most light rail transit agencies in the nation. Crossbuck signs are not typically used at grade crossings controlled by traffic signals, particularly in downtown areas. Grade crossings within highway-highway intersections in urban areas with train speeds of 35 mph or less are typically controlled by traffic signals and Crossbuck signs are not used. Crossbuck signs are not appropriate for light rail transit grade crossings in downtown areas or at intersections controlled by traffic signals, since they are believed to be ineffective and create sign clutter. A city agreed with the deletion while a State DOT opposed it.

The NCUTCD and a State DOT suggested adding a requirement in Section 8B.04 that the mounting height for the STOP or YIELD sign should be at least 5 feet for new installations while another State DOT suggested a 4-foot mounting height for new installations. The FHWA adopts a minimum mounting height of 4 feet but agrees that a higher mounting height might be needed for new installations and might consider proposing this in a future NPA.

The FHWA also proposed in Section 8B.03 of the NPA to revise the STANDARD statement, and the associated figure, to indicate that the measurement for the retroreflective strip that is placed on the front and back of the support for the Crossbuck sign is to be from the ground, rather than the roadway. The FHWA proposed this change because there might be some cases where the ground level at the base of the sign is higher than the edge of the roadway. The FHWA adopts the proposed change in Section 8B.04 in this final rule but does not adopt the requirement for the retroreflective strip on the back of the support. A State DOT suggested revising the text to add the word ''back'' to the existing STANDARD statement to specify where not to install white strips on Crossbuck supports for one-way streets. The FHWA agrees and adopts the suggested revision in this final rule and changes this statement to an OPTION rather than stating it in a STANDARD text as an exception.

Two State DOTs and a city opposed the STANDARD statement proposed in Section 8B.05 in the NPA for the use of STOP AHEAD and YIELD AHEAD warning signs because installing the signs might not always be feasible because of space limitations, the signs might conflict with advance railroad warning signs, and drivers might start ignoring these signs if too many are installed. The FHWA disagrees with the commenter because there will not be an over-proliferation of these signs if they are installed only when the criteria in Section 2C.35 are met. The FHWA adopts this proposed STANDARD paragraph in this final rule, but reverses the order of the W3–1 and W3–2 signs to improve consistency. The FHWA also adds a YIELD AHEAD and STOP AHEAD warning sign to Figure 8B–6.

A county and a consultant suggested revising the NPA proposed GUIDANCE recommending using yield lines at highway-rail crossings in order to reference Section 3B.16 and to remove the words ''transverse line'' since it might be confused with a stop line. The FHWA disagrees with removing ''transverse line'' because Section 3B.16 in the 2003 MUTCD makes it clear that yield lines are transverse lines. The FHWA does not adopt the proposed GUIDANCE and instead adopts a reference to Section 8B.28 in a new SUPPORT statement for the proper use of stop lines and yield lines.

A State DOT suggested providing an OPTION allowing a ''Goal Post'' or ''U''-mounted assembly for the placement of the Yield or Stop sign on a Crossbuck Assembly to maintain proper sign mounting height for crashworthiness of the sign assembly. The commenter also notes that these can be used as an alternative where the roadway shoulder area is limited. The FHWA notes that the text does not prevent an agency from using a U-mounted assembly. Figure 8B–2 shows the YIELD or STOP sign below the Crossbuck and Number of Tracks signs, but does not prohibit other arrangements and therefore no revisions are necessary to accommodate the commenter's request.

A State railroad operator suggested adding a STANDARD to require the railroad company to be responsible for the entire Crossbuck Assembly (which the language in the NPA defines to include the YIELD or STOP sign), unless the roadway authority has agreed to place and maintain a separate YIELD or STOP sign for the crossing. The commenter stated that typically railroad companies prohibit roadway authorities from altering or otherwise modifying Crossbuck Assemblies at their grade crossings, and STOP and YIELD signs placed in conjunction with Crossbuck Assemblies should ideally be located on the same post, and therefore maintained by the railroad. The commenter said that the responsibilities of the roadway authority and railroad should be stated. The FHWA disagrees because responsibility the installation and maintenance of the YIELD or STOP sign on the Crossbuck support will vary from State to State. To clarify this situation, the FHWA adds a cross reference to Sections 8A.02 and 8A.03, which discusses the general responsibilities of highway agencies and railroad companies.

553. The FHWA relocates Section 10C.04 in the 2003 MUTCD to Section 8B.05 and retitles the section as ''Use of STOP (R1–1) or YIELD (R1–2) Signs without Crossbuck Signs at Highway-Light Rail Grade Crossings,'' with editorial revisions, as proposed in the NPA, in this final rule.

554. The FHWA combines the light-rail transit grade crossing information from Section 10C.15 as proposed in the NPA into new Section 8B.06 (Section 8B.04 in the 2003 MUTCD) Grade Crossing Advance Warning Signs (W10 Series) and also adopts the NPA proposed revisions for Section 8B.06. The FHWA proposed to add to the first STANDARD statement a requirement that a supplemental plaque describing the type of traffic control at the highway-rail grade crossing shall be used with the Grade Crossing Advance Warning sign (W10–1). As part of this proposal, the FHWA also proposed requiring the use of a new No Signal (W10–10P) supplemental plaque in advance of a crossing that does not have active traffic control devices, and the use of a new Signal Ahead (W10–16P) plaque in advance of a crossing that does have active traffic control devices. While ATSSA agreed, numerous commenters opposed the use of the No Signal plaque because it is obvious what control is at an active crossing and because of concerns over the cost of

implementation, sign clutter, and lack of research and justification for their use. The FHWA acknowledges that the SIGNAL AHEAD plaque message is not needed or particularly helpful in advance of active crossings. There is already a NO GATES OR LIGHTS (W10–13P) plaque that can be used in advance of passive crossings, so a new NO SIGNAL plaque is unnecessary. Using a separate YIELD AHEAD or STOP AHEAD plaque will not convey this message, as road users might think that it refers to a highway-highway intersection beyond the grade crossing. Because this final rule adopts a requirement that a retroreflective YIELD or STOP sign be used at every passive crossing, which will have an effect on how much in advance (especially at night) a road user becomes aware of the presence of a grade crossing, there is no need to require or even recommend that this plaque be used at all passive crossings. As a result of the comments, the FHWA does not adopt the proposed STANDARD requiring supplemental plaques under advance warning signs at active and passive crossings, and the two proposed plaque designs.

A State DOT suggested providing an OPTION for situations where two grade crossings are spaced closely together where one grade crossing has signals and the other crossing does not. The FHWA disagrees with the need for this OPTION because in this unusual case lights and gates will have to also be installed at the passive grade crossing or the placement of the signs and plaques will have to be carefully designed to minimize any potential confusion. A State DOT recommended changing the reference from the W10–1 sign to the W10 series since there will be instances where the NO TRAIN HORN plaque is used and there will not be a W10–1 sign. The FHWA agrees and adopts the suggested revision.

The FHWA also proposed in the NPA to add at the end of the 1st STANDARD a statement that a YIELD AHEAD or a STOP AHEAD advance warning sign shall also be installed if criteria are met, along with information regarding the distance between signs in advance of a highway-rail grade crossing, to emphasize existing requirements in Part 2. Two State DOTs, five local agencies, an association, and a consultant opposed the new STANDARD because of concerns about sign redundancy with other advance warning signage, increases burdens on public agencies resulting from sign clutter and operations costs in typical urban environments, and will likely not change road user behavior. A city suggested reducing the STANDARD to GUIDANCE. The FHWA disagrees because the use of STOP AHEAD or YIELD AHEAD signs are required for non-grade crossing applications in Section 2C.35 when the criteria is met and their use should also be required in this section. Therefore, the FHWA adopts in this final rule the language as proposed in the NPA.

555. The FHWA adopts the NPA proposed new Figure 8B–3 Crossbuck Assembly with a YIELD or STOP Sign on a Separate Sign Support to reflect the adopted new requirement to install a YIELD sign or STOP sign at all passive highway-rail grade crossings, except crossings where road users are directed by an authorized person on the ground to not enter the crossing at all times that an approaching train is about to occupy the crossing. The remaining existing Figures in Chapter 8B are renumbered accordingly.

556. The FHWA combines light-rail transit grade crossing information from Section 10C.10 in the NPA into retitled Section 8B.07 (Section 8B.05 in the 2003 MUTCD) EXEMPT Grade Crossings Plaques (R15–3P, W10–1aP). A State DOT suggested revising the existing provisions to clarify the placement of an exempt plaque in relation to a Crossbuck sign, warning sign, or other plaque. The FHWA disagrees because Section 8B.07 has existing text that says that the EXEMPT plaque is installed below the advance warning sign.

557. In retitled Figure 8B–4 (Figure 8B–2 in the 2003 MUTCD) Warning Signs and Plaques for Grade Crossings, the FHWA proposed in the NPA to add the light rail transit signs and plaques from Figure 10C–3 in the 2003 MUTCD. The FHWA proposed revising the symbol shown on the W10–7 sign to use the same symbol of a light rail transit vehicle as that used on the I–12 sign. The light rail transit vehicle symbol on the existing W10–7 sign was an inadvertent error that the FHWA wanted to correct so that the symbols will be consistent. A city and ATSSA agreed with the proposed revision. The NCUTCD suggested adding a note that signs can be modified for geometrics to allow a curved line for a roundabout and railroad tracks. The FHWA agrees and adopts the proposed revision with the suggested note and editorial revisions.

558. With respect to the NPA proposed Figure 8B–6 Example of Placement of Warning Signs and Pavement Markings at Grade Crossings, the NCUTCD suggested adding the words ''If transverse lines are used at the grade crossing'' to the note about the yield line. The FHWA agrees and adopts the suggested change in this final rule. A State DOT opposed the use of yield lines. The commenter suggested showing an illustration of the yield line if this requirement is retained. The FHWA notes that if a YIELD sign is used at a passive crossing, then a yield or stop line may be used per Section 8B.28, as discussed below. The FHWA does not add an illustration of a yield line since the note on Figure 8B–6 is sufficient. The NCUTCD opposed moving the W10–1 sign in reference to the railroad crossing pavement markings and suggested retaining the location as shown in the 2003 MUTCD. The FHWA agrees and maintains the placement of the W10–1 and pavement markings as shown in the 2003 MUTCD. An NCUTCD member suggested illustrating the use of the W10–10P and W10–16P plaques for passive and active grade crossings, respectively. The FHWA notes that the supplemental plaques will not be required and therefore does not add them to the figure.

559. In Section 8B.08 Turn Restrictions During Preemption (Section 8B.06 in the 2003 MUTCD) and in Section 8B.09 DO NOT STOP ON TRACKS Sign (R8–8) (Section 8B.07 in the 2003 MUTCD) the FHWA combines the proposed language with appropriate text from Sections 10C.09 and 10C.05, respectively, in the 2003 MUTCD for light rail transit grade crossings, and adopts editorial revisions as proposed in the NPA in this final rule.

560. In Section 8B.10 TRACKS OUT OF SERVICE Sign (R8–9) (Section 8B.09 in the 2003 MUTCD) the FHWA combines the existing language with appropriate text from Section 10C.06 in the 2003 MUTCD for light rail transit grade crossings in this final rule. A local agency suggested revising the existing OPTION statement to clarify that the R8–9 sign replaces the Crossbuck assembly. The FHWA agrees and adopts the suggested revision in this final rule.

561. In retitled Section 8B.11 STOP HERE WHEN FLASHING Sign (R8–10, R8–10a) the FHWA combines the existing language with appropriate text from Section 10C.08 in the 2003 MUTCD for light rail transit grade crossings.

562. In retitled Section 8B.12 STOP HERE ON RED Sign (R10–6, R10–6a) the FHWA combines the existing language with appropriate text from Section 10C.07 in the 2003 MUTCD for light rail transit grade crossings.

563. In Section 8B.17 LOOK Sign (R15–8) (Section 8B.16 in the 2003 MUTCD), the FHWA proposed in the NPA to remove the option of mounting the LOOK sign on the Crossbuck support. Two State DOTs opposed this

revision because there are situations where this option is beneficial. Based on the comments received, the FHWA does not adopt the proposed change. However, the FHWA adopts a new GUIDANCE statement recommending that the LOOK sign should not be mounted on a Crossbuck Assembly that has a STOP or YIELD sign because there would be insufficient space for the LOOK sign and there would be too many signs for the driver to process. A State railroad operator suggested removing the phrase ''on a separate post'' from the proposed revision in the NPA to allow other possible mounting locations, such as on a pedestrian swing gate or on a wall adjacent to the crossing. The FHWA notes that the NPA proposal intended to prohibit the mounting of the LOOK sign on the Crossbuck support, and the option suggested by the commenter would be allowed with the adopted text. The FHWA also combines language with appropriate text from Section 10C.03 in the 2003 MUTCD for light rail transit grade crossings.

564. The FHWA proposed to rewrite Section 8B.18 (Section 8B.12 in the 2003 MUTCD) Emergency Notification Sign (I–13) and combine it with the information in Section 10C.21 in the NPA. The proposed new text included STANDARD statements that specify the minimum amount of information to be placed on Emergency Notification signs, sign placement, and the sign color of a white legend and border on a blue background. A GUIDANCE statement with additional information on sign retroreflectivity, sign placement, and sign size was also proposed. To illustrate the proposed changes, FHWA proposed to revise Figure 8B–5 and Table 8B–1 accordingly. The FHWA proposed these changes to simplify the requirements for these signs and to assure that the appropriate information is displayed on these signs that provide valuable information to roadway users in the event of an emergency or signal malfunction requiring notification to the railroad or light rail transit agency. A city and ATSSA agreed with the revisions proposed in the NPA. Two State DOTs suggested revisions to allow different letter heights. A city also opposed the proposed revision because in urban areas where the highway-light rail transit grade crossing is at a named intersection there should not be a need for a unique grade crossing identifier. The FHWA adopts the revisions as proposed in the NPA but removes specific references to letter heights and design details since this information will be addressed by an anticipated future rulemaking by the Federal Railway Administration.

A State DOT, six local agencies, an association, an NCUTCD member, and a consultant suggested adding a new provision that the railroad company is responsible for the installation and maintenance of the I–13 sign. The FHWA disagrees and notes that this specific responsibility might vary from State to State and Sections 8A.02 and 8A.03 discuss the general responsibilities of highway agencies and railroad companies.

565. With respect to the NPA proposals for retitled Figure 8B–5, (Figure 8B–4 in the 2003 MUTCD) Example of Emergency Notification Sign, the NCUTCD suggested revising the crossing number on the I–13 sign (I–13a in the 2003 MUTCD) to be consistent with the DOT format. The FHWA agrees with showing a realistic number in the figure and adopts the sign with a revised legend in this final rule. An NCUTCD member suggested deleting the emergency notification sign and figure from the MUTCD because he believes that it is the railroad company's responsibility to provide the sign. The FHWA disagrees because there are situations where highway agencies install and maintain these signs and therefore the sign is retained to promote uniformity.

566. In retitled Section 8B.21 (Section 8B.15 in the NPA) NO TRAIN HORN Sign or Plaque (W10–9, W10–9P), the FHWA proposed in the NPA to change the existing NO TRAIN HORN sign to a supplemental plaque. The FHWA also proposed to revise the STANDARD to clarify that the plaque should be mounted directly below the W10–1 sign. Two State DOTs and a State railroad operator suggested revising the NPA proposed STANDARD to include a reference to 49 CFR part 222 to be in conformity with the quiet zone definition noted earlier in the MUTCD. The FHWA agrees and adopts the suggested change in this final rule. The NCUTCD and a State DOT suggested allowing the NO TRAIN HORN plaque to also be used with the W10–2, W10–3, and W10–4 signs. The FHWA agrees that such use is appropriate and adopts the suggested revision. A State DOT also suggested requiring the NO TRAIN HORN plaque below the Number of Tracks Plaque, if used, otherwise mounted under the Crossbuck sign. The FHWA disagrees because the suggested revision would allow the placement of the NO TRAIN HORN sign at the crossing rather than in advance of the crossing where it is needed. The FHWA does not adopt the removal of the existing NO TRAIN HORN W10–9 sign as proposed in the NPA, and instead allows either the W10–9 sign or W10–9P plaque to be used.

567. In the NPA, the FHWA proposed deleting existing Section 8B.15 and relocating the information to other sections. The FHWA retains the section as Section 8.22 NO GATES OR LIGHTS Plaque (W10–13P) in this final rule. The FHWA deletes the NO SIGNAL Sign from the MUTCD based on comments received in Section 8B.06. See item 554 above.

568. The FHWA adopts Section 8B.23 Low Ground Clearance Grade Crossing Sign (W10–5) (Section 8B.17 in the 2003 MUTCD) in this final rule, which combines the existing language with the existing language in Section 10C.16 in the 2003 MUTCD for light rail transit grade crossings.

569. In Section 8B.24 (Section 8B.18 in the 2003 MUTCD) Storage Space Signs (W10–11, W10–11a, W10–11b), the FHWA combines appropriate text from Section 10C.18 in the 2003 MUTCD with NPA proposed Section 8B.18 in this final rule. A railroad operator suggested requiring the NO TRAIN HORN plaque (W10–9P) be placed above the W10–11aP or W10–11bP plaque. The FHWA disagrees and retains the existing text because the NO TRAIN HORN plaque needs to be placed on the same support as the advance warning sign, not the same support as the storage distance sign.

570. In Section 8B.25 Skewed Crossing Sign (W10–12) (Section 8B.19 in the 2003 MUTCD), the FHWA combines the existing language with appropriate text from Section 10C.19 in the 2003 MUTCD for light rail transit grade crossings.

571. In Section 8B.27 (Section 8B.20 in the 2003 MUTCD) Pavement Markings, the FHWA combines the existing language and proposed revisions with appropriate text from Section 10C.23 in the 2003 MUTCD for light rail transit grade crossings in this final rule. A State DOT opposed the NPA proposed revision to the 4th STANDARD statement in section 8B.20 which proposed removing the requirement for railroad pavement markings on roads with speeds less than 40 mph. The commenter believes that the pavement markings are important for safety and the revision would apply to thousands of crossings in the commenter's jurisdiction. The FHWA addresses the commenter's concern by revising the wording so that an engineering study is required to omit pavement markings on roads with speeds less than 40 mph.

The NCUTCD, two DOTs, two local agencies, an NCUTCD member, and a

consultant opposed the NPA proposed revisions to the GUIDANCE regarding the location of the advanced warning sign in relation to the pavement marking and suggested retaining the 2003 MUTCD text. The FHWA agrees and maintains the text as in the 2003 MUTCD and revises Figure 8B–6 to be consistent with this action.

572. In retitled Section 8B.28 (Section 8B.21 in the 2003 MUTCD) Stop and Yield Lines, the FHWA proposed in the NPA to add a STANDARD statement requiring the use of stop lines on paved roadways at highway-rail grade crossings that are equipped with active control devices. This requirement is currently implied by the existing language in Section 8B.21 of the 2003 MUTCD and illustrated in Figure 8B–6. A local DOT agreed. The FHWA adopts this specific requirement for clarification and because the stop line provides road users with a clear indication of the point behind which they are required to stop when the traffic control devices are activated.

The FHWA also proposed relocating GUIDANCE statements from Section 8B.05 in the NPA recommending stop lines when a STOP sign is used with the Crossbuck sign and adding yield lines when a YIELD sign is used with the Crossbuck sign. A city suggested adding a requirement for stop lines at passive crossings because stop lines are more important in those situations. A State DOT opposed using yield lines because their practice is to use stop lines at all highway rail crossings. Based on the comments received, the FHWA adds an OPTION to allow stop lines at passive grade crossings where a YIELD sign is installed. While the stop line is preferred in this situation for consistency, the new OPTION will improve safety by improving nighttime visibility at grade crossings with the retroreflective stop lines. The FHWA also combines the existing language with appropriate text from Section 10C.24 in the 2003 MUTCD for light rail transit grade crossings.

A city opposed the proposed revision in Section 8B.21 of the NPA to require a stop line at every active grade crossing because of the belief that this would provide a small benefit for a large cost and a State DOT suggested reducing the STANDARD to GUIDANCE. The FHWA disagrees with the commenters because the requirement is only for paved active crossings and the FHWA believes the safety benefits will outweigh the disadvantages. A State railroad operator suggested providing GUIDANCE regarding the appropriate placement of the stop line where tracks are within or adjacent to an intersection. The FHWA declines to add the suggested statement because engineering judgment should dictate stop line placement in those situations due to the wide variety of situations where tracks are within or immediately adjacent to the intersection. The FHWA adopts the language as proposed in the NPA and the new OPTION to install a stop line at a grade crossing with a YIELD sign in this final rule.

573. In Section 8B.29 (Section 8B.22 in the 2003 MUTCD) Dynamic Envelope Markings, the FHWA adopts the proposed NPA revision to Section 8B.22 in the 2003 MUTCD and relocates the SUPPORT, GUIDANCE, and OPTION statements from Section 10C.24 as proposed in the NPA. The FHWA deletes the existing OPTION statement in Section 8B.22 of the 2003 MUTCD in this final rule based on a comment received from a State railroad operator which suggested that the provision is subjective. The FHWA agrees that the OPTION is not needed because adopted paragraph 02 adequately addresses the subject.

574. In retitled Figure 8B–8 Example of Train Dynamic Envelope Pavement Markings at Grade Crossings, a State DOT suggested providing a new note on the existing figure that the dynamic envelope markings are optional. The FHWA agrees because the text of Section 8B.29 clearly describes these markings as optional. The FHWA adds ''optional'' prior to ''white pavement marking'' in the bottom right-hand corner of the drawing. The FHWA also adds the illustration from Figure 8A–1 in the 2003 MUTCD to this figure.

575. The FHWA in this final rule adopts the NPA proposed deletion of Chapter 8C Illumination in the 2003 MUTCD and places the information from this chapter in a new section numbered and titled Section 8A.06 Illumination at Grade Crossings. See item 544 above. The remaining chapters in Part 8 are re-lettered accordingly.

576. The FHWA relocates to Section 8C.01 (Section 8D.01 in the 2003 MUTCD) Introduction, the SUPPORT and GUIDANCE statements regarding light-rail transit grade crossings from Section 10D.01 in the NPA in this final rule. The FHWA proposed in the NPA to change the OPTION statement in Section 10D.01 to a STANDARD statement, which will require audible devices to be provided and operated in conjunction with flashing-light signals or traffic control signals where they are operated at a light rail transit grade crossing that is used by pedestrians. The FHWA proposed this change because light rail transit vehicles are often nearly silent, and blind pedestrians cannot see flashing lights. Requiring the use of an audible warning device would assure that information about the approach of a light rail transit vehicle is available to persons with visual disabilities. Two cities and a State railroad operator opposed the revision, in part because it might create conflicts with pedestrian crosswalk audible indications. The FHWA disagrees because it is essential that an audible device be available for blind pedestrians because of the quiet operation of light rail transit vehicles and light rail transit is generally located in urban areas where pedestrians are prevalent. The FHWA also notes that if conventional pedestrian signals are used at a traffic control signal, the accessible pedestrian features would be sufficient provided that pedestrians are always directed to not be in the crosswalk when a light-rail vehicle is approaching or occupying the crosswalk location and therefore text revisions are not necessary to accommodate pedestrian crosswalk audible indications. The FHWA believes the safety benefits outweigh the costs associated with the new requirement. The FHWA adopts the language as proposed in the NPA but relocates the statement to Section 8C.10.

The NCUTCD suggested adding new GUIDANCE that the top of the signal foundation should be no more than 4 inches above the surface of the ground. The NCUTCD stated that the top of the foundation should be at the same elevation as the crown of the roadway to permit use of standardized traffic control devices that meet the vertical clearances shown in Figure 8C–1 (Figure 8D–1 in the 2003 MUTCD). The NCUTCD also indicated that where site conditions require the top of the foundation to be at different elevation than the crown of the roadway, then the shoulder side slope should be re-graded or the height of the signal mast should be adjusted to maintain the vertical clearance requirements of Figure 8C–1. The FHWA agrees and adopts the suggested revision in this final rule.

577. In Figure 8C–1 (Figure 8D–1 in the 2003 MUTCD), Composite Drawing of Active Traffic Control Devices for Highway-Rail Grade Crossings Showing Clearances, the FHWA proposed to change gate arm stripes from diagonal to vertical. The FHWA received no comments and therefore adopts the revisions as proposed in the NPA in this final rule. A local DOT suggested clarifying the existing note above the gate that says, ''Dimension A–B–C and length for appropriate approaching traffic.'' The FHWA notes that the quantitative dimensions for A, B, and C are intentionally not specified because these dimensions vary from one location

to another based on the geometry of the approach lanes. The text in Section 8C.04 requires at least three lights on the gate arm. These lights should be positioned to have the maximum impact on drivers approaching the gate. The FHWA deletes the existing dimensions and revises the note to say, ''Minimum of three red lights positioned as appropriate for approaching traffic'' in this final rule.

578. In retitled Section 8C.02 (Section 8D.02 and 8D.03 in the 2003 MUTCD) Flashing-Light Signals, the FHWA adopts the editorial revisions as proposed in Section 8C.02 the NPA in this final rule. A State railroad operator suggested adding a new SUPPORT statement similar to Section 4D.06 to allow for the use of industry-standard technology such as light-emitting-diode (LED) signals which might not use optical lenses. Although not included in the NPA, the FHWA agrees and adopts a new SUPPORT statement that is similar to the text in Section 4D.06 in this final rule.

The FHWA also combines the OPTION and STANDARD statements contained in NPA Section 8C.03 into Section 8C.02 and adopts the new STANDARD as proposed in the NPA.

579. In Section 8C.04 (Section 8D.04 in the 2003 MUTCD) Automatic Gates, the FHWA proposed in the NPA to revise the 4th paragraph of the STANDARD statement to indicate that the stripes on gate arms shall be vertical, rather than 45-degree diagonal. The FHWA also proposed changes to the stripes on Figures 8C–1, 8C–5, and 8C–6 accordingly. The diagonal stripes might encourage road users to drive around the gates because diagonal stripes are used on other devices such as barricades, object markers, etc. to indicate the side of the device that road users are required to use when they travel past the device. A State DOT, a city, ATSSA, and a railroad operator agreed with the revision. The railroad operator also suggested adding GUIDANCE allowing a crossing to have one gate with vertical stripes and one gate with diagonal stripes during the implementation period. Two State DOTs and a citizen opposed the proposed revisions because the change is too subtle for the driver to notice and the lack of research supporting the revision. The FHWA disagrees and believes that this revision is worth making because of its potential to improve safety. The FHWA adopts the language as proposed in the NPA and adds a SUPPORT statement cross referencing paragraph 24 of the MUTCD Introduction, which describes two situations when a non-serviceable device that is non-compliant may be replaced in kind.

The FHWA adopts into this section the existing OPTION and GUIDANCE statements regarding light rail transit grade crossings from Section 10D.03 in the 2003 MUTCD.

580. In Section 8C.06 Four Quadrant Gate Systems (Section 8D.05 in the 2003 MUTCD), the FHWA adopts the editorial revisions proposed in the NPA in this final rule. The FHWA also combines the existing language with appropriate text from Section 10D.04 in the 2003 MUTCD for light rail transit grade crossings.

581. The FHWA proposed a new Section 8C.06 Wayside Horn Systems in the NPA. This new section as proposed in the NPA contained OPTION, STANDARD, and GUIDANCE statements regarding the use of wayside horn systems to provide directional audible warning at highway-rail grade crossings pursuant to the Interim Approval for the Use of Wayside Horn Systems, which was issued on August 2, 2004.[204] The Interim Approval and the proposed new MUTCD text support the regulation adopted by Federal Railroad Administration mandating the sounding of locomotive horns at highway-rail grade crossings (49 CFR part 222).[205] A State DOT opposed the proposed new section because they believe that a wayside horn system is not a traffic control device. The FHWA disagrees because a wayside horn system provides warning to traffic and is important to include in the MUTCD to assure uniform messages.

The NCUTCD suggested requiring the location and operating characteristics of the wayside horns to be determined by a diagnostic team. Based on item 539 above, the NPA proposed definition and proposed use of diagnostic team term has been removed from the MUTCD. An NCUTCD member opposed the STANDARD regarding wayside horn systems being directed towards approaching road users because traffic facing a STOP sign has no additional obligation to wait for clearance of the train than traffic waiting at a Crossbuck sign only and traffic controlled by a signal is obligated to wait until allowed by the signal to proceed. A local DOT also noted a conflict between the NPA proposed STANDARD in Section 8C.06 which states that the wayside horn systems shall be directed towards approaching road users, but provides an exception for movements that are controlled by a STOP sign or traffic control signal, and the NPA proposed GUIDANCE which states that wayside horn systems should be installed for each roadway approach. To clarify the new provisions and to be consistent with FRA regulations, the FHWA revises the proposed OPTION, STANDARD, and GUIDANCE statements in the NPA with references to 49 CFR part 222 and removes the specific requirements and recommendations in this final rule. This information does not need to be repeated in the MUTCD.

582. In Section 8C.09 (Section 8D.07 in the 2003 MUTCD) Traffic Control Signals at or Near Highway-Rail Grade Crossings, the FHWA proposed in the NPA to add a 3rd paragraph to the GUIDANCE statement recommending that back-up power be supplied to traffic control signals that have railroad preemption or that are coordinated with flashing-light signal systems at a highway-rail grade crossing. The FHWA proposed this recommendation because railroad flashing-light signals are typically provided with standby power supply to ensure their operation during power outages and it is important that traffic signals at or near the crossings also be provided with standby power during power outages to help prevent vehicles from queuing on approaches that cross the tracks. Two State DOTs suggested elevating the GUIDANCE to STANDARD. The City of Phoenix, AZ, suggested reducing the statement to an OPTION because of concerns about installation cost and the additional battery waste. Furthermore, they mentioned that Arizona's state laws require signals with power outages to be treated as four-way stop control. The FHWA notes that the proposed paragraph was identical to the new paragraph adopted in Section 4D.27. In this final rule the FHWA replaces the proposed GUIDANCE statement with a new SUPPORT statement referencing Section 4D.27 to eliminate redundancy.

In addition, the FHWA proposed in the NPA to add to the 4th paragraph of the GUIDANCE a statement consistent with Section 8A.01, which states that the highway agency or authority with jurisdiction and the regulatory agency with statutory authority jointly determine the need and selection of devices at a highway-rail grade crossing. A State DOT and a city opposed the proposed deletion of the words ''and the railroad company'' because they believe it is imperative that the railroad be

[204] The Interim Approval can be viewed at the following Internet Web site: *http://mutcd.fhwa.dot.gov/res-ia_waysidehorns.htm.*

[205] The **Federal Register** Notice was published on December 18, 2003, (Volume 68, Number 243, Page 70586–70687) and can be viewed at the following Internet Web site: *http://www.fra.dot.gov/downloads/Safety/train_horn_rule/fed_reg_trainhorns_final.pdf.*

involved in the timing requirements of a signal system. The FHWA disagrees because of the need for consistency with Section 8A.01 and adopts the language as proposed in the NPA in this final rule.

In conjunction with that change, the FHWA adopts the proposed new STANDARD statement in this final rule that requires that the timing parameters must be furnished by the jurisdiction so that the railroad will be able to design the train detection circuitry.

583. In retitled Section 8C.10 Traffic Control Signals at or Near Highway-LRT Grade Crossings (Section 10D.06 in the NPA), the FHWA combines the existing language with editorial revisions proposed in the NPA with existing language with proposed editorial revisions in Section 10D.07 in the NPA for highway traffic signal preemption turning restrictions.

584. In Section 8C.11 (relocated from Section 10D.08 in the NPA) Use of Traffic Control Signals for Control of LRT Vehicles at Grade Crossings, the FHWA adopts the revisions as proposed in the NPA in this final rule. A city questioned why the existing 2nd GUIDANCE statement is included in the MUTCD because it describes the type of signals used to control light rail transit vehicles. They believe that this is only useful for train operators. The FHWA disagrees because even though trained light rail transit operators are the only persons who are directly responding to these special signals, they are able to be viewed by other road users who begin to understand their meanings as they watch what light rail transit operators do in response to them. This is especially true as these signals are also beginning to be used for exclusive bus lanes. Traffic safety is improved by making these special signals uniform. The FHWA declines to remove the provision in this final rule.

585. The FHWA adopts the NPA proposed new Section 8C.12 Grade Crossing(s) Within or In Close Proximity to Circular Intersections in this final rule. This new section contains SUPPORT and STANDARD statements that clarify the need for active traffic control devices where grade crossings are within or in close proximity to roundabouts, traffic circles, or circular intersections. Where circular intersections include or are within 200 feet of a grade crossing, an engineering study is now required to be performed to determine if queuing could impact the grade crossing. A State DOT and a consulting firm agreed with the proposed new Section. A State railroad operator opposed the proposed new Section because of opposition to roundabouts being constructed adjacent to grade crossings due to grade crossing safety concerns. The FHWA agrees that when possible, it is better not to install roundabouts in close proximity to existing grade crossings because of the difficulty encountered when trying to clear the tracks as a train is approaching. When it is unavoidable, this section includes provisions that are intended to minimize any operational or safety issues.

A city suggested revising the STANDARD to allow engineering judgment to determine if queuing could impact a grade crossing. The FHWA disagrees and retains the requirement for an engineering study because this situation requires data collection and analysis in order to make sound judgment. The FHWA in this final rule replaces the words ''within close proximity'' with ''200 feet of'' in the new STANDARD to give a quantitative dimension in this final rule.

The FHWA establishes a target compliance date of December 31, 2014 (approximately 5 years from the effective date of this final rule) for the required traffic study at existing locations. The FHWA establishes this target compliance date because it is important that these studies be conducted in a timely manner. Because the new requirements involve conducting engineering studies at existing grade crossings, the FHWA believes that relying on the systematic upgrading processes that highway agencies typically use to replace existing signs at the end of their service lives would not be appropriate, given the safety implications of not having any means of clearing the track of stopped motor vehicles when rail traffic is approaching. The FHWA anticipates that the required traffic studies at existing locations will provide significant safety benefits to road users.

A State DOT suggested adding lights and gates to the proposed GUIDANCE list that should be considered for keeping the crossing clear of traffic or for clearing traffic. The FHWA agrees and in this final rule revises item C ''Grade crossing regulatory and warning devices'' to include gates, lights, and regulatory signs. A city opposed the proposed GUIDANCE because the information is related to intersection design. The FHWA disagrees because the statement provides valuable suggestions that agencies can implement to keep the grade crossing clear of traffic or to clear traffic from the grade crossing prior to the arrival of rail traffic.

586. In retitled Section 8C.13 (relocated from Section 10D.08 in the 2003 MUTCD) Pedestrian and Bicycle Signals and Crossings at LRT Grade Crossings, the FHWA proposed in the NPA to add to the GUIDANCE a statement that an audible device should be installed, in addition to a Crossbuck sign, at pedestrian and bicycle crossings where determined by an engineering study. The FHWA also proposed to recommend that the LOOK sign and/or pedestrian gates should be considered if an engineering study shows that flashing-light signals with a Crossbuck sign and an audible device would not provide sufficient notice of an approaching light rail transit vehicle. The FHWA proposed these changes to provide consistency with changes in Section 8C.01 in the NPA in item 576 above. A city agreed with the proposed revisions. The NCUTCD and a State railroad operator suggested moving all the text in this section to Chapter 8D Pathway Grade Crossing. The FHWA disagrees because Chapter 8D pertains only to pathways, not to sidewalks. The FHWA adopts the revisions as proposed in the NPA in this final rule.

587. In Figure 8C–6 (Figure 10D–4 in the 2003 MUTCD) Example of a Separate Pedestrian Gate, the NCUTCD suggested adding a new illustration showing a stand-alone pedestrian gate. The FHWA agrees and adopts a figure that shows a stand-alone pedestrian gate.

588. The FHWA adopts the proposed new Chapter 8D (Chapter 8E in the NPA) Pathway Grade Crossings, including Sections 8D.01 through 8D.06 in this final rule. The purpose of this new Chapter is to provide information for traffic control devices used at pathway-rail grade crossings. Shared-use paths and other similar facilities sometimes cross railroad or light rail transit tracks at grade and it is important that suitable traffic control devices be used to provide for safe and effective operation of such crossings. The FHWA also adopts and incorporates into Chapter 8D material from proposed Chapter 10F regarding pathway-light rail transit grade crossings.

589. In new Section 8D.03 retitled Pathway Grade Crossing Signs and Markings, the FHWA adopts the text as proposed in the NPA and also incorporates material regarding pathway-light rail transit grade crossings from Section 10F.03, as proposed in the NPA, in this final rule. A city opposed the STANDARD that requires post mounted signs to have a minimum mounting height of 4 feet and suggested it be reduced to a GUIDANCE statement because there are signs such as object marker signs that should be mounted lower. The FHWA disagrees because Sections 8D.03 and 9B.01 both

contain a similar 4-foot minimum mounting height requirement for signs posted for pathways and shared-use paths.

590. The FHWA adopts the proposed new Section 8D.04 (Section 8E.04 in the NPA) Stop Lines, Edge Lines, and Detectable Warnings in this final rule. In the NPA, the FHWA proposed to add new GUIDANCE on the use of stop lines and detectable warning surfaces. A local DOT and a city suggested revising the 1st GUIDANCE statement as proposed in the NPA to increase the minimum 2 foot distance between the stop line and gate or counterweight. The FHWA notes that the GUIDANCE wording uses the term ''at least'' meaning that there is flexibility to set the stop line farther back and therefore declines to make the suggested revision.

A local DOT suggested reducing the requirement to place the stop lines and detectable warning surfaces a minimum of 12 feet from the nearest rail because the distance does not allow a user of the crossing to view the approaching trains. The FHWA disagrees because pedestrians and bicyclists should be able to see approaching trains from a distance of 12 feet back from the nearest rail.

A consulting firm agreed with the 2nd GUIDANCE statement while a State DOT opposed it because it believed that detectable warnings are not a traffic control device and do not belong in the MUTCD. A State railroad operator suggested revising the GUIDANCE to add the words ''at least'' before the 2-foot detectable warning surface width to allow a 3-foot wide detectable surface to be consistent with California design guidelines, replace the ''upstream'' and ''downstream'' terminology with ''edge nearest the tracks'' to clarify placement of detectable surfaces on sidewalks where exit gates or off-quadrant flashing light signals are used, to reference the placement to the flashing light signals, and to delete the phrase ''and no closer than the stop line'' to remove the conflict with the 2-foot placement. For consistency with other Parts in the MUTCD, the FHWA reduces the proposed GUIDANCE statement for detectable warnings to SUPPORT and references ADAAG for design and placement of detectable warnings in this final rule.

The NCUTCD suggested adding an OPTION allowing the use of edge lines on an approach to and across the tracks at a pathway-light rail transit grade crossing, a station crossing, or sidewalk at a highway-light rail transit grade crossing. The NCUTCD also suggested adding a SUPPORT statement about edge lines at skew track angle or multiple track intersections. The FHWA agrees and adopts the suggested OPTION and SUPPORT, as information about these optional practices already allowed by provisions of Part 3 is useful.

591. The FHWA adopts the proposed new Section 8D.05 (Section 8E.05 in the NPA) Passive Devices for Pathway Grade Crossing in this final rule. In the NPA, the FHWA proposed STANDARD, OPTION, and GUIDANCE statements for passive devices and incorporates the light-rail grade crossing provisions from proposed Section 10F.05 in the NPA. The FHWA does not adopt the proposed GUIDANCE statement regarding the placement of fencing in this final rule based on comments received and because fences are not traffic control devices. The FHWA also proposed an OPTION in Section 10F.05 in the NPA allowing refuge areas at light rail transit grade crossings. The FHWA does not adopt the proposed OPTION in this final rule based on the NCUTCD recommendation and because refuge islands are not traffic control devices.

592. The FHWA adopts the proposed new Section 8D.06 (Section 8E.06 in the NPA) Active Traffic Control Systems for Pathway Grade Crossings, with the revisions discussed herein, in this final rule. The FHWA also incorporates into Section 8D.06 pathway-light rail transit crossing material from Section 10F.06 in the NPA. The NCUTCD agreed with the new text and suggested several editorial revisions which the FHWA adopts in this final rule.

A local DOT suggested revising the STANDARD to increase the 1-foot minimum height for the flashing red lights between the tracks to 4 feet because the 1-foot minimum will present a tripping hazard for users. The FHWA disagrees and notes that this was based on a recommendation provided by the NCUTCD and because pedestrians tend to look down as they step across tracks rather than look straight ahead.

A State railroad operator suggested revising the last STANDARD to replace ''active traffic control devices'' with ''a gate arm that extends across the sidewalk and into the roadway'' because the term ''active traffic control devices'' is too broad, as it could refer to a predestrian-specific device such as a separate automatic gate. The recommended language would prevent the placement of separate automatic gates on the outside of a sidewalk. The FHWA agrees and adopts the suggested revision in this final rule.

The NCUTCD suggested revising GUIDANCE regarding the height of separate automatic gates used for sidewalks so that the minimum height of the gate arm when lowered is reduced from the proposed value of 3 feet to 2.5 feet and to add a maximum height of 4 feet. A State railroad operator and a city also suggested adding a maximum height in the provision. The FHWA agrees that a maximum height should also be specified so that the gate will not be so high as to be ineffective for shorter persons and children. The FHWA adopts in this final rule a revised minimum height of 2.5 feet and a maximum height of 4 feet.

The NCUTCD and a local DOT suggested deleting, or revising to an OPTION, GUIDANCE paragraph 11 regarding a separate gate mechanism for sidewalk gates from the roadway gates and making other editorial changes. The FHWA disagrees and adopts the language as proposed in the NPA in this final rule, because it is important that pedestrians be prevented from raising the vehicular gate.

A local DOT suggested adding to the proposed GUIDANCE that a combination of automatic gates and swing gates could be used to provide full width coverage of the crossing. The FHWA agrees and adopts the suggested revision to the GUIDANCE in this final rule.

Discussion of Amendments to Part 9—Traffic Controls for Bicycle Facilities

593. In Section 9A.03 Definitions Relating to Bicycles, the FHWA proposed in the NPA to change the definition of ''bicycle lane'' to indicate that a bicycle lane is to be designated by pavement markings, and that signs may be used to supplement the markings designating a bicycle lane, but they are not required. While two cities and one association agreed with this change, a State DOT opposed this change, indicating that they preferred to use signs and pavement markings. Another State DOT questioned whether the use of pavement markings alone was consistent with the function of pavement markings in Part 3, which indicates that in most cases pavement markings are used to supplement signs. Because markings can sometimes be used alone to effectively convey regulations, guidance, or warnings, such as in the case of no-passing zone markings, the FHWA believes that bicycle lanes can be effectively designated by markings alone. States may supplement bicycle lane markings with signs if they choose to do so. The FHWA adopts in this final rule the proposed change to the definition and relocates this definition to Section 1A.13 to consolidate all definitions in one place.

594. In Section 9B.01 Application and Placement of Signs, the FHWA proposed in the NPA to revise the STANDARD statement to indicate that no portion of a sign or its support shall be placed less than 2 feet laterally from the near edge of the path, or less than 8 feet vertically over the entire width of the shared-use path. As part of this change, the FHWA proposed to remove the requirement that signs be placed a maximum of 6 feet from the near edge of a path. ATSSA, an NCUTCD member, and a citizen supported this change, while two State DOTs opposed this change. One of the commenters opposed this change, in part, because the change would cause the MUTCD to be in conflict with AASHTO guidance on bicycle facilities.[206] The FHWA believes that the AASHTO guide, which is currently undergoing revision, will be changed to reflect changes in the MUTCD. The FHWA adopts the proposed changes in this final rule to be more consistent with Part 2 and to respond to feedback from practitioners that the existing MUTCD standards for sign height and offset can restrict the ability of agencies to effectively install signs on many shared-use path locations. The FHWA also modifies Figure 9B–1 to illustrate the minimum vertical offset information for overhead signs.

595. In Section 9B.04, retitled Bike Lane Signs and Plaques (R3–17, R3–17aP, R3–17bP), the FHWA in this final rule revises the STANDARD and GUIDANCE statements to clarify that Bike Lane signs are not required along bicycle lanes, and to give recommendations on the placement of Bike Lane signs and plaques when they are used. A city, an NCUTCD member, and a citizen agreed with the revisions as proposed in the NPA, while a State DOT and a city preferred that bike lane signs remain mandatory. Whether the presence or absence of the Bicycle Lane sign provides a clearly measurable benefit in indicating a designated bicycle lane has not been conclusively demonstrated. Amending the MUTCD to make the use of Bicycle Lane signs with marked bicycle lanes an optional, rather than a mandatory, condition provides flexibility for jurisdictions that do not desire to use the Bicycle Lane sign, without restricting the ability of jurisdictions that prefer to use the signs to continue to do so. These changes are consistent with the changes to the definition of ''bicycle lane'' as discussed in item 593 above.

596. The FHWA adopts in this final rule the NPA proposed new Section 9B.06 Bicycles May Use Full Lane Sign (R4–11). This Section includes OPTION and SUPPORT statements regarding the use of this sign, which is illustrated in Figure 9B–2. While two State DOTs, ATTSA, three bicycle associations, two cities, and several citizens supported the proposed new sign, two State DOTs and an NCUTCD member opposed it, stating that the application of the design should be restricted to locations with speeds of less than 40 mph and that less experienced cyclists will likely misunderstand the meaning of the message. Other commenters suggested modifications to the sign design. The FHWA adopts this new sign as proposed in the NPA and accompanying text and figure, to provide jurisdictions with a consistent sign design, along with application information, for locations where it is important to inform road users that the travel lanes are too narrow for bicyclists and motor vehicles to operate side by side.

597. In Section 9B.09 Selective Exclusion Signs (numbered and titled in the 2003 MUTCD as Section 9B.08 No Bicycles Sign (R5–6)''), the FHWA in this final rule adopts new text regarding the exclusion of various designated types of traffic from using particular roadways or facilities. As part of the change, the FHWA adopts No Skaters (R9–13) and No Equestrians (R9–14) signs to the text and to Figure 9B–2. While the NCUTCD and ATSSA both agreed with the changes as proposed in the NPA, a State DOT suggested that the GUIDANCE be changed to an OPTION statement. The NCUTCD and another State DOT suggested that the section be organized to be consistent with the comparable section in Chapter 2B. The FHWA agrees with the reorganization suggestion and incorporates those changes into the language adopted in this final rule.

598. In retitled Section 9B.11 Bicycle Regulatory Signs (R9–5, R9–6, R10–4, R10–24, R10–25, and R10–26) (numbered Section 9B.10 in the 2003 MUTCD) the FHWA in this final rule is adopting information about three new signs for bicycle pushbuttons, consistent with similar text adopted in Chapter 2B. The FHWA received a comment from the NCUTCD in support of this change as proposed in the NPA, but suggesting that paragraph 4 be expanded to allow the use of the PUSH BUTTON TO TURN ON WARNING LIGHTS (with pushbutton symbol) (R10–25) sign in other appropriate locations where other types of beacons or lights are used for traffic control for bicyclists, such as beacons at path-roadway crossings, tunnels, or other locations. The FHWA agrees and in this final rule adopts this new OPTION based on the NCUTCD's suggestion.

599. In Section 9B.18 Bicycle Warning and Combined Bicycle/Pedestrian Signs (W11–1 and W11–15) (numbered and titled in the 2003 MUTCD as Section 9B.17 Bicycle Warning Sign (W11–1),) the FHWA in this final rule adopts the NPA proposed OPTION statement permitting the use of the Combined Bicycle/Pedestrian (W11–15) sign where both bicyclists and pedestrians might be crossing the roadway, such as at an intersection with a shared-use path. Based on comments from the NCUTCD, several DOTs and others, the design of the sign adopted in this final rule is changed from what was proposed in the NPA. Further discussion of this sign can be found above in the discussion of Chapter 2C.

The FHWA also proposed in the NPA to permit a TRAIL X–ING (W11–15P) supplemental plaque to be mounted below the W11–15 sign. A State DOT commented that they use a TRAIL CROSSING word message warning sign (with the word ''crossing'' spelled out rather than abbreviated). The FHWA does not adopt this word message sign in this final rule, but notes that agencies are permitted to use word message warning signs that they feel are most appropriate for their situation. A transportation consultant suggested that the supplemental plaque should be allowed to be placed above or below the W11–15 sign. The FHWA disagrees, because Section 2C.53 requires supplemental warning plaques to be mounted below the primary sign unless otherwise allowed, and there is no documented reason to allow it to be above the W11–15 sign. Therefore the FHWA adopts the text as proposed in the NPA. The FHWA adopts the proposed illustrations of the W11–15 sign and W11–15P supplemental plaque configuration in Figure 9B–3. These changes are consistent with Chapter 2C.

Finally, in the NPA the FHWA proposed changing paragraph 06 to a GUIDANCE to recommend, rather than merely allow, that the W11–15 sign and W11–15P supplemental plaques have a fluorescent yellow-green background color with a black legend and border. The FHWA received comments from a State DOT, a city, and a member of the NCUTCD opposed to this proposed recommendation, because either the agency reserves the use of the fluorescent yellow-green background color for school-related uses or because they feel that the research does not

[206] ''Guide for the Development of Bicycle Facilities'', 1999, by the American Association of State Highway and Transportation Officials (AASHTO), is available for purchase from AASHTO at the following Internet Web site: *https://bookstore.transportation.org/*.

support safety or operational benefits to support the making of fluorescent yellow-green background colors a recommended condition. As a result of these comments, along with comments regarding similar issues in Part 2, the FHWA adopts this paragraph as an OPTION for consistency with Section 2C.03

600. In Section 9B.19 Other Bicycle Warning Signs (Section 9B.18 in the 2003 MUTCD), the FHWA adopts in this final rule the NPA proposed change in the legend on the W5–4a sign from ''BIKEWAY NARROWS'' to ''PATH NARROWS.'' The FHWA adopts this change because shared-use paths are the only bikeway type on which the W5–4a sign is used, therefore, use on other types of bikeways would be inappropriate or confusing, and should not be encouraged. An NCUTCD member and a citizen agreed with this proposed change. In conjunction with this change in the text, the FHWA adopts appropriate changes in Table 9B–1.

601. In Section 9B.20 Bicycle Guide Signs (D1–1b, D1–1c, D1–2b, D1–2c, D1–3b, D1–3c, D11–1, D11–1c) (numbered and titled in the 2003 MUTCD as Section 9B.19 Bicycle Route Guide Signs (D11–1),) the FHWA proposed in the NPA to add several new signs, along with information on their use. These changes would provide flexibility and potentially reduce costs for signing bicycle routes in urban areas where multiple routes intersect or overlap. A State DOT, an NCUTCD member, two associations, and a citizen all agreed with the changes. While a city generally supported the signs, it questioned whether the details of the Bike Route Designation signs needed to be required through the use of STANDARD statements. The FHWA believes that the level of detail is needed to make sure that agencies design the signs properly and consistently. A State DOT recommended that these signs be used only on shared use paths, not on roadways. The FHWA believes that the bicycle symbol on the signs distinguishes them from destination signs for motorists, however to be clear, in this final rule the FHWA adopts a recommendation that the smaller bike designation signs should not be used as a substitute for the larger vehicular destination signs when the message is also intended to be seen by motorists. Along with additional text regarding the use of the Alternative Bike Route Guide (D11–1c) and Bicycle Destination signs (D1–1b, D1–1c, D1–2b, D1–2c, D1–3b, and D1–3c), the FHWA adopts the various new signs to Table 9B–1 and Figure 9B–4. The FHWA received many comments from NCUTCD members, ATSSA, State and local DOTs, associations, and citizens in support of the signs in Figure 9B–4.

602. In Section 9B.21 Bicycle Route Signs (M1–8, M1–8a, M1–9) (numbered Section 9B.20 in the 2003 MUTCD), the FHWA in this final rule adopts the NPA proposed Bicycle Route (M1–8a) sign that retains the clear, simple, and uniform design of the M1–8 sign, but provides an area near the top of the panel to include a pictograph or words that are associated with the route or with the agency that has jurisdiction over the route. The M1–8 sign remains in the MUTCD for use when agencies do not wish to use a distinctive pictograph, symbol, or wording.

In addition, the FHWA adopts the proposed change of paragraph 04 to a GUIDANCE to recommend, rather than merely permit, that a U.S. Bicycle Route number designation be requested from AASHTO for a designated bicycle route that extends through two or more States. The FHWA also adopts in this GUIDANCE the text relocated from the definition of ''designated bicycle route'' in Section 9A.03 regarding continuous routing of bicycle routes, as discussed above in item 593.

Finally, the FHWA adopts the revised design of the U.S. Bike Route Sign in Figure 9B–4 so that a larger bicycle is shown on the top part of the sign with a smaller number below it. The reason for the change is to present an immediate impression of a ''bicycle numbered route'' rather than a ''highway numbered route which can also be used by bicyclists'' and to provide consistency with AASHTO's recommended design for the sign. The FHWA received two comments in support of the proposed changes to this section; however a State DOT commented that they preferred the old M1–9 sign with the route number larger than the bicycle symbol and above the symbol. The FHWA believes that the larger bike symbol with smaller route number will deter motorists from mistaking the sign for a vehicle route number when observing the sign from a distance and adopts in this final rule the image as proposed in the NPA.

603. The FHWA in this final rule revises the content of Section 9B.22 Bicycle Route Sign Auxiliary Plaques (numbered and titled in the 2003 MUTCD as Section 9B.21 Destination Arrow and Supplemental Plaque Signs for Bicycle Route Signs) considerably. As part of the changes, the FHWA revises the size and design of the M4–11 BEGIN plaque to be consistent with similar M4 series auxiliary signs in Part 9. The FHWA also deletes the M4–12 and M4–13 plaques from this section and Figure 9B–4 because these duplicate the M4–6 and M4–5 auxiliary signs. In addition, the FHWA deletes the M7 series arrow plaques from this section and Figure 9B–4 because these duplicate the new sizes of the M5 and M6 auxiliary signs. The FHWA also adds a size of 12 x 6 inches for selected M3 and M4 series auxiliary signs, and a size of 12 x 9 inches for all M5 and M6 series auxiliary signs, and refers to these smaller sizes in this section, Table 9B–1, and Figure 9B–4. These changes will ensure that route auxiliary designations are consistent between Part 2 and Part 9. The FHWA received a comment from an NCUTCD member in support of the changes to this section proposed in the NPA. A State DOT recommended that supplementary plaques be restricted from exceeding the width of the sign they supplement, however the FHWA feels that this restriction is not necessary, because agencies do not tend to use plaques that are wider than the sign that they accompany as long as the available plaque sizes enable choosing a plaque of equal or less width.

604. The FHWA adopts in this final rule the three new sections proposed in the NPA following Section 9B.23 Bicycle Parking Area Sign (D4–3) (Section 9B.22 in the 2003 MUTCD). New Section 9B.24 Reference Location Signs (D10–1 through D10–3) and Intermediate Reference Location Signs (D10–1a through D10–3a) contains information regarding the use of these signs on shared-use paths. Reference Location signs (formerly called mileposts) have been defined in Chapter 2D of the MUTCD since 1971, and have proven extraordinarily valuable for traveler information, maintenance and operations, emergency response, and numerous other applications. The linear nature of many shared-use paths also naturally lends itself to the application of Reference Location signs. Defining a standard and uniform design provides more uniform traveler guidance, reduces the proliferation of non-standard reference location signs, and encourages the use of these signs where desirable and appropriate. The signs are proportionately sized for the lower operating speeds of shared-use paths, using a 6-inch wide panel with 4.5 inch numerals. The text is adapted directly from Section 2H.05 defining the use of these signs for conventional roadways. Although the FHWA received comments from ATSSA, an NCUTCD member, and a citizen in support of this proposed new section, the NCUTCD, several

bicycle associations, a city and a citizen opposed paragraph 10 that recommended that the zero distance should begin at the south and west terminus points, because it does not allow for needed flexibility for local agencies in setting up reference marker systems on paths. Because deviations from a recommendation are permitted if there is a good engineering reason to do so, the FHWA adopts the language regarding the zero distance in this final rule. A city suggested that placing the details for the design of the reference location in a STANDARD statement was excessive; however, the FHWA believes that these requirements are necessary to make sure that agencies design the signs properly. In addition to adopting revisions the text, the FHWA adopts revisions to Figure 9B–4 and Table 9B–1 to include the use of these signs.

605. The FHWA adopts in this final rule a second new section, Section 9B.25 Mode-Specific Guide Signs for Shared-Use Paths (D11–1a, D11–2, D11–3, D11–4), that contains information regarding the use of signs to guide different types of users to separate pathways where they are available. The 2003 MUTCD provided tools only to prohibit user types, not to show which user types are permitted. As a result, jurisdictions commonly installed varied, non-standard mode permission signs. The changes adopted are intended to provide clarity and uniformity for mode-specific guide signs on shared-use paths by adding four new signs to the MUTCD. The FHWA received comments from an NCUTCD member and a citizen in support of this proposed new section. In addition to adopting the new signs in Figure 9B–4 and Table 9B–1, the FHWA adopts the proposed Figure 9B–8 ''Example of Mode-Specific Guide Signing on a Shared-Use Path'' to illustrate the use of the proposed signs.

606. The FHWA adopts in this final rule a new Section 9B.26 Object Markers. This section contains relocated text and figures from Section 9C.03 of the 2003 MUTCD, to be consistent with a similar move of object markers from Part 3 to Part 2. The FHWA received a comment from an NCUTCD member in favor of this change. The NCUTCD and a State DOT suggested that the object markers be included in a figure so in this final rule the FHWA includes them in Figure 9B–3 and adds the smaller size object markers to Table 9B–1. Based on comments from the NCUTCD and a State DOT, the FHWA also adopts an option to use a proportionately smaller (6 x 18 inches) version of the Type 3 object marker for use on shared-use paths. This smaller size will be more useful and appropriate than the standard size of 12 & 36 inches for many applications, and will provide adequate visibility and target value at pathway speeds.

607. The FHWA adopts several changes to Table 9B–1 in this final rule based on comments to the docket. The NCUTCD, a State DOT, a city, bicycle associations, and citizens provided comments regarding the R3–17 sign and R3–17a and R3–17b plaques. As a result, the FHWA changes the name of the sign to ''Bike Lane'' to be consistent with the actual wording on the sign and changes the minimum size of the roadway size for the R3–17 sign to 24 x 18 inches and the sizes of the corresponding R3–17aP and R3–17bP plaques to 24 x 8 inches.

Based on comments from the NCUTCD, a State DOT, and a bicycle association, the FHWA changes the minimum shared-use path size for the R5–6 sign to 18 x 18 inches. The FHWA does not agree with comments to reduce the size of the roadway size of this sign, because there are more distractions from other signs and traffic control devices in a roadway environment, and therefore retains the minimum size of 24 x 24 inches for roadway uses in this final rule.

The NCUTCD and several associations suggested that the name of the W10–1 sign be changed to ''Grade Crossing Advance Warning'' to be consistent with the description of the W10–1 sign in Chapter 8B. The FHWA agrees and adopts this change in this final rule. In addition, the NCUTCD, a State DOT, two cities, and several associations and citizens suggested that the size of the W10–1 on shared-use paths be reduced. The FHWA agrees and changes the diameter of the W10–1 sign to 24 inches for use on shared-use paths.

Based on comments from the NCUTCD and several associations, the FHWA adopts a row for the W10–9P No Train Horn plaque (12 x 9 inches) and a row for the W16–2aP XX Feet plaque (18 x 9 inches) for use on shared-use paths.

The NCUTCD and several associations suggested that the name of the M1–8 and M1–8a signs be changed to ''Numbered Bicycle Route'' to be consistent with the intended application of these signs and to reduce confusion with other non-numbered bicycle route signs. The FHWA agrees and adopts the name change in this final rule. In addition, based on comments from the NCUTCD, a State DOT, and several associations, the FHWA revises the size of the roadway M1–8 and M1–8a signs to 18 x 24 inches for greater visibility.

Finally, based on comments from the NCUTCD, a State DOT, and several associations, the FHWA revises the size of the U.S. Bicycle Route (M1–9) sign to 12 x 18 inches for use on paths to make the size of this sign consistent with the M1–8 and M1–8a signs.

608. In Section 9C.03 Marking Patterns and Colors on Shared-Use Paths, the FHWA in this final rule relocates the last five paragraphs that were in this section in the 2003 MUTCD to new Section 9B.26, as discussed in item 606 above.

In the NPA, the FHWA proposed to expand paragraph 05 to describe that a solid white line may be used on shared-use paths to separate different types of users traveling in the same direction. Because pedestrian use in designated portions of shared-use paths is typically bi-directional, the NCUTCD, a State DOT, two cities, and several bicycle associations and citizens opposed the expanded description. The FHWA agrees and does not adopt the phrase ''traveling in the same direction'' in this final rule.

609. In Section 9C.04 Markings for Bicycle Lanes, the FHWA in this final rule incorporates several changes to this Section to correspond with changes to the definition of ''bicycle lane'' in Section 1A.13 and signs and plaques for bike lanes in Section 9B.04 (item 595 above). A State DOT, a city, and an NCUTCD member all supported the changes to this section that indicate that bike lane signs are optional.

Based on a comment from a State DOT, the FHWA adopts expanded paragraphs 06 and 07 to include information regarding the marking of bike lanes in the vicinity of left-turn lanes as well as right-turn lanes, for consistency with other provisions in Part 9.

In the NPA, the FHWA proposed to expand the last STANDARD statement to include ''other circular intersections'' as locations where bicycle lanes are prohibited. Although the FHWA's intent was to clarify that in addition to being prohibited on the circular roadway of a roundabout, bicycle lanes are not to be provided on the circular roadway of other circular intersections, the NCUTCD and several bicycle associations objected to the statement, since there are certain types of larger circular intersections (such as ones with significant distances between exits and entrances) where bike lanes may be appropriate based on engineering judgment. The FHWA agrees and does not adopt the phrase ''other circular intersections'' in this final rule.

610. The FHWA in this final rule adopts the proposed new section at the end of Chapter 9C numbered and titled Section 9C.07 Shared Lane Marking. This section contains OPTION,

GUIDANCE, and STANDARD statements regarding the use of a proposed new Shared Lane Marking. This pavement marking indicates the appropriate bicyclist line of travel, and cues motorists to pass with sufficient clearance, and is based on field research conducted in San Francisco, CA.[207] The purpose of this marking is to reduce the number and severity of bicycle-vehicular crashes, particularly crashes involving bicycles colliding with suddenly opened doors of parked vehicles. The FHWA received two comments from NCUTCD members, three State DOTs, four local jurisdictions, four bicycle associations, and eight citizens in support of this proposed new section.

Two State DOTs and one bicycle association expressed concern regarding paragraph 02 that recommends that the shared lane marking not be placed on roadways with a speed limit above 35 mph. Because the 35 mph speed limit is a recommendation, agencies may impose a lower maximum speed limit criterion on the use of this marking if there is a good engineering reason to do so, therefore the FHWA adopts the proposed wording in this final rule.

A State DOT, a local DOT, two cities, two bicycle associations, and a citizen expressed concern regarding the proposed requirement in the NPA regarding the placement of the shared lane marking when used in a shared lane with on-street parallel parking. The commenters felt that the measurements should be recommendations, rather than requirements, in order to give agencies flexibility in placement of the marking. The FHWA agrees and in this final rule adopts these measurements as a GUIDANCE statement in paragraph 04. The FHWA reiterates, however, that the text provides a minimum distance from the center of the marking to the face of curb or edge of pavement where there is no curb, so agencies are free to place the markings at a greater distance if there is a good engineering reason to do so.

The FHWA received comments from a State DOT, two cities, a bicycle association and a citizen regarding the recommendation in paragraph 05 that on a street without on-street parking that has an outside travel lane that is less than 14 feet wide, the centers of the Shared Lane Markings should be at least 4 feet from the face of the curb, or from the edge of the pavement where there is no curb. Some commenters felt that the 4-foot distance was too close to the curb, while others stated that it is preferable to install the marking closer to the curb. The FHWA in this final rule adopts the language as proposed in the NPA, because it is a recommendation for minimum lateral clearances, therefore engineering judgment can be used if slightly reduced lateral distances are more appropriate, while larger lateral clearances can also be implemented.

The FHWA also received comments from three cities and from a transportation consultant regarding the recommended spacing interval between the Shared Lane Markings. Some commenters felt that a 250-foot spacing was too close and some felt that there should not be a recommended spacing interval at all. The FHWA believes that it is important to space the markings no more than 250 feet apart so that users can see the next marking from the previous one, so the FHWA adopts the recommended 250-foot interval spacing in this final rule. Since this is a recommended maximum spacing, agencies are free to space the markings at closer intervals if they feel it is appropriate.

Finally, several commenters expressed confusion, or the need for clarity, between the use of the Shared Lane Marking and the Bicycles May Use Full Lane (R4–11) sign. The marking and the sign are two separate devices, however the FHWA adopts a SUPPORT statement in this final rule providing a cross reference to the Bicycles May Use Full Lane sign and clarifies that the two devices are not required to be used together. In addition to the text, the FHWA in this final rule illustrates the appropriate design of the marking in adopted Figure 9C–9 Shared Lane Marking.

Discussion of Amendments to Appendix

611. As previously discussed in this preamble under General Amendments to the MUTCD, in this final rule the FHWA places information in a new Appendix A2, with metric equivalent values for all English unit values used in the MUTCD.

Rulemaking Analysis 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 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. In addition these changes do not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. 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. 601–612), the FHWA has evaluated the effects of these changes 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, 109 Stat. 48, March 22, 1995). 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 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 $128.1 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and the FHWA has determined that this action does not have sufficient federalism

[207] ''San Francisco's Shared Lane Pavement Markings: Improving Bicycle Safety,'' Final Report, February 2004, prepared for the City of San Francisco Department of Traffic and Parking by Alta Planning and Design can be viewed at the following Internet Web site: *http://www.sfmta.com/cms/uploadedfiles/dpt/bike/Bike_Plan/Shared%20Lane%20Marking%20Full%20Report-052404.pdf.*

implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this rulemaking will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. 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 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 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. Therefore, a Statement of Energy Effects under Executive Order 13211 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 for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this action does not contain collection information requirements for 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. The FHWA certifies that this action does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

The FHWA does not anticipate that this action will affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The agency has analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that it does not have any effect on the quality of the environment.

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 18, 2009.

Jeffrey F. Paniati,

Executive Director.

■ In consideration of the foregoing, under the authority of 23 U.S.C 101(a), 104, 109(d), 114(a), 217, 315, and 402(a), and as discussed in the preamble, the FHWA amends title 23, Code of Federal Regulations as follows:

PART 634—[REMOVED AND RESERVED]

■ 1. Remove Part 634 .

PART 655—TRAFFIC OPERATIONS

■ 2. 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).

■ 3. Revise paragraph (a) of § 655.601, to read as follows:

§ 655.601 Purpose.

* * * * *

(a) Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), 2009 Edition, FHWA, dated November 4, 2009. 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 National Archives and Records Administration (NARA). For information on the availability of this material at NARA call (202) 741–6030, or go to *http://www.archives.gov/Federal_register/code_of_Federal_regulations/ibr_locations.html.* It is available for inspection and copying at the Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, telephone 202–366–1993, as provided in 49 CFR part 7. The text is also available from the FHWA Office of Operations Web site at: *http//mutcd.fhwa.dot.gov.*

* * * * *

■ 4. In § 655.603, revise paragraph (a) to read as follows:

§ 655.603 Standards.

(a) National MUTCD. The MUTCD approved by the Federal Highway Administrator is the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel in accordance with 23 U.S.C. 109(d) and 402(a). For the purpose of MUTCD applicability, open to public travel includes toll roads and roads within shopping centers, airports, sports arenas, and other similar business and/or recreation facilities that are privately owned but where the public is allowed to travel without access restrictions. Except for gated toll roads, roads within private gated properties where access is restricted at all times are not included in this definition. Parking areas, driving aisles within parking areas, and private highway-rail grade

crossings are also not included in this definition.

* * * * *

Appendix to Subpart F of Part 655—[Amended]

■ 5. In Table 1 is amended by revising the daytime chromaticity coordinates for the color Purple as follows:

TABLE 1 TO APPENDIX TO PART 655, SUBPART F—DAYTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE STANDARD ILLUMINANT D_{65}

Color	1		2		3		4	
	x	y	x	y	x	y	x	y
* * *	*		*		*		*	
Purple	0.302	0.064	0.310	0.210	0.380	0.255	0.468	0.140

* * * * *

■ 6. Table 2 is amended by adding the nighttime chromaticity coordinates for the color Purple as follows:

TABLE 2 TO APPENDIX TO PART 655, SUBPART F—NIGHTTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND OBSERVATION ANGLE OF 0.33°, ENTRANCE ANGLE OF +5° AND CIE STANDARD ILLUMINANT A

Color	1		2		3		4	
	x	y	x	y	x	y	x	y
* * *	*		*		*		*	
Purple	0.355	0.088	0.385	0.288	0.500	0.350	0.635	0.221

■ 7. Table 3 is amended by revising the daytime chromaticity coordinates for the color Fluorescent Pink, and by adding after Fluorescent Pink the color Fluorescent Red and its daytime chromaticity coordinates, for retroreflective sign material as follows:

TABLE 3 TO APPENDIX TO PART 655, SUBPART F—DAYTIME COLOR SPECIFICATION LIMITS FOR FLUORESCENT RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE STANDARD ILLUMINANT D_{65}

Color	1		2		3		4		5	
	x	y	x	y	x	y	x	y	x	y
* * *	*		*		*		*		*	
Fluorescent Pink	0.600	0.340	0.450	0.332	0.430	0.275	0.536	0.230	0.644	0.221
Fluorescent Red	0.666	0.334	0.613	0.333	0.671	0.275	9.735	0.265	.....	.....

■ 8. Table 3A is amended by adding after Fluorescent Pink the color Fluorescent Red and its daytime luminance factor limits for retroreflective sign material as follows: Table 3A to Appendix to Part 655, Subpart F—Daytime Luminance Factors (%) for Fluorescent Retroreflective Material with CIE 2° Standard Observer and 45/0 (0/45) Geometry and CIE Standard Illuminant D_{65}.

Color	Min	Max	Y_F
* * * *	*	*	*
Fluorescent Red	20	30	15

■ 9. Table 4 is amended by adding after Fluorescent Green the color Fluorescent Red and its nighttime chromaticity coordinates for retroreflective sign material as follows:

TABLE 4 TO APPENDIX TO PART 655, SUBPART F—NIGHTTIME COLOR SPECIFICATION LIMITS FOR FLUORESCENT RETROREFLECTIVE MATERIAL WITH CIE 2° STANDARD OBSERVER AND OBSERVATION ANGLE OF 0.33°, ENTRANCE ANGLE OF +5° AND CIE STANDARD ILLUMINANT A

Color	1		2		3		4	
	x	y	x	y	x	y	x	y
* * *	*		*		*		*	
Fluorescent Red	0.680	0.320	0.645	0.320	0.712	0.253	0.735	0.265

■ 10. Table 5 is amended by adding after the color Blue the daytime chromaticity coordinates for Purple retroreflective pavement marking material as follows:

TABLE 5 TO APPENDIX TO PART 655, SUBPART F—DAYTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE PAVEMENT MARKING MATERIAL WITH CIE 2° STANDARD OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE STANDARD ILLUMINANT D_{65}

Color	1		2		3		4	
	x	y	x	y	x	y	x	y
* * *	*		*		*		*	
Purple	0.300	0.064	0.309	0.260	0.362	0.295	0.475	0.144

■ 11. Table 5A is amended by adding after the color Blue the daytime luminance factors for Purple retroreflective pavement marking material as follows:

TABLE 5A TO PART 655, SUBPART F—DAYTIME LUMINANCE FACTORS (%) FOR RETROREFLECTIVE PAVEMENT MARKING MATERIAL WITH CIE 2° STANDAR OBSERVER AND 45/0 (0/45) GEOMETRY AND CIE STANDARD ILLUMINANT D_{65}

Color	Min	Max
* * * * *	*	*
Purple	5	15

■ 12. Table 6 is amended by adding after the color Yellow, the nighttime chromaticity coordinates for Purple retroreflective pavement marking material as follows:

TABLE 6 TO APPENDIX TO PART 655, SUBPART F—NIGHTTIME COLOR SPECIFICATION LIMITS FOR RETROREFLECTIVE PAVEMENT MARKING MATERIAL WITH CIE 2° STANDARD OBSERVER, OBSERVATION ANGLE OF 1.05°, ENTRANCE ANGLE OF +88.76° AND CIE STANDARD ILLUMINANT A

Color	1		2		3		4	
	x	y	x	y	x	y	x	y
* * *	*		*		*		*	
Purple	0.338	0.080	0.425	0.365	0.470	0.385	0.635	0.221

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Partial 90-Day Finding on a Petition to List 475 Species in the Southwestern United States as Threatened or Endangered With Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2008–0130]
[92210–1111–0000–B2]

Endangered and Threatened Wildlife and Plants; Partial 90-Day Finding on a Petition to List 475 Species in the Southwestern United States as Threatened or Endangered with Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90–day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90–day finding on 192 species from a petition to list 475 species in the southwestern United States as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). For 125 of the 192 species, we find that the petition did not present substantial information indicating that listing may be warranted. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing may be warranted for 67 of the 192 species. Therefore, with the publication of this notice, we are initiating a status review of the 67 species to determine if listing is warranted. To ensure that the status review is comprehensive, we are requesting scientific and commercial data and other information regarding these 67 species. Based on the status review, we will issue a 12–month finding on the petition, which will address whether the petitioned action is warranted, as provided in the Act.

DATES: To allow us adequate time to conduct a status review, we request that we receive information on or before February 16, 2010. After this date, you must submit information directly to the Southwest Regional Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we may not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

• Federal rulemaking Portal: *http://www.regulations.gov*. Search for Docket no. FWS-R2-ES-2008-0130 and then follow the instructions for submitting comments.

• U.S. Mail or hand delivery: Public Comments Processing, Attn: FWS-R6-ES-2008-0131; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the **Request for Information** section below for more information).

FOR FURTHER INFORMATION CONTACT: Nancy Gloman, Assistant Regional Director, Southwest Regional Ecological Services Office, 500 Gold Avenue SW, Albuquerque, NM 87102; telephone 505/248-6920; facsimile 505/248-6788. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on each of the 67 species from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. For each of the 67 species, we seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species or its habitat.

(2) The five factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include.

If, after the status review, we determine that listing any of the 67 species is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act) to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, within the geographical range currently occupied by each of these 67 species, we request data and information on:

(1) what may constitute ''physical or biological features essential to the conservation of the species'';

(2) where these features are currently found; and

(3) whether any of these features may require special management considerations or protection.

In addition, we request data and information on ''specific areas outside the geographical area occupied by the species'' that are ''essential to the conservation of the species.'' Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 3(5)(A) and section 4(b) of the Act.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act of 1973, as amended (Act) (16 U.S.C. 1533 (b)(1)(A)) directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Information and supporting documentation that we received and used in preparing this finding will be available for you to review at *http://www.regulations.gov*, or you may make an appointment during normal business hours at the U.S. Fish and Wildlife

Service, Southwest Regional Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that a petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise readily available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90–day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted (50 CFR 424.14(b)).'' If we find that substantial scientific or commercial information was presented, we are required to promptly commence a status review of the species, which is subsequently summarized in our 12–month finding.

Petition History

On June 25, 2007, we received a formal petition dated June 18, 2007, from Forest Guardians (now WildEarth Guardians), requesting that we, the U.S. Fish and Wildlife Service (Service), do the following (1) Consider all full species in our Southwest Region ranked as G1 or G1G2 by the organization NatureServe, except those that are currently listed, as proposed for listing, or candidates for listing; and (2) list each species under the Act as either endangered or threatened with critical habitat. The petitioner incorporated all analyses, references, and documentation provided by NatureServe in its online database at *http://www.natureserve.org/* into the petition. The petition clearly identified itself as a petition and included the appropriate identification information, as required in 50 CFR 424.14(a). We sent a letter to the petitioner dated July 11, 2007, acknowledging receipt of the petition and stating that the petition was under review by staff in our Southwest Regional Office.

We received an additional petition on October 15, 2008, from WildEarth Guardians, dated October 9, 2008, requesting that we list *Pediomelum pentaphyllum* (Chihuahua scurfpea) as threatened or endangered, and that we designate critical habitat concurrently with the listing. The petition clearly identified itself as a petition and included the information required in 50 CFR 424.14(a). We acknowledged receipt of the petition in a letter dated November 26, 2008. *Pediomelum pentaphyllum* was also included in the June 18, 2007, petition. This finding will evaluate information in both petitions concerning *P. pentaphyllum.*

On March 19, 2008, WildEarth Guardians filed a complaint indicating that the Service failed to comply with its mandatory duty to make a preliminary 90–day finding on the June 18, 2007, petition to list 475 southwest species. We subsequently published an initial 90–day finding for 270 of the 475 petitioned species on January 6, 2009, concluding that the petition did not present substantial information that listing of those species may be warranted (74 FR 419). On March 13, 2009, the Service and WildEarth Guardians filed a stipulated settlement agreement, agreeing that the Service would submit to the **Federal Register** a finding as to whether WildEarth Guardians' petition presents substantial information indicating that the petitioned action may be warranted for the remaining southwestern species by December 9, 2009. This finding, together with the 90–day finding on petitions to list nine Texas mussels (completed separately, and submitted to the **Federal Register** also on December 9, 2009), meets that portion of the settlement.

The 2007 petition included a list of 475 species. One species, Salina mucket (*Potamilus metnecktayi*), is also known by the scientific name *Disconaias salinasensis*; we were petitioned to list the species under both scientific names. The species files in NatureServe for these two names are identical. For the remainder of our review we used the name *P. metnecktayi*; therefore, we reviewed only 474 actual species files.

Because the petition requested that we consider all species from the list that were not currently listed, proposed for listing, or candidates for listing, an additional 5 of the 474 petitioned species were not included in the review because these species are either currently listed or are candidates for listing. Quitobaquito pupfish (*Cyprinodon eremus*) is currently listed as endangered under the name desert pupfish (*Cyprinodon macularius eremus*). In Arizona, this family was historically represented by two recognized subspecies, *C. m. macularius* and *C. m. eremus*, and an undescribed species, the Monkey Spring pupfish. Minckley *et al.* (2002, p. 701) raised *C. m. eremus* to a full species, *C. eremus.* The species is listed as endangered throughout its range, so we did not consider it as part of this petition.

Ramsey Canyon leopard frog (*Rana subaquavocalis*) is no longer recognized as a distinct species (Crother 2008, p. 7). Rather, it is considered to be synonymous with the Chiricahua leopard frog (*Lithobates* [=Rana] *chiricahuensis*). The Chiricahua leopard frog is listed as threatened throughout its range, and any populations formerly known as Ramsey Canyon leopard frog are thus now listed as threatened.

On December 13, 2007, we made a 12–month finding that the Jollyville Plateau salamander (*Eurycea tonkawae*) warrants listing, but that listing is precluded by higher listing priorities (72 FR 71040), thus rendering the species to candidate status. Similarly, on December 6, 2007, we published our annual review of native species that are candidates for listing as endangered or threatened (72 FR 69034), in which we made the San Bernardino springsnail (*Pyrgulopsis bernardina*) a candidate species. Finally, on December 10, 2008, we made *Sphaeralcea gierischii* (Gierisch mallow) a candidate species in the annual review of candidate species (73 FR 75175). Because these five entities—Quitobaquito pupfish, Ramsey Canyon leopard frog, Jollyville Plateau salamander, San Bernardino springsnail, and *Sphaeralcea gierischii*—are currently listed or are candidates for listing, and we were petitioned to list species that are not listed or candidates, they were not evaluated as part of this petition.

Agave arizonica (Arizona agave) was recently delisted (71 FR 35195; June 19, 2006) because it was determined to be a product of hybridization and therefore not a listable entity. No new information was presented in the petition for *A. arizonica* beyond that reviewed in the June 19, 2006, delisting rule (71 FR 35195), thus *A. arizonica* was not evaluated as part of the petition. After eliminating review of Quitobaquito pupfish, Ramsey Canyon leopard frog, Jollyville Plateau salamander, San Bernardino springsnail, *Sphaeralcea gierischii,* and *A. arizonica*, there were 468 species files to continue with our review in the NatureServe database.

A total of 277 of the petitioned species were or will be addressed in other findings. As discussed above, 270 species were addressed in our January 6, 2009, finding (74 FR 419). Three additional species—*Camissoria exilis* (Cottonwood Spring suncup), *Cryptantha semiglabra* (Pipe Springs crypantha), and *Lesquerella navajoensis* (Navajo bladderpod)—were addressed

in a separate 90–day finding on a petition to list 206 species in the Midwest and western United States (August 18, 2009; 74 FR 41649). Four additional species which were not addressed in an earlier finding and are not included in this finding—golden orb (*Quadrula aurea*), Texas fatmucket (*Lampsilis bracteata*), Texas heelsplitter (*Potamilus amphichaenus*), and Salina mucket (*Potamilus metnecktayi*)—will be addressed in one or more additional 90–day findings in the future. Although we are not making a finding on the remaining four species at this time, the lack of inclusion of those species in this finding does not imply that we are making or will make a positive finding on any or all of the remaining species.

Finally, based on a review of our January 6, 2009, 90–day finding (74 FR 419), we are re-evaluating the information presented in the petition and readily available in our files regarding *Donrichardsia macroneuron* in this finding. Thus, this finding addresses 192 of the 475 petitioned southwest species.

Species Information

The petitioners presented two tables that collectively listed the 475 species for consideration and requested that the Service incorporate all analyses, references, and documentation provided by NatureServe in its online database into the petition. The information presented by NatureServe (*http://www.natureserve.org/explorer/*) is considered to be a reputable source of information on taxonomy and distribution. However, NatureServe indicates on its website that information in the database is not intended for determining whether species are warranted for listing under the Act, and we found that the information presented was limited in its usefulness for this process. The threat information presented by NatureServe in many cases is minimal. NatureServe was limited in usefulness when the information presented did not identify one or more threats, did not link the threats to the species or the habitats occupied by the species, or did not reasonably indicate how the threats may impact the species' status.

We accessed the NatureServe database on July 5, 2007. We saved electronic and hard-copies of each species file and used this information, including references cited within these files, during our review. Therefore, all information we used from the species files in NatureServe was current to that date. All of the petitioned species were ranked by NatureServe as G1 (critically imperiled) or G1G2 (between critically imperiled and imperiled).

We followed regulations at 50 CFR 424.14(b) in evaluating the information presented in the petition. 50 CFR 424.14(b)(1) provides that the Service must consider whether the petition has presented substantial information indicating to a reasonable person that the petitioned action may be warranted. 50 CFR 424.14(b)(2) requires that the petition provide a narrative justification describing past and present numbers and distribution, and any threats faced by the species. The petition is also required to provide appropriate supporting documentation—references, publications, reports, or letters from authorities, and maps.

We reviewed all references cited in the NatureServe database species files that were available to us. For some species in NatureServe, there is a ''Local Programs'' link to the websites of the State programs that contribute information to NatureServe. Where information was available from these State programs specific to the species in question, we accepted the assertions and opinions of the State programs for the purposes of this 90–day finding, because these programs have primary management responsibility for non-federally listed species. These State programs' websites were accessed after 2007 when we downloaded the species files from NatureServe. We also reviewed information in references cited in NatureServe that were available on the Internet and in local libraries, and other information readily available in our files directly relevant to the information raised in the petition.

Following review of the available information, we separated the 192 remaining species reviewed in this finding into categories based on the level of information found. The first category, titled Category A in Table 1, has only minimal information about each species, and in some cases no more information than the name of the species. Category A contains 45 species. An example of a species in this category that had minimal information is a caddisfly with no common name, *Hydroptila protera*. The NatureServe file for this species names the species and states that it occurs in undetermined sites in Oklahoma and Texas. The file provides two references. The first, Blickle (1979), contains no information on threats to the species, but provides illustrations of various species within the same genus and in others. The second, Clemson University Department of Entomology (2002), provides only taxonomic information for the species. The magnitude and type of information provided for other species in this category was similar in nature, or was largely taxonomic with little location information.

Occasionally, generic information was presented in the NatureServe species files for species we placed in Category A, such as for the class or family the species belongs to, but not specific information on the individual species. The references were taxonomic in nature or simply checklists (lists of species, for example Common and Scientific Names of Fishes from the United States and Canada (Robins *et al.* 1991)) or taxonomic keys (which provide anatomical characteristics for identification of species) and did not address threats to the species. An example that illustrates the type of generic information that was presented for such species in Category A is Guadalupe woodlandsnail (*Ashmunella carlsbadensis*). The NatureServe file for this species states the name of the species and lists two references. The first is an annotated checklist of New Mexico land snails (Metcalf and Smartt 1988). The second is a checklist of names of aquatic invertebrates from the United States and Canada (Turgeon *et al.* 1998). The file contains no other information specific to the Guadalupe woodlandsnail. The file does describe the basic biology of terrestrial snails (pulmonates) in general stating ''terrestrial gastropods do not move much usually only to find food or reproduce'' and ''as a whole, pulmonates (previously Subclass Pulmonata) are better dispersers than prosobranchs (previously Subclass Prosobranchia) possibly due to their hermaphroditic reproduction increasing the chance of new colonization.'' Identical language was used in other NatureServe files for terrestrial snail species, and no specific information was provided about the species or threats to the species or its habitat.

The information we reviewed for the species in Category B contained basic information on the range of the species based on some level of survey effort. Habitat type was frequently mentioned as well as other aspects of the species' biology, such as food habitats. Population size or abundance, if addressed, was rarely quantified, and NatureServe (2007) instead used descriptors such as large, small, or numerous. The available information we reviewed did not address specific threats to the species. Category B contains 29 species.

An example of the type of information we found for species in Category B is illustrated by *Opuntia aureispina* (golden-spined prickly-pear). The

NatureServe file for *O. aureispina* provides two references. The first describes the physical characteristics of cacti of Big Bend National Park (Heil and Brack 1988). The second is a checklist of the vascular flora of the United States, Canada, and Greenland (Kartesz 1994). Neither article addresses threats to *O. aureispina*. The NatureServe file for this species states that the species is known from one small area of Big Bend National Park in Brewster County, Texas, and that it inhabits limestone slabs and fractured limestone rocks in shrublands in low elevations near the Rio Grande. The NatureServe file for this species does not address threats or the global protection status for this species. This information is typical for the species in Category B.

TABLE 1. SPECIES FOR WHICH THREAT INFORMATION WAS NOT PROVIDED IN THE PETITION OR READILY AVAILABLE IN OUR FILES.

Category	Scientific Name	Common Name	Range	Group
A	*Ashmunella carlsbadensis*	Guadelupe Woodlandsnail	NM, TX	Snail
A	*Holospira yucatanensis*	Bartsch Holospira	TX	Snail
A	*Humboldtiana edithae*	Boulder Slide Threeband	TX	Snail
A	*Pseudosubulina cheatumi*	Chisos Foxsnail	TX	Snail
A	*Marstonia comalensis*	Comal Siltsnail	TX	Snail
A	*Radiocentrum ferrissi*	Fringed Mountainsnail	NM	Snail
A	*Euglandina texasiana*	Glossy Wolfsnail	TX	Snail
A	*Holospira hamiltoni*	Hamilton Holospira	TX	Snail
A	*Daedalochila hippocrepis*	Horseshoe Liptooth	TX	Snail
A	*Holospira oritis*	Mountain Holospira	TX	Snail
A	*Holospira pityis*	Pinecone Holospira	TX	Snail
A	*Holospira riograndensis*	Rio Grande Holospira	TX	Snail
A	*Holospira pasonis*	Robust Holospira	TX	Snail
A	*Helicodiscus nummus*	Wax Coil	AR, OK, TX	Snail
A	*Holospira mesolia*	Widemouth Holospira	TX	Snail
A	*Microdynerus arenicolus*	Antioch Potter Wasp	AZ,CA,NV	Insect
A	*Hydroptila protera*	Caddisfly	OK, TX	Insect
A	*Ptomaphagus cocytus*	Cave Obligate Beetle	AZ	Insect
A	*Oncopodura prietoi*	Cave Obligate Springtail	NM	Insect
A	*Pseudosinella vita*	Cave Obligate Springtail	NM	Insect
A	*Tomocerus grahami*	Cave Obligate Springtail	NM	Insect
A	*Afilia sp. 1*	Notodontid Moth	TX	Insect
A	*Hydroptila ouachita*	Purse Casemaker Caddisfly	LA, TX	Insect
A	*Melanoplus sp. 9*	Grasshopper	TX	Insect
A	*Melanoplus sp. 22*	Grasshopper	TX	Insect
A	*Melanoplus sp. 26*	Grasshopper	TX	Insect
A	*Melanoplus sp. 36*	Grasshopper	TX	Insect
A	*Melanoplus sp. 48*	Grasshopper	NM	Insect
A	*Melanoplus sp. 52*	Grasshopper	AZ	Insect
A	*Melanoplus sp. 62*	Grasshopper	TX	Insect
A	*Ceuthothrombium cavaticum*	Cave Obligate Mite	NM	Arachnid
A	*Albiorix anophthalmus*	Cave Obligate Pseudoscorpion	AZ	Arachnid

TABLE 1. SPECIES FOR WHICH THREAT INFORMATION WAS NOT PROVIDED IN THE PETITION OR READILY AVAILABLE IN OUR FILES.—Continued

Category	Scientific Name	Common Name	Range	Group
A	*Aphrastochthonius pachysetus*	Cave Obligate Pseudoscorpion	NM	Arachnid
A	*Chitrellina chiricahuae*	Cave Obligate Pseudoscorpion	AZ	Arachnid
A	*Neoleptoneta anopica*	Cave Obligate Spider	TX	Arachnid
A	*Procambarus texanus*	Bastrop Crayfish	TX	Crustacean
A	*Holsingerius samacos*	Cave Obligate Amphipod	TX	Crustacean
A	*Texiweckelia relicta*	Cave Obligate Amphipod	TX	Crustacean
A	*Palaemonetes holthuisi*	Cave Obligate Decapod	TX	Crustacean
A	*Amergoniscus centralis*	Cave Obligate Isopod	OK	Crustacean
A	*Amergoniscus gipsocolus*	Cave Obligate Isopod	TX	Crustacean
A	*Sphaeromicola moria*	Cave Obligate Shrimp	TX	Crustacean
A	*Fryxellia pygmaea*	Fryxell's Pygmy Mallow	TX	Flowering Plant
A	*Quercus acerifolia*	Mapleleaf Oak	AR, OK	Flowering Plant
A	*Xanthoparmelia planilobata*	Lichen (no common name)	NM	Lichen
B	*Eurycea sp. 6*	Pedernales River Springs Salamander	TX	Amphibian
B	*Sonorella papagorum*	Black Mountain Talussnail	AZ, NM	Snail
B	*Sonorella christenseni*	Clark Peak Talussnail	AZ, NM	Snail
B	*Sonorella huecoensis*	Hueco Mountains Talus Snail	TX	Snail
B	*Sonorella sp. 1*	Terrestrial Snail	NM	Snail
B	*Limnephilus adapus*	Caddisfly	TX	Insect
B	*Comaldessus stygius*	Comal Springs Diving Beetle	TX	Insect
B	*Protoptila arca*	San Marcos Saddle-case Caddisfly	TX	Insect
B	*Sphinx smithi*	Sphinx Moth (no common name)	AZ, Mexico	Insect
B	*Stygobromus limbus*	Border Cave Amphipod	TX	Crustacean
B	*Procambarus brazoriensis*	Brazoria Crayfish	TX	Crustacean
B	*Paramexiweckelia ruffoi*	Ruffo's Cave Amphipod	TX	Crustacean
B	*Adenophyllum wrightii*	Wright's Dogweed	AZ, NM	Flowering Plant
B	*Berberis harrisoniana*	Kofka Barberry	AZ, CA	Flowering Plant
B	*Carex mckittrickensis*	Guadalupe Mountain Sedge	TX	Flowering Plant
B	*Cooperia smallii*	Small's Rainlily	TX	Flowering Plant
B	*Hedyotis pooleana*	Jackie's Bluet	TX	Flowering Plant
B	*Echeandia texensis*	Craglily (no common name)	TX	Flowering Plant
B	*Opuntia aureispina*	Golden-spined Prickly-pear	TX	Flowering Plant
B	*Opuntia densispina*	Big Bend Prickly-pear	TX	Flowering Plant
B	*Perityle cochisensis*	Cochise Rockdaisy	AZ	Flowering Plant
B	*Quercus boytonii*	Boynton's Sand Post Oak	AL, TX	Flowering Plant
B	*Quercus tardifolia*	Chisos Mountains Oak	TX	Flowering Plant

TABLE 1. SPECIES FOR WHICH THREAT INFORMATION WAS NOT PROVIDED IN THE PETITION OR READILY AVAILABLE IN OUR FILES.—Continued

Category	Scientific Name	Common Name	Range	Group
B	*Quercus robusta*	Robust Oak	TX	Flowering Plant
B	*Selinocarpus maloneanus*	Malone Mountains Moonpod	TX	Flowering Plant
B	*Senna ripleyana*	Ripley's Senna	TX	Flowering Plant
B	*Solanum leptosepalum*	Tigna Potato	TX	Flowering Plant
B	*Stellaria porsildii*	Porsild's Starwort	AZ, NM	Flowering Plant
B	*Yucca necopina*	Brazos River Yucca	TX	Flowering Plant

The information we reviewed for the remaining 118 species included some discussion of one or more potential threats. Each of these species, which are listed in Tables 2 and 3 below, is discussed more thoroughly in the **''Five-Factor Evaluation''** section below.

TABLE 2. SPECIES FOR WHICH THREAT INFORMATION WAS PRESENTED, BUT FOR WHICH THE INFORMATION PRESENTED IN THE PETITION AND OTHERWISE READILY AVAILABLE WAS NOT SUBSTANTIAL.

Scientific Name	Common Name	Range	Group
Geomys streckeri	Strecker's Pocket Gopher	TX	Mammal
Ashmunella mearnsii	Big Hatchet Woodlandsnail	NM	Snail
Pyrgulopsis simplex	Fossil Springsnail	AZ	Snail
Ashmunella hebardi	Hacheta Grande Woodlandsnail	NM	Snail
Sonorella pedregosensis	Leslie Canyon Talussnail	AZ	Snail
Pyrgulopsis davisi	Limpia Creek Springsnail	TX	Snail
Pyrgulopsis montezumensis	Montezuma Well Springsnail	AZ	Snail
Pyrgulopsis metcalfi	Naegele Springsnail	TX	Snail
Ashmunella kochi	San Andreas Woodlandsnail	NM	Snail
Adhemarius blanchardorum	Blanchard's Sphinx Moth	TX	Insect
Phylocentropus harrisi	Caddisfly (no common name)	AL, FL, TX	Insect
Apodemia chisosensis	Chisos Metalmark	TX	Insect
Stallingsia maculosus	Manfreda Giant-skipper	TX, Mexico	Insect
Lachlania dencyannae	Mayfly (no common name)	NM	Insect
Euhyparpax rosea	Notodontid Moth (no common name)	CO, NM	Insect
Ursia sp. 1	Notodontid Moth (no common name)	TX	Insect
Cylloepus parkeri	Parker's Cylloepus Riffle Beetle	AZ	Insect
Automeris patagoniensis	Patagonia Eyed Silkmoth	AZ	Insect
Sphingicampa raspa	Royal Moth (no common name)	AZ, TX	Insect
Sphinx eremitoides	Sage Sphinx	CO, KA, NM, TX	Insect
Thymoites minero	Cave Obligate Spider (no common name)	AZ	Arachnid
Procambarus nigrocinctus	Blackbelted Crayfish	TX	Crustacean
Procambarus nechesae	Neches Crayfish	TX	Crustacean
Streptocephalus moorei	Spinythumb Fairy Shrimp	NM, Mexico	Crustacean

TABLE 2. SPECIES FOR WHICH THREAT INFORMATION WAS PRESENTED, BUT FOR WHICH THE INFORMATION PRESENTED IN THE PETITION AND OTHERWISE READILY AVAILABLE WAS NOT SUBSTANTIAL.—Continued

Scientific Name	Common Name	Range	Group
Arenaria livermorensis	Livermore Sandwort	TX	Flowering Plant
Argemone arizonica	Arizona Prickle-poppy	AZ	Flowering Plant
Batesimalva violacea	Purple Gay-mallow	TX, Mexico	Flowering Plant
Bonamia ovalifolia	Bigpod Bonamia	TX, Mexico	Flowering Plant
Bouteloua kayi	Kay Gramma	TX	Flowering Plant
Cryptantha ganderi	Gander's Cryptantha	AZ, CA, Mexico	Flowering Plant
Dalea bartonii	Cox's Dalea	TX	Flowering Plant
Dalea tentaculoides	Gentry's Indigobush	AZ	Flowering Plant
Eleocharis cylindrica	Cylinder Spikerush	NM, TX	Flowering Plant
Erigeron acomanus	Acoma Fleabane	NM	Flowering Plant
Erigeron bistiensis	Bisti Fleabane	NM	Flowering Plant
Escobaria guadalupensis	Guadalupe Pincushion Cactus	NM, TX	Flowering Plant
Euphorbia aaron-rossii	Marble Canyon Spurge	AZ	Flowering Plant
Glossopetalon texense	Texas Grease Bush	TX	Flowering Plant
Kallstroemia perennans	Perennial Caltrop	TX	Flowering Plant
Pediomelum humile	Rydberg's Scurfpea	TX, Mexico	Flowering Plant
Perityle huecoensis	Hueco Mountains Rockdaisy	TX, Mexico	Flowering Plant
Perityle saxicola	Fish Creek Rock Daisy	AZ	Flowering Plant
Perityle warnockii	River Rockdaisy	TX	Flowering Plant
Quercus graciliformis	Slender Oak	TX, Mexico	Flowering Plant
Rhododon angulatus	Lonestar Sand-mint	TX	Flowering Plant
Sophora gypsophila	Gypsum Necklace	NM, TX	Flowering Plant
Valerianella nuttallii	Nuttall's Corn-salad	AR, OK	Flowering Plant
Grimmia americana	Moss (no common name)	AZ, NV, TX	Fern Ally
Riccia californica	Moss (no common name)	CA, OR, TX	Fern Ally
Acarospora clauzadeana	Lichen (no common name)	NM, Mexico, Spain	Lichen
Omphalora arizonica	Lichen (no common name)	AZ, CO, NM	Lichen

TABLE 3. SPECIES FOR WHICH INFORMATION IN THE PETITION AND OTHERWISE READILY AVAILABLE IS SUBSTANTIAL AND INDICATES THAT LISTING AS THREATENED OR ENDANGERED MAY BE WARRANTED.

Scientific name	Common Name	Range	Group
Aspidoscelis arizonae	Arizona Striped Whiptail	AZ	Reptile
Notophthalmus meridionalis	Black-spotted Newt	TX, Mexico	Amphibian
Eurycea robusta	Blanco Blind Salamander	TX	Amphibian
Eurycea tridentifera	Comal Blind Salamander	TX	Amphibian
Eurycea sp. 8	Comal Springs Salamander	TX	Amphibian
Eurycea neotenes	Texas Salamander	TX	Amphibian

TABLE 3. SPECIES FOR WHICH INFORMATION IN THE PETITION AND OTHERWISE READILY AVAILABLE IS SUBSTANTIAL AND INDICATES THAT LISTING AS THREATENED OR ENDANGERED MAY BE WARRANTED.—Continued

Scientific name	Common Name	Range	Group
Macrhybopsis tetranema	Arkansas River Speckled Chub	CO, KA, NM, OK, TX	Fish
Ictalurus sp. 1	Chihuahua Catfish	TX	Fish
Cyprinella sp. 2	Nueces Shiner	TX	Fish
Cyprinodon pecosensis	Pecos pupfish	NM, TX	Fish
Cyprinella lepida	Plateau Shiner	TX	Fish
Gambusia clarkhubbsi	San Felipe Gambusia	TX	Fish
Trogloglanis pattersoni	Toothless Blindcat	TX	Fish
Cyprinodon tularosa	White Sands Pupfish	NM	Fish
Satan eurystomus	Widemouth Blindcat	TX	Fish
Pleurobema riddellii	Louisiana Pigtoe	LA, TX	Clam
Pisidium sanguinichristi	Sangre de Cristo Peaclam	NM	Clam
Toxolasma corvunculus	Southern Purple Lilliput	AL, FL, GA, OK	Clam
Fusconaia lananensis	Triangle Pigtoe	TX	Clam
Pyrgulopsis arizonae	Bylas Springsnail	AZ	Snail
Ashmunella macromphala	Cook's Peak Woodlandsnail	NM	Snail
Sonorella todseni	Dona Ana Talussnail	NM	Snail
Tryonia gilae	Gila Tryonia	AZ	Snail
Pyrgulopsis bacchus	Grand Wash Springsnail	AZ	Snail
Ashmunella levettei	Huachuca Woodlandsnail	AZ, NM	Snail
Pyrgulopsis conica	Kingman Springsnail	AZ	Snail
Phreatodrobia imitata	Mimic Cavesnail	TX	Snail
Oreohelix pilsbryi	Mineral Creek Mountainsnail	NM	Snail
Pyrgulopsis pecosensis	Pecos Springsnail	NM	Snail
Sonorella grahamensis	Pinaleno Talussnail	AZ	Snail
Tryonia quitobaquitae	Quitobaquito Tryonia	AZ	Snail
Sonorella eremite	San Xavier Talussnail	AZ	Snail
Maricopella allynsmithi	Squaw Park Talussnail	AZ	Snail
Pyrgulopsis glandulosa	Verde Rim Springsnail	AZ	Snail
Sonorella macrophallus	Wet Canyon Talussnail	AZ	Snail
Cicindela theatina	Colorado Tiger Beetle	CO	Insect
Haideoporus texanus	Edwards Aquifer Diving Beetle	TX	Insect
Lycaena ferrisi	Ferris's Copper	AZ	Insect
Astylis sp. 1	Notodontid Moth (no common name)	AZ	Insect
Heterocampa sp. 1 nr. amanda	Notodontid Moth (no common name)	AZ	Insect
Litodonta sp. 1 nr. alpina	Notodontid Moth (no common name)	AZ	Insect
Ursia furtiva	Notodontid Moth (no common name)	TX	Insect

TABLE 3. SPECIES FOR WHICH INFORMATION IN THE PETITION AND OTHERWISE READILY AVAILABLE IS SUBSTANTIAL AND INDICATES THAT LISTING AS THREATENED OR ENDANGERED MAY BE WARRANTED.—Continued

Scientific name	Common Name	Range	Group
Papaipema eryngii	Rattlesnake-master Borer Moth	AR, IL, IN, IA, KY, MO, NC, OK	Insect
Sphingicampa blanchardi	Royal Moth (no common name)	TX, Mexico	Insect
Argia sabino	Sabino Dancer	AZ	Insect
Anacroneuria wipukupa	Stonefly (no common name)	AZ, Mexico	Insect
Agapema galbina	Tamaulipan Agapema	AZ, TX, Mexico	Insect
Archeolarca cavicola	Grand Canyon Cave Scorpion	AZ	Arachnid
Cambarus subterraneus	Delaware County Cave Crayfish	OK	Crustacean
Orconectes saxatilis	Kiamichi Crayfish	OK	Crustacean
Cambarus tartarus	Oklahoma Cave Crayfish	OK	Crustacean
Lirceolus smithii	Texas Troglobitic Water Slater	TX	Crustacean
Agalinis navasotensis	Navasota False Foxglove	TX	Flowering Plant
Amoreuxia gonzalezii	Santa Rita Yellowshow	AZ, Mexico	Flowering Plant
Amsonia tharpii	Tharp's Blue-star	NM, TX	Flowering Plant
Asclepias prostrata	Prostrate Milkweed	TX, Mexico	Flowering Plant
Astragalus hypoxylus	Huachuca Milk-vetch	AZ, Mexico	Flowering Plant
Castilleja ornata	Glowing Indian-paintbrush	NM, Mexico	Flowering Plant
Erigeron piscaticus	Fish Creek Fleabane	AZ	Flowering Plant
Eriogonum mortonianum	Morton's Wild Buckwheat	AZ	Flowering Plant
Genistidium dumosum	Brush-pea	TX, Mexico	Flowering Plant
Hexalectris revolute	Chisos Coralroot	AZ, TX, Mexico	Flowering Plant
Lesquerella kaibabensis	Kaibab Bladderpod	AZ	Flowering Plant
Paronychia congesta	Bushy Whitlow-wort	TX	Flowering Plant
Pediomelum pentaphyllum	Chihuahua Scurfpea	AZ, NM, TX, Mexico	Flowering Plant
Salvia pentstemonoides	Big Red Sage	TX	Flowering Plant
Donrichardsonia macroneuron	Moss (no common name)	TX	Fern Ally

Evaluation of Information for this Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

In making this 90–day finding, we evaluated whether information regarding threats to each of the 192 species, as presented in the petition and other information in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation is presented below. For each species, we fully evaluated all information available to us through the NatureServe website, information cited in NatureServe available on the Internet or in local libraries, and other information readily available in our files.

Species Placed in Categories A and B for Which Substantial Information Was Not Presented

Factor A, The present or threatened destruction, modification, or curtailment of a species' habitat or range: For each of the species we placed in Categories A and B (Table 1 above), no information was presented on threats specific to the species or their habitats; therefore, we find the petition, including all available references and the NatureServe species files, does not present substantial information that the present or threatened destruction,

modification, or curtailment of habitat or range is a threat to any of the 74 species in Categories A and B (Table 1).

Factor B, Overutilization of species for commercial, recreational, scientific, or educational purposes: For each of the species we placed in Categories A and B (Table 1, above), no information was presented on threats to the species or their habitats; therefore we find the petition, including all available references and the NatureServe species files, does not present substantial information that overutilization for commercial, recreational, scientific, or educational purposes is a threat to any of the 74 species in Categories A and B (Table 1).

Factor C, Disease or predation: For those species we placed in Categories A and B (Table 1, above), no information was presented on threats specific to the species or their habitats; therefore we find the petition, including all available references and the NatureServe species files, does not present substantial information that disease or predation is a threat to any of the 74 species in Categories A and B (Table 1).

Factor D, Inadequacy of existing regulatory mechanisms: For those species we placed in Categories A and B (Table 1, above), no information was presented on threats specific to the species or their habitats; therefore we find the petition, including all available references and the NatureServe species files, does not present substantial information that the inadequacy of existing regulatory mechanisms is a threat to any of the 74 species in Categories A and B (Table 1).

Factor E, Other natural or manmade factors affecting species' continued existence: For those species we placed in Categories A and B (Table 1, above), no information was presented on threats specific to the species or their habitats; therefore we find the petition, including all available references and the NatureServe species files, does not present substantial information that other natural or manmade factors affecting the species' continued existence are threats to any of the 74 species in Categories A and B (Table 1).

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the 74 species in Categories A and B may be warranted.

Species for Which Threat Information Was Presented, But For Which Substantial Information Was Not Presented

Mammals

Strecker's Pocket Gopher (*Geomys streckeri*)

Strecker's pocket gopher is known from two localities in Dimmit and Zavala Counties, Texas (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factors A, B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: NatureServe (2007) identifies rarity as a threat to Strecker's pocket gopher. In the absence of information identifying other threats to the species and linking those to the rarity of the species, we do not consider rarity to be a threat.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the Strecker's pocket gopher may be warranted.

Snails

Big Hatchet Woodlandsnail (*Ashmunella mearnsii*)

The Big Hatchet woodlandsnail is known to occur on talus slopes (rock piles formed at the base of cliffs) in the mountains of eastern Hidalgo County in southwestern New Mexico (Metcalf and Smartt 1997). Recently, the species was collected from isolated populations within the range of the Big Hatchet Mountains at Zeller Peak, Mescal Canyon, Chaney Canyon (also called Chainey Canyon), Big Hatchet Peak, and Thompson Canyon (Lang 2005). The species likely formerly occupied the Little Hatchet Mountains and Howells Ridge to the northwest of the Big Hatchet Mountains as indicated by the presence of fossils in those areas (Lang 2005).

Factor A: A prescribed burn of 4,856 hectares (ha) (12,000 acres (ac)) was planned for late spring to early summer of 2005 to control woody plant overgrowth in the north-central range of the Big Hatchet Mountains. Such a fire could threaten the persistence of isolated populations of the Big Hatchet woodlandsnail (Lang 2005). In addition, since the species inhabits talus slopes, which are sparsely vegetated and probably unlikely to have much fuel load, it is likely that the species and its habitat have withstood previous wildfires or prescribed burns in the past. No information was provided on whether the burn occurred, or how the species may have responded to it. We have determined that this information does not meet the substantial information standard.

Factors B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: The Big Hatchet woodlandsnail and Hacheta Grande woodlandsnail (*Ashmunella hebardi*) co-occur and hybridize in a narrow and abrupt zone of contact of approximately 0.259 square kilometers (km) (0.1 square miles (mi)) in southwestern Chaney Canyon (Lang 2005). However, the area where hybrids occur is small relative to the size of the area occupied by the Big Hatchet woodlandsnail (Lang 2005). No information was presented indicating that this narrow zone of hybridization is resulting in impacts to the species. We have determined that this information does not meet the substantial information standard.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the Big Hatchet woodlandsnail may be warranted.

Fossil Springsnail (*Pyrgulopsis simplex*)

The fossil springsnail is found at a spring near Strawberry, Gila County, and Fossil Springs, Yavapai County, Arizona (AGFD 2003) in the lower Verde River watershed (NatureServe 2007). Individuals of the species are typically found in the headsprings and upper sections of the outflow. They are gill breathers and, therefore, require perennially flowing water (AGFD 2003). Springsnails in the genus *Pyrgulopsis* are generally found on rock or aquatic plants in moderate current. The occupied springs are on the Coconino and Tonto National Forests. The fossil springsnail was formerly a candidate 2 species, a taxon for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factor A: According to AGFD (2003), the fossil springsnail is threatened by water development activities and deterioration or disappearance of its habitat; however, they also note that the fossil springsnail has experienced no apparent reduction in range or

abundance as a result of activities in the Fossil Creek watershed during the past two decades. Further, AGFD (2003) does not describe the nature or cause of the deterioration or disappearance of fossil springsnail habitats. We have determined that this information does not meet the substantial information standard.

Factors B and C: No information was presented in the petition concerning threats to this species from these factors.

Factor D: According to AGFD (2003), Fossil Springs was designated a Botanical Area by the Coconino National Forest, an action designed to provide increased protection and restoration of the area. Public access to Fossil Springs is limited to foot travel; however, the other spring in the watershed containing the Fossil springsnail is provided no special protection.

Factor E: No information was presented in the petition concerning threats to this species from this factor.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the fossil springsnail may be warranted.

Hacheta Grande Woodlandsnail (*Ashmunella hebardi*)

The Hacheta Grande woodlandsnail is known from one population in Chaney Canyon (also referred to as Chainey Canyon) in the Big Hatchet Mountains, Hidalgo County, New Mexico (NatureServe 2007). The species has been collected from elevations of 1,935 to 2,234 meters (m) (6350 to 7330 feet (ft)) on the south side of Chaney Canyon west of Big Hatchet Peak (Metcalf and Smartt 1997; Lang 2005). Hacheta Grande woodlandsnails most commonly occur at the base of limestone outcrops beneath large rock fragments and rock rubble piles where mold grows on leaf litter mixed with soil (Lang 2005) in an area of tall pinyon pines (Metcalf and Smartt 1997). The historic range of the species is unknown; however, at all sites sampled by Lang (2005) where the species was found, live individuals or shells of recently dead individuals were found, suggesting that the historic and current range may be the same.

Factor A: According to NatureServe (2007), Chaney Canyon is remote and inaccessible, and does not appear to be valuable as a recreational site. The area has been explored for minerals, but the absence of mining in this mountain and those nearby suggests that mining is not a threat (NatureServe 2007). The mountain is grazed by livestock, but the snail inhabits rocky areas that lack forage and are not generally accessed by livestock (NatureServe 2007). A prescribed burn of 4,856 ha (12,000 ac) was planned for late spring to early summer of 2005 to control woody plant overgrowth in that area of the Big Hatchet Mountains. Such a fire could threaten the persistence of isolated populations of the Hacheta Grande woodlandsnail (Lang 2005) or cause the extirpation of the species (NatureServe 2007); however, no information was provided on whether the burn occurred or how the species may have responded to it. In addition, since the species inhabits rock outcrops, which are sparsely vegetated and probably unlikely to have much fuel load, it is likely that the species and its habitat have withstood previous wildfires or prescribed burns in the past. We do not consider the assertions by Lang (2005) or NatureServe (2007) to meet the substantial information standard. NatureServe (2007) asserts that while range contraction due to climate change in the past ten thousand years has not been documented for this species, it has been documented for many similar species and may be a concern for the Hacheta Grande woodlandsnail. However, this is an assertion, and NatureServe (2007) did not provide references or discussion to support it, and there is no evidence of range contraction despite efforts of researchers to document it (Metcalf and Smartt 1997; Lang 2005). We have determined that this information does not meet the substantial information standard.

Factors B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: The Big Hatchet woodlandsnail and Hacheta Grande woodlandsnail co-occur and hybridize in a narrow and abrupt zone of contact of approximately 0.259 square km (0.1 square mi) in southwestern Chaney Canyon (Lang 2005). However, the area where hybrids occur is small relative to the size of the area occupied by the Hacheta Grande woodlandsnail (Lang 2005), and there is no evidence the area of hybridization has increased between the time of the Metcalf and Smartt surveys (1997) and those of Lang (2005). No information was presented indicating that this narrow zone of hybridization is resulting in impacts to the species. We have determined that this information does not meet the substantial information standard. NatureServe (2007) identifies restricted geographic range as a potential threat to the species. In the absence of additional information identifying other threats to the species and linking those threats to the geographic range of the species, we do not consider restricted geographic range to be a threat.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the Hacheta Grande woodlandsnail may be warranted.

Leslie Canyon Talussnail (*Sonorella pedregosensis)*

The Leslie Canyon talussnail is known to occur in Leslie Canyon National Wildlife Refuge (a unit of the San Bernardino National Wildlife Refuge complex), north of Douglas in the Pedregosa Mountains, Cochise County, Arizona (Gilbertson and Radke 2006). No further information regarding the historical or current distribution or status of the species was presented.

Factors A and B: No information was presented in the petition concerning threats to this species from these factors.

Factor C: According to NatureServe (2007), at the time of initial collection of specimens of this species, Gilbertson and Radke (2006) observed a desert box turtle (*Terrapene ornate luteola)* actively preying on snails in the refuge following an overnight rainstorm when snails became most active. An examination of the box turtle's feces found shell fragments of the snail; however, there is no indication that this level of predation may constitute a species-level threat. We have determined that this information does not meet the substantial information standard.

Factors D and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing of the Leslie Canyon talussnail may be warranted.

Limpia Creek Springsnail (*Pyrgulopsis davisi*)

The Limpia Creek springsnail is found in and on mud and rocks among patches of *Nasturtium officinale* (watercress) in spring-fed rivulets within a tributary of Limpia Creek, Pecos River drainage, Jeff Davis County, Texas (NatureServe 2007). The species is a gill breather and, therefore, requires perennially flowing water. Based on specimens collected in 1914, there may be an additional locality; however, the location of the possible second site is uncertain (NatureServe 2007). It is reported as abundant at the single known occurrence, but quantitative population estimates are not provided (NatureServe

2007). Since only one occurrence is known with certainty and the only known occurrence is small, occupying a very restricted habitat, abundance may be considered very low relative to most other organisms (NatureServe 2007).

Factor A: NatureServe (2007) indicates probable threats include trampling and other degradation of the aquatic site by livestock, and the potential for diversion or other flow alteration; however, no information is presented indicating that these activities are occurring or are likely to occur in the future in occupied habitats. We have determined that this information does not meet the substantial information standard.

Factor B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the Limpia Creek springsnail may be warranted.

Montezuma Well Springsnail (*Pyrgulopsis montezumensis)*

The Montezuma Well springsnail is known to occur in Montezuma Well, a unit of Montezuma Castle National Monument, in Yavapai County, Arizona (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factors A, B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: The Arizona Game and Fish Department (AGFD 1998) identifies restricted geographic distribution as a threat to the Montezuma Well springsnail. In the absence of additional information identifying other threats to the species and linking one or more of those threats to the species, we do not consider a restricted geographic range to be a threat.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the Montezuma Well springsnail may be warranted.

Naegele Springsnail (*Pyrgulopsis metcalfi*)

The Naegele springsnail is found in the outflows of Naegele Springs (Rio Grande River basin), Presidio County, western Texas. Fossils from two localities in the Pecos River valley in New Mexico and Texas may also be Naegele springsnails (Taylor 1987). It is reported to be common at the single known occurrence, but quantitative population estimates are not provided (NatureServe 2007). Since only one occurrence is known with certainty and the only known occurrence is small, occupying restricted habitat, abundance may be considered very low relative to most other organisms (NatureServe 2007).

Factor A: NatureServe (2007) indicates probable threats include trampling and other degradation of the aquatic site by livestock, and the potential for alteration of the sole aquatic site of occurrence; however, no information is presented indicating that these activities are occurring or are likely to occur in the future in occupied habitats. We have determined that this information does not meet the substantial information standard.

Factor B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the Naegele springsnail may be warranted.

San Andreas Woodlandsnail (*Ashmunella kochii*)

The San Andreas woodlandsnail is known to occur in the San Andres Mountains, Dona Ana County, New Mexico, and the Caballo Mountains to the west of the San Andres Mountains in Sierra County (Metcalf and Smartt 1997; Sullivan 1997). It primarily occurs in rock seams in steep canyons and cliffs associated with moderately moist vegetation and abundant shade (NatureServe 2007).

Factor A: According to Sullivan (1997), a road may be built to the peak of Quartzite Mountain in a portion of the San Andres Mountains, which would destroy some of the habitat of the species. No information was provided on whether the road has been constructed or if it may be constructed at some point in the future. The portion of the species' habitat that would be impacted by such a road appears small relative to the range of the species. We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the San Andreas woodlandsnail may be warranted.

Insects

Blanchard's Sphinx Moth (*Adhemarius blanchardorum)*

Blanchard's sphinx moth is known to occur in the Chisos Mountains in Brewster County, Texas (NatureServe 2007). Almost all known specimens are from Panther Pass and adjacent Green Gulch in Big Bend National Park. The species' range may extend south into the Sierra Madre Orientale of Mexico; however, no occurrences south of the U.S. border are documented (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factors A, B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: NatureServe (2007) identifies rarity as a threat to Blanchard's sphinx moth. In the absence of information identifying other threats to the species and linking those threats to the rarity of the species, we do not consider rarity to be a threat.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing Blanchard's sphinx moth may be warranted.

Caddisfly (no common name) (*Phylocentropus harrisi)*

NatureServe (2007) cites Morse *et al.* (1997) and personal communications with J. Morse in 2000 and 2004 in stating that the caddisfly is known to occur in the Southern Appalachian States and Texas. No further information regarding the historical or current distribution or status of the species was presented.

Factor A: Morse *et al.* (1997) identify multiple historical and potential current threats to the mayflies, dragonflies, damselflies, stoneflies, and caddisflies of the southeastern United States including agriculture, dams, deforestation, acid precipitation, sedimentation, and residential development. However, the discussions in Morse *et al.* (1997) are general in nature and do not identify which activities are currently impacting any species in particular nor do they identify which threats may be occurring in which habitats. We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition

concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the caddisfly may be warranted.

Chisos Metalmark (*Apodemia chisosensis*)

The Chisos metalmark is a butterfly known to occur in Texas (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factors A, B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: NatureServe (2007) identifies rarity as a threat to the Chisos metalmark. In the absence of information identifying other threats to the species and linking those threats to the rarity of the species, we do not consider rarity to be a threat.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing Chisos metalmark may be warranted.

Manfreda Giant-skipper (*Stallingsia maculosus)*

The Manfreda giant-skipper is a butterfly known to occur in San Patricio, Bexar, and Kinney Counties, Texas, and possibly in Nuevo Leon, Mexico (NatureServe 2007). NatureServe (2007) states that the species is currently declining, and projects that the global long-term trend of the species will be one of large to substantial decline (50 percent to 90 percent).

Factor A: NatureServe (2007) identifies development as a threat to the Manfreda giant-skipper, and asserts that some of the few known sites have been destroyed. However, no specific information on where the development may be threatening the species now or in the future was provided. The three counties where it has been documented are not close to one another; therefore, we do not assume that if development is occurring at one occupied site, it also occurs at other sites. NatureServe (2004) also notes that the species' host plant may be in competition with invasive grasses such as Guinea grass (*Panicum maximum*), but does not indicate whether *P. maximum* occurs within the range of the Manfreda giant-skipper or is likely to in the future. We have determined that this information does not meet the substantial information standard, particularly in light of the wide dispersion of the counties where the species has been documented.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the Manfreda giant-skipper may be warranted.

Mayfly (no common name) (*Lachlania dencyannae)*

This mayfly is confined to the Gila River drainage system in New Mexico. According to NatureServe (2007), larvae have been found clinging to woody debris and vegetation caught in the crevices of rocks near the East Fork of the Gila River at its junction with the Gila River (McCafferty *et al.* 1997).

Factor A: According to NatureServe (2007), the Gila River drainage, the only known drainage inhabited by the species, is subjected to on-going degradation, primarily associated with grazing. However, NatureServe (2007) does not explain the type of grazing or its impact to the species or the portion of the Gila River occupied by the species where grazing threatens it. We have determined that this information does not meet the substantial information standard.

Factors B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: NatureServe (2007) cites McCafferty *et al.* (1997) indicating that the species appears to be truly rare and restricted to the Gila River drainage. In the absence of additional information identifying other threats to the species and linking one or more of those threats to the species, we do not consider rarity to be a threat.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the Mayfly may be warranted.

Notodontid Moth (no common name) (*Euhyparpax rosea)*

This notodontid moth is known to occur in Custer County in south-central Colorado, and several hundred miles (several hundred kilometers) away, near Silver City, Grant County in southwestern New Mexico, and in Arizona (AGFD 2005; NatureServe 2007). Described in the 1800s, the species has been found in one or two locations in the last 40 or 50 years (NatureServe 2007). AGFD (2005) indicates that further study is needed to determine the moth's life history, population status, and population range.

Factors A, B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: NatureServe (2007) identifies its restricted range at each of the three known sites as a threat to this notodontid moth. Restricted geographic range may exacerbate the impacts to the species of potential threats through chance events such as fire, invasion of exotic weeds, or inadvertent management actions (NatureServe 2007). However, in the absence of information identifying chance events or other threats to the species and linking those threats to the restricted range of the species, or the potential for such chance events to occur in the occupied habitats, we do not consider chance events or restricted geographic range to be threats to the species. This is especially true in light of its apparent widely dispersed distribution, which suggests that a chance event occurring in one State is unlikely to be occurring in another State.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the notodontid moth may be warranted.

Notodontid Moth (no common name) (*Ursia* sp. 1)

This Notodontid moth is known to occur in Cameron and San Patricio Counties, along the coast of south Texas (NatureServe 2007).

Factors A, B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: NatureServe (2007) identifies its restricted geographic range as a threat to this notodontid moth. Restricted geographic range may exacerbate the impacts to the species of potential threats through chance events such as fire or inadvertent management actions (NatureServe 2007). However, in the absence of information identifying chance events or other threats to the species and linking those threats to the restricted range of the species, or the potential for such chance events to occur in the occupied habitats, we do not consider chance events or restricted geographic range to be threats to the species. Additionally, the two counties where this species is known to occur are widely spaced from one another, with four counties between them; thus, it is unlikely the same chance event would

occur at both sites in the same timeframe.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the Notodontid moth may be warranted.

Parker's Cylloepus Riffle Beetle (*Cylloepus parkeri*)

The Parker's cylloepus riffle beetle is known to occur in Roundtree Canyon in Bloody Basin within the Tonto National Forest, Yavapai County, Arizona (AGFD 2003). Johnson (1992) states that it also occurs in Tangle Creek, also located in Bloody Basin. The habitat is described as permanent, clean, slow-moving small streams, with loose gravelly substrate and very little sand. The species likely hides under rocks and may occur in spring brooks as well as creeks (AGFD 2003).

Factor A: According to AGFD (2003), the riffle beetle requires water that is high in oxygen content. This factor greatly restricts the species' distribution and results in high sensitivity to pollutants. AGFD (2003) indicates that activities such as mining, stream channelization, and heavy grazing would deplete the oxygen content of its habitat and almost certainly be detrimental to this beetle; however, they do not indicate whether these activities are occurring or are likely to occur in habitats occupied by the species.

Factor B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing Parker's cylloepus riffle beetle may be warranted.

Patagonia Eyed Silkmoth (*Automeris patagoniensis)*

The Patagonia eyed silkmoth is known to occur at Harshaw Creek in the Patagonia Mountains in Santa Cruz County and in the Huachuca Mountains in Cochise County, Arizona (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factor A: NatureServe (2007) identifies potential replacement of host plant grasses by invasive weeds to be a threat to the moth. However, NatureServe (2007) does not indicate whether invasive weeds currently occur or are likely to occur in known habitat of the moth. Additionally, the known moth sites are in two mountain ranges several miles (several kilometers) apart and thus would not likely be impacted simultaneously by invasive weeds. We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the Patagonia eyed silkmoth may be warranted.

Royal Moth (no common name) (*Sphingicampa raspa)*

This royal moth is known to occur in southeastern Arizona and Big Bend, Texas. On August 3, 2004, the species was photographed in Copper Canyon, Cochise County, Arizona, where 20 or more individuals were observed (AGFD 2005; NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factor A: The AGFD (2005) and NatureServe (2007) identify the lack of targeted management of habitat and fire as threats to the royal moth and its habitat. However, neither source identifies the extent to which these management activities may be occurring in the range of the species nor identifies the potential impacts of these activities on the species. We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the royal moth may be warranted.

Sage Sphinx (*Sphinx eremitoides)*

The sage sphinx is a moth believed to occur in the Great Plains region from Kansas to Texas west into Colorado and New Mexico (NatureServe 2007), although there are no documented records for Colorado or New Mexico (NatureServe 2007). NatureServe (2007) indicates that the species occurs in two counties in Kansas and in four counties in Texas. No further information regarding the historical or current distribution or status of the species was presented.

Factor A: NatureServe (2007) identifies conversion of native habitats to cultivated agriculture or heavily grazed lands as a threat to the sage sphinx. However, NatureServe (2007) provides no information or discussion to indicate that either of these activities is actually occurring or likely to occur in occupied habitats. We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the sage sphinx may be warranted.

Arachnids

Cave Obligate Spider (no common name) (*Thymoites minero)*

This cave obligate spider can be found in tangled webs built under stones, against walls, and in cracks and crevices in caves within Cochise County, Arizona (AGFD 2005). AGFD (2005) indicates that further study is needed to determine distribution and population size, as well as life history traits of the spider.

Factor A: AGFD (2005) identifies development and vandalism as potential threats to cave invertebrates; however, no information specific to this cave-obligate species or its habitat was presented. We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the cave obligate spider may be warranted.

Crustaceans

Blackbelted Crayfish (*Procambarus nigrocinctus*)

According to NatureServe (2007), the blackbelted crayfish is known to occur in five sites in the Neches River basin in Angelina and Jasper Counties, Texas. Blackbelted crayfish occur among rocks and accumulated debris in small, moderately flowing creeks (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factor A: NatureServe (2007) indicates that several sites are near an airport and that development could eliminate populations; however, there is

no discussion or information provided which indicates any adverse impacts to the species as a result of its location near an airport nor an indication of whether development is occurring or is likely to occur in occupied habitats. We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the blackbelted crayfish may be warranted.

Neches Crayfish (*Procambarus nechesae*)

The Neches crayfish is known to occur in five sites in the Neches River basin in Angelina and Trinity Counties, Texas (NatureServe 2007). According to NatureServe (2007), Neches crayfish form simple burrows in temporary or semipermanent pools in roadside ditches. No further information regarding the historical or current distribution or status of the species was presented.

Factor A: NatureServe (2007) identifies land alteration as a threat to the Neches crayfish, but does not indicate what type of land alteration may be occurring or the impacts such alteration could have on the species. We have determined that this information does not meet the substantial information standard.

Factors B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: NatureServe (2007) states that there are few known occurrences of the Neches crayfish and that it appears to be restricted to a small watershed. In the absence of information identifying other threats to the species and linking those threats to rarity or geographic distribution the species, we do not consider rarity or restricted geographic distribution to be a threat. We note that NatureServe (2007) also states that more and better surveys will probably at least double the number of occurrences.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing the Neches crayfish may be warranted.

Spinythumb Fairy Shrimp (*Streptocephalus moorei)*

The spinythumb fairy shrimp is known from a site north of the town of Jimenez in northern Chihuahua, Mexico, and from two counties in southern New Mexico (Maeda-Martinez *et al.* 2005). In New Mexico, the species has been discovered recently in two pools in the town of Columbus in Luna County and in a stock tank in Sierra County (Maeda-Martinez *et al.* 2005). The area of occupancy is small, though three of the four sites are widely separated (NatureServe 2007). According to NatureServe (2007), the species was found at the northern Mexico site only in 1971 and has not been found there since, despite repeated visits. Maeda-Martinez *et al.* (2005) indicate that it may be extirpated there.

Factor A: According to NatureServe (2007), habitat destruction is the greatest threat to the species. Maeda-Martinez *et al.* (2005) indicates that extension of Federal Highway Number 45 is altering the habitat at the northern Mexico site. However, the highway construction threatens the site where the species has not been found since 1971, despite repeated visits. No specific information on habitat destruction was presented for the remaining three sites. We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing of the spinythumb fairy shrimp may be warranted.

Flowering Plants

Arenaria livermorensis (Livermore Sandwort)

Arenaria livermorensis is an herbaceous plant that inhabits crevices and cracks on cliffs and bare igneous rock walls at high elevations (NatureServe 2007). This species is known only from Mt. Livermore, Jeff Davis County, Texas (NatureServe 2007).

Factor A: NatureServe (2007) identifies habitat loss and degradation as a threat to *Arenaria livermorensis;* however, the cause of loss and degradation of habitat was not specified. NatureServe (2007) states that the possible development of an observatory on top of Mt. Livermore may constitute a threat to the species; however, there is no information indicating whether this development took place or may still take place. We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition does not present substantial information to indicate that listing *Arenaria livermorensis* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Argemone arizonica (Arizona Prickle-poppy)

Argemone arizonica is a plant known to occur on steep rocky slopes on the north wall of Grand Canyon National Park, Coconino County, Arizona (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factor A: NatureServe (2007) identifies trampling from hiking as a possible threat to the species, but does not indicate whether trampling is occurring or is likely to occur in the future. Further, because *Argemone arizonica* is found on steep rocky slopes on canyon walls, it is not clear that recreationists would favor that type of habitat for hiking. We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Argemone arizonica* may be warranted.

Batesimalva violacea (Purple Gay-mallow)

Batesimalva violacea is a shrub known to occur in the Chisos Mountains of southern Brewster County, Texas, and is thought to occur in Coahuila and Nuevo Leon, Mexico (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factors A and B: No information was presented in the petition concerning threats to this species from these factors.

Factor C: NatureServe (2007) identifies grazing as a threat to *Batesimalva violacea*, but does not indicate whether grazing is occurring or is likely to occur in the future in occupied habitats Further, NatureServe (2007) does not indicate how grazing

may be impacting this species (e.g., trampling, habitat degradation, predation). We have determined that this information does not meet the substantial information standard.

Factors D and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Batesimalva violacea* may be warranted.

Bonamia ovalifolia (Bigpod Bonamia)

Bonamia ovalifolia is a perennial herb known to occur in Brewster County, Texas, and in adjacent Coahuila, Mexico (NatureServe 2007). It is an inhabitant of deep alluvial sands overlying limestone ledges or outcrops along deep river canyons near desert grasslands and shrublands (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factors A: NatureServe (2007) identifies overgrazing as a threat to *Bonamia ovalifolia*, but does not indicate whether grazing is occurring or is likely to occur in the future in occupied habitats Further, NatureServe (2007) does not indicate how grazing may be impacting this species (e.g., trampling, habitat degradation, predation). We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Bonamia ovalifolia* may be warranted.

Bouteloua kayi (Kay Gramma)

Bouteloua kayi is a perennial grass known to occur in limestone crevices in Brewster County, Texas, where there are five known populations (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factors A: NatureServe (2007) indicates that *Bouteloua kayi* is possibly threatened by overgrazing, but does not indicate whether grazing is occurring or is likely to occur in the future in occupied habitats Further, NatureServe (2007) does not indicate how grazing may be impacting this species (e.g., trampling, habitat degradation, predation). We have determined that this information does not meet the substantial information standard.

Factors B, C, D. and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Bouteloua kayi* may be warranted.

Cryptantha ganderi (Gander's Cryptantha)

Cryptantha ganderi is an annual plant known to occur in southern California and Arizona in the United States, and Baja California and Sonora in Mexico (NatureServe 2007). It is found on sand dunes around the head of the Gulf of California, including the Gran Desierto de Altar in Sonora, Mexico; the Pinta Sands in Yuma County, Arizona; and the Borrego Valley in San Diego County, California (NatureServe 2007). According to the AGFD (2005), six occurrences are known in California and one in Arizona.

Factor A: NatureServe (2007) identifies development in California as a threat to the species, claiming that the expansion of the Borrego airport may impact the species' habitat; however, no supporting information was provided that allows us to determine if these activities are occurring or how they may be impacting the species. No information about development was presented for other portions of the range of the species. NatureServe (2007) indicates that sand dune habitats are vulnerable to OHV use; however, no information specific to *Cryptantha ganderi* or the specific areas where OHV use may be occurring was presented. We have determined that the information presented concerning development and OHV use does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Cryptantha ganderi* may be warranted.

Dalea bartonii (Cox's Dalea)

Dalea bartonii is a perennial plant with one known occurrence in the drainage of the San Francisco Creek in Brewster County, Texas (NatureServe 2007). This population likely contains fewer than 1000 individuals (NatureServe 2007).

Factor A: NatureServe (2007) identifies overgrazing as a threat to *Dalea bartonii*, but does not indicate whether grazing is occurring or is likely to occur in the future in occupied habitats. Further, NatureServe (2007) does not indicate how grazing may be impacting this species (e.g., trampling, habitat degradation, predation). NatureServe (2007) further identifies the introduction of exotic species as a threat to *D. bartonii*, but does not identify which exotic species may be occurring within the range of *D. bartonii* or how those exotic species may be impacting *D. bartonii*. We have determined that the information presented concerning overgrazing and exotic species does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Dalea bartonii* may be warranted.

Dalea tentaculoides (Gentry's Indigobush)

Dalea tentaculoides is a perennial shrub known historically in the United States from only three areas in southern Arizona: the western and northern slopes of the Baboquivari Mountains in the Tohono O'odham Nation, Mendoza Canyon in the Coyote Mountains, and Sycamore Canyon in the Atascosa Mountains on the Coronado National Forest (Service 2005). As of 2005, plants were only known to occur in Sycamore Canyon and on lands within the Tohono O'odham Nation (Schmalzel 2005). The plant has also been found at three locations in Mexico (Service 2005). The first location was found in 1995, northeast of Huásabas in the State of Sonora. In 2004, the species was documented in the Sierra El Humo, south-southwest of Sasabe, Arizona, in northwestern Sonora, Mexico (L. Hahn, pers. comm. 2004 cited in Service 2005). Surveys in 2005 documented the persistence of those two populations and discovered a third in the Sierra de La Madera (Van Devender 2005).

In 2005, the Service made a 12–month finding in response to a January 2, 2002, petition to list *Dalea tentaculoides* (September 27, 2005; 70 FR 56426). After reviewing the best scientific and commercial information available at that time, we determined the species did not warrant listing (Service 2005).

Factor A: NatureServe (2007) indicates that seasonal flooding,

watershed degradation due to overgrazing, and trampling by recreational users and livestock may be threats to *Dalea tentaculoides*, but does not indicate whether these activities are occurring or are likely to occur in occupied habitat. Further, these potential threats were examined in our 2005 12–month finding with the conclusion that the species did not warrant listing (Service 2005), and no newer information was provided by the petitioner than that used in the 2005 finding. We have determined that the information presented does not meet the substantial information standard.

Factor B: No information was presented in the petition concerning threats to this species from this factor.

Factor C: NatureServe (2007) indicates that consumption by livestock may be a threat to *Dalea tentaculoides*, but does not indicate whether consumption is occurring or is likely to occur in the future. Further, this potential threat was examined in our 2005 12–month finding with the conclusion that the species did not warrant listing (Service 2005), and no newer information was provided by the petitioner than that used in the 2005 finding. We have determined that the information presented does not meet the substantial information standard.

Factors D and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Dalea tentaculoides* may be warranted.

Eleocharis cylindrica (Cylinder Spikerush)

Eleocharis cylindrica is a perennial sedge known to occur in New Mexico and Texas (NatureServe 2007). It is an inhabitant of shallow water or calcareous mud at desert springs and in streams (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factor A: NatureServe (2007) states that wetlands in arid environments are often in jeopardy, but does not identify any specific activities or threats that may be impacting *Eleocharis cylindrica* now or in the future. We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Eleocharis cylindrica* may be warranted.

Erigeron acomanus (Acoma Fleabane)

Erigeron acomanus is a perennial herb known to occur in McKinley and Cibola Counties, New Mexico (NatureServe 2007). It is an inhabitant of sandy arroyos beneath sandstone cliffs in the high plateau country of west-central New Mexico. It is presently known from four small, isolated populations, which are further divided into distinct geographic subpopulations (Reed 1996).

Factor A: NatureServe (2007) states that current land uses do not significantly threaten this species' habitats. NatureServe (2007) further notes that the species may occasionally be impacted by mining, but does not identify whether mining is actually occurring or is likely to occur in the future. We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing of *Erigeron acomanus* may be warranted.

Erigeron bistiensis (Bisti Fleabane)

Erigeron bistiensis is a perennial herb known from a small area primarily on Navajo Nation lands in San Juan County, New Mexico (NatureServe 2007). It is reported that there are fewer than 1,000 individuals, which are restricted to a particular type of sandstone-derived rock (NatureServe 2007). However, Tonne (2007) has questioned the validity of the species and believes it to be the common *Erigeron pulcherrimus* (basin fleabane).

Factor A: NatureServe (2007) identifies the species' placement in an area of high oil and gas development as a threat to the species, but does not identify how oil and gas activities may be impacting the species or its habitat. NatureServe (2007) also identifies urban development as a threat, but does not indicate whether urban development is occurring or is likely to occur in occupied habitats. We have determined that the information presented concerning oil and gas activities and urban development does not meet the substantial information standard.

Factor B: No information was presented in the petition concerning threats to this species from this factor.

Factor C: NatureServe (2007) identifies intense grazing as a threat to *Erigeron bistiensis*, but also states that plants seem free of signs of herbivory (consumption of plants). According to Tonne (2007), livestock grazing is intense in the area of the single described population, but individual plants showed no sign of herbivory; it appears to be relatively unpalatable to livestock. We have determined that this information does not meet the substantial information standard.

Factors D and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Erigeron bistiensis* may be warranted.

Escobaria guadalupensis (Guadalupe Pincushion Cactus)

Escobaria guadalupensis is a cactus known to occur in New Mexico and in the Guadalupe Mountains National Park, Texas (NatureServe 2007). The species inhabits exposed slabs and fractured outcrops of limestone on steep slopes in open coniferous woodlands (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factor A: No information was presented in the petition concerning threats to this species from this factor.

Factor B: NatureServe (2007) identifies collection of the cactus for cultivation as a possible threat to *Escobaria guadalupensis*, but indicates that specimens identified in trade were not collected from the wild. We have determined that this information does not meet the substantial information standard.

Factors C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Escobaria guadalupensis* may be warranted.

Euphorbia aaron-rossii (Marble Canyon Spurge)

Euphorbia aaron-rossii is a plant known to occur on Navajo Nation lands and in the following areas in Grand Canyon National Park in Coconino County, Arizona: Marble Canyon, Grand

Canyon (along the Colorado River on the east side of the canyon), and the canyon of the Little Colorado River (AGFD 2005).

Factors A, B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: NatureServe (2007) identifies limited geographic range as a threat to *Euphorbia aaron-rossii*. In the absence of information identifying other threats to the species and linking those threats to the limited geographic range of the species, we do not consider limited geographic range to be a threat.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Euphorbia aaron-rossii* may be warranted.

Glossopetalon texense (Texas Grease Bush)

Glossopetalon texense is a shrub known to occur in Uvalde and Val Verde Counties, Texas (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factors A and B: No information was presented in the petition concerning threats to this species from these factors.

Factor C: NatureServe (2007) states that *Glossopetalon texense* may be susceptible to predation from browsing, but does not indicate whether grazing by livestock or other herbivores (animals which eat plants) is occurring or may occur in the future in occupied habitats.. We have determined that this information does not meet the substantial information standard.

Factors D and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Glossopetalon texense* may be warranted.

Kallstroemia perennans (Perennial Caltrop)

Kallstroemia perennans is a plant known to occur in Presidio, Val Verde and Brewster Counties, Texas (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factor A: According to NatureServe (2007), *Kallstroemia perennans* occurs in an area subject to land abuse; however, these abuses are not specified. We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Kallstroemia perennans* may be warranted.

Pediomelum humile (Rydberg's Scurfpea)

Pediomelum humile is a perennial herb known to occur in Val Verde County, Texas, and possibly in adjacent Coahuila, Mexico (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factor A: NatureServe (2007) indicates that habitats are often heavily browsed by sheep or goats, but does not indicate how these activities may be impacting this species (e.g., trampling, habitat degradation, predation). NatureServe (2007) further indicates that urbanization could destroy some sites, but not does explain through what portion of the range these activities may occur nor how it would impact the species. We have determined that the information presented concerning browsing and urbanization does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Pediomelum humile* may be warranted.

Perityle huecoensis (Hueco Mountains Rockdaisy)

Perityle huecoensis is a plant known to occur in the Hueco Mountains on Fort Bliss Military Reservation in El Paso County, Texas, and in the Sierra Juarez, Mexico (NatureServe 2007). According to NatureServe (2007), the Texas population consists of a total of 700 to 800 plants. No further information regarding the historical or current distribution or status of the species was presented.

Factor A: Worthington (1991) identifies human activity as a potential threat to the genus *Perityle* in an occupied canyon; however, he does not describe the nature of the human activity. Worthington (1991) also reports that *Perityle huecoensis* occurs on vertical cliffs in the canyon, habitat not likely to be visited by humans. We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Perityle huecoensis* may be warranted.

Perityle saxicola (Fish Creek Rock Daisy)

Perityle saxicola is a perennial herb known to occur in Gila and Maricopa Counties, Arizona (NatureServe 2007). Its current distribution is found near Tonto National Monument, Roosevelt Lake, and above Horse Camp Creek in the Sierra Ancha Mountains (AGFD 2004). *Perityle saxicola* grows in moisture deficient habitat in cracks and crevices on cliff faces, on large boulders, and on rocky outcrops in canyons (AGFD 2004).

Factor A: AGFD (2004) indicates that threats to the species are restricted to activities requiring blasting, including dam, road, and trail construction, but does not indicate whether these activities are occurring or are likely to occur in occupied habitats in the future. AGFD (2004) further indicates that the species may have been impacted during the Roosevelt Dam re-construction in the 1990s; however, most of the plants occurred up-slope, above construction activities. We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Perityle saxicola* may be warranted.

Perityle warnockii (River Rockdaisy)

Perityle warnockii is a plant known to occur in the Pecos River in Val Verde County, Texas (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factors A: NatureServe (2007) indicates that the area is heavily grazed by sheep and goats, but does not indicate how these activities may be impacting this species (e.g., trampling, habitat degradation, predation).

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Perityle warnockii* may be warranted.

Quercus graciliformis (Slender Oak)

Quercus graciliformis is a plant known to occur in the Chisos Mountains in Big Bend National Park, Brewster County, Texas, and in adjacent northern Chihuahua, Mexico (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factor A: NatureServe (2007) identifies the activities of tourists as a threat to this species, but does not identify the type of activities nor how they may be impacting this species. NatureServe (2007) further identifies occasional drought as a threat to the species, but provides no information concerning the frequency or intensity of these droughts or how the species is impacted by drought. We have determined that the information presented concerning tourist activities and drought does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Quercus graciliformis* may be warranted.

Rhododon angulatus (Lonestar Sandmint)

Rhododon angulatus is a plant known from two populations occurring in Aransas County, Texas (NatureServe 2007). It is also reported in Nueces and Refugio Counties; however, these reports remain unconfirmed (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factor A: NatureServe (2007) notes that threats to *Rhododon angulatus* include suburban sprawl, industrial development, and road widening, but does not indicate whether these activities are occurring or are likely to occur in the future nor how these activities may impact *R. angulatus*. We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Rhododon angulatus* may be warranted.

Sophora gypsophila (Gypsum Necklace)

Sophora gypsophila is a shrub known to occur in Culberson County in western Texas and in adjacent Eddy and Otero Counties in southern New Mexico (NatureServe 2007). There is an additional occurrence 300 km (185 mi) to the south in Chihuahua, Mexico (NatureServe 2007). NatureServe (2007) estimates that there are approximately 2000 known individuals of the species.

Factors A, B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: NatureServe (2007) identifies the effects of climate change as a threat to *Sophora gypsophila*. NatureServe (2007) indicates that the distribution of the species is declining as its habitat becomes drier due to climate change. Information in our files indicates that warming of the climate is unequivocal and that drying trends in the southwestern United States are likely to persist (Intergovernmental Panel on Climate Change 2007a, p. 30; Intergovernmental Panel on Climate Change 2007b, p. 887); however, we find the information presented in the petition and readily available in our files to be insufficiently specific to *Sophora gypsophila* or its habitat.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Sophora gypsophila* may be warranted.

Valerianella nuttallii (Nuttall's Cornsalad)

Valerianella nuttallii is an herbaceous plant that is limited to western Arkansas and eastern Oklahoma. The species is known from few remaining individuals (approximately 1,000-3,000) (NatureServe 2007). The species historically occurred in 11 counties in western Arkansas (NatureServe 2007) and in 13 counties in eastern Oklahoma (Oklahoma Biological Survey 2002), and is currently thought to occur in 7 counties in Arkansas and 3 in Oklahoma (NatureServe 2007). The species is found in areas with saturated soils associated with shale (NatureServe 2007).

Factor A: NatureServe (2007) indicates that *Valerianella nuttallii* occurs in hay meadows in which moderate grazing occurs; however, NatureServe (2007) does not identify moderate grazing as a threat to the species. We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Valerianella nuttallii* may be warranted.

Ferns and Allies

Grimmia americana (no common name)

Grimmia americana is a moss known to occur in western Texas, southern Nevada, and central Arizona (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factor A: Stark (1999) states that the *Grimmia americana* population in Clark County, Nevada, occurs at an entry point to a canyon containing petroglyphs, and due to relatively high public access, is likely impacted by trampling by humans. Because this species is known to occur on cliffs and boulders (NatureServe 2007), it is likely somewhat protected from recreational users. No information is presented concerning recreational use at the Texas or Arizona site. We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Grimmia americana* may be warranted.

Riccia californica (no common name)

Riccia californica is a moss reported from west-central Oregon south to San Francisco and Santa Clara Counties in northern California, with a disjunct population reported from San Diego County in southern California (Stark and Whittemore 1992; NatureServe 2007). It has also been reported from Texas (Schuster 1992).

Factor A: NatureServe (2007) indicates the population in southern California may be threatened by

development, but the nature of the development and impact on the species were not discussed. Additionally, no information was presented concerning the present or threatened destruction, modification, or curtailment of its habitat in the rest of its range in northern California, Oregon, and Texas. We have determined that this information does not meet the substantial information standard.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Riccia californica* may be warranted.

Lichens

Acarospora clauzadeana (no common name)

Acarospora clauzadeana is a lichen known to occur near Roswell in Chaves County, New Mexico; near Almeria in Andalusia, Spain; and near Cuatro Cienegas in Coahuila, Mexico (NatureServe 2007). In New Mexico, it is very specific in where it colonizes as it is restricted to pure gypsum that has been eroded to knife-sharp edges (NatureServe 2007). The current size of the area occupied by this species is apparently small, even though it occurs in three distinct parts of the world (NatureServe 2007). The lichen is sparsely distributed throughout its local area in New Mexico. It is difficult to quantify abundance of this species because it deeply penetrates stony rocks. It is not clearly known how this species disperses and whether it has relatively recently colonized certain sites or it was once more common than it is now and surviving historic sites are being observed (NatureServe 2007). The status of the populations in Spain and Mexico are unknown (NatureServe 2007).

Factor A: NatureServe (2007) indicates that gypsum mining, off-road vehicle use, and other recreational activities are potential threats to *Acarospora clauzadeana*, but does not indicate whether any of these activities are occurring or are likely to occur in occupied habitats. Additionally, NatureServe (2007) indicates that its habitat is naturally subject to erosion such that any activity that accelerates erosion would threaten the species; however, NatureServe (2007) does not identify any specific erosion accelerating threats occurring or likely to occur in occupied habitats. We have determined that this information does not meet the substantial information standard.

Factor B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Acarospora clauzadeana* may be warranted.

Omphalora arizonica (no common name)

Omphalora arizonica is a lichen known to occur in the mountains in Santa Cruz and Apache Counties, Arizona; in Bernalillo, Lincoln, Otero, San Miquel, Union, and Doña Ana Counties, New Mexico; and in Larimer, Mineral, and Saguache Counties, Colorado (NatureServe 2007).

Factor A: NatureServe (2007) identifies mechanical disturbance such as rock climbing in the Sandia Mountains of New Mexico as a threat to *Omphalora arizonica*; however, this threat is not considered by NatureServe to be of significant concern. We have determined that this information does not meet the substantial information standard.

Factors B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: NatureServe (2007) identifies air pollution as a threat to *Omphalora arizonica*, but does not identify the nature of such pollution nor its impacts on this lichen. We have determined that this information does not meet the substantial information standard.

Based on our evaluation of the information provided in the petition, we have determined that the petition does not present substantial information to indicate that listing *Omphalora arizonica* may be warranted.

Species For Which Substantial Information Was Presented

Reptiles

Arizona Striped Whiptail (*Aspidoscelis arizonae*)

The Arizona striped whiptail is a lizard which inhabits grasslands and shrublands and is reported to occur in a small range in southeastern Arizona, including in the vicinity of the towns of Willcox (Cochise County) and Fairbank (Cochise County), and the Hackberry Ranch in Whitlock Valley (Graham County) (Sullivan *et al.* 2005). Surveys from 2000 through 2003 found the species near Willcox and near Bonita (where not previously recorded), but not in the Whitlock Valley (Sullivan *et al.* 2005). Sullivan *et al.* (2005) did not find appropriate habitat at the historical Fairbank site and believe it was a base camp rather than the actual collection site.

Factor A: NatureServe cited the AGFD (2006) in indicating that habitat degradation due to urban and agricultural development and improper livestock grazing may be threats to the species. Sullivan *et al.* (2005) noted that one historical collecting site is now a housing development where they found no whiptails during their surveys. While they found the species at seven of eight historical collecting sites, they found evidence of recent heavy grazing at most sites occupied by the species (Sullivan *et al.* 2005).

Factor B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Arizona striped whiptail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from development and improper livestock grazing.

Amphibians

Black-spotted Newt (*Notophthalmus meridionalis*)

The black-spotted newt is known to occur along the Gulf Coastal Plain, from south of the San Antonio River in Texas southward to Tamaulipas, northern Veracruz, and southeastern San Luis Potosi, Mexico (NatureServe 2007). Adults, juveniles, and larvae of the species inhabit permanent and temporary ponds, roadside ditches, and quiet stream pools. The species is usually found among submerged vegetation such as *Chara* spp. (muskgrass) and under rocks and other shelter when ponds dry up (NatureServe 2007). NatureServe (2007) reports results from a Service survey in the mid-1980's whereby the black-spotted newt was observed at 5 localities, 2 in Texas and 3 in Mexico, during 221 surveys conducted. Additionally, NatureServe (2007) reports that the species could be absent from two of the three known localities in Mexico, but still exists in Siberia in northern Veracruz. The black-spotted newt was formerly a candidate 2 species, a taxa for which information in our possession indicated that

proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factor A: NatureServe (2007) identifies past habitat alteration within the historic range of the species in Texas and Mexico as a threat to the species; however, no information is provided concerning the potential for alteration of currently occupied habitats. We have determined that this information does not meet the substantial information standard.

Factors B and C: No information was presented in the petition concerning threats to this species from these factors.

Factor D: NatureServe (2007) states that it is unknown whether any occurrences are appropriately protected or managed. The species is listed as endangered by the Mexican government, but it is not known to occur in any protected areas in Mexico (NatureServe (2007). The species is listed as threatened by Texas Parks and Wildlife Department. Texas Parks and Wildlife Department regulations prohibit the taking, possession, transportation, or sale of any of the animal species designated by State law as endangered or threatened without the issuance of a permit.

Factor E: Dixon (1987) identifies the use of herbicide and pesticide as a threat to the species, indicating that the species ''has become endangered in Texas because pesticides and herbicides have been used throughout its area of distribution in Texas.''

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the black-spotted newt may be warranted due to the other natural or manmade factors affecting its continued existence resulting from herbicide and pesticide use.

Blanco Blind Salamander (*Eurycea robusta*)

The Blanco blind salamander is found in water-filled underground caverns known to occur in the San Marcos Pool of the Balcones Aquifer (part of the Edwards Aquifer), Hays County, Texas (NatureServe 2007). It is known from four specimens observed in 1951 where only one was collected and preserved (NatureServe 2007).

Factor A: NatureServe (2007) indicates that the Blanco blind salamander may be sensitive to changes in water quality and thus vulnerable to groundwater pollutants. NatureServe (2007) further indicates the salamander is likely threatened by falling groundwater levels that have resulted from increased pumping to support residential and commercial development in the region. Campbell (2003) indicates that increased groundwater use coupled with drought in the region is a serious threat to aquatic species in the Edwards Aquifer.

Factor B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing Blanco blind salamander may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from water pollutants and water withdrawal.

Comal Blind Salamander (*Eurycea tridentifera*)

The Comal blind salamander is known to occur in the southeastern margin of the Edwards Plateau and the Cibolo Sinkhole Plain region of Comal County, Bexar County, and possibly in Kendall County, Texas (NatureServe 2007). Its current distribution includes Badweather Pit, Honey Creek Cave, Ebert Cave, Comal Springs, Pedernales Spring 1 and Spring 2, and caves at Camp Bullis Army Base (Chippindale and Hills 1994, Hills and Chippindale 2000). Hills and Chippindale (2000) listed at least seven separate occurrences of the species in recent surveys.

Factor A: NatureServe (2007) cites Hills and Chippindale (2000), who note that several species that occur in the Comal Springs ecosystem are threatened by habitat loss and modification due to groundwater withdrawal and groundwater contamination within the Edwards Aquifer. Because the Comal blind salamander co-occurs with these species, it may be facing the same threats. NatureServe (2007) also indicates that the species may be threatened by land development; however, no information was provided indicating that development is occurring or is likely to occur in areas occupied by the species. We have determined that the information presented concerning land development does not meet the substantial information standard.

Factor B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Comal blind Salamander may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from groundwater withdrawal and contamination.

Comal Springs Salamander (*Eurycea* sp. 8)

The Comal Springs salamander is known to occur only in Comal Springs in Landa Park and Landa Lake, Texas.

Factor A: NatureServe (2007) cites Chippindale *et al.* (2000), who note that several species that occur in the Comal Springs ecosystem are threatened by habitat loss and modification due to groundwater withdrawal and groundwater contamination within the Edwards Aquifer. Because the Comal Springs salamander co-occurs with these species, it may be facing the same threats.

Factor B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Comal Springs salamander may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from groundwater withdrawal and groundwater contamination.

Texas Salamander (*Eurycea neotenes)*

The Texas Salamander is known to occur in Bexar County in south-central Texas (NatureServe 2007). It was formerly thought to be a wide-ranging species (Sweet 1984), but recent genetic data indicates that it is restricted to Helotes Creek Spring, Leon Springs, and Mueller's Spring (Chippindale *et al.* 2000). No further information regarding the historical or current distribution or status of the species was presented.

Factor A: Bruce (1976) identifies frequent drought and occasional flooding, which would destroy or modify its habitat, as threats to the Texas salamander. Although those Texas salamanders in permanent springs or underground waters would be expected to survive droughts, it is likely that many would be trapped downstream in drying surface pools (Bruce 1976). Information readily

available in our files confirms that droughts occur in this region of south-central Texas (72 FR 71040, December 13, 2007).

Factor B: No information was presented in the petition concerning threats to this species from this factor.

Factor C: Bruce (1976) indicates that a high mortality rate in juvenile Texas salamanders may be due to high predation, but provides no information on the type of predation that may be occurring. We have determined that this information does not meet the substantial information standard.

Factors D and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Texas salamander may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from drought.

Fish

Arkansas River Speckled Chub (*Macrhybopsis tetranema*)

The Arkansas River speckled chub is a fish known to occur in shallow channels of large, permanently flowing, sandy streams (NatureServe 2007). Historically, it occurred in the upper Arkansas River basin in Oklahoma, Kansas, Texas, New Mexico, and Colorado. It is currently known to be extant in two widely disjunct areas: the Ninnescah River and an associated portion of the Arkansas River in Kansas, and the South Canadian River between Ute and Meredith reservoirs in New Mexico and Texas (Eisenhour 1999; Luttrell *et al.* 1999).

Factor A: According to NatureServe (2007) and Luttrell *et al.* (1999), the Arkansas River speckled chub may be threatened by continuing river impoundments, water diversion projects, drought, and depletions of groundwater.

Factors B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factors E: Reservoirs and dewatered river stretches may pose further threats to the species by creating barriers to movement and recolonization (Luttrell *et al.* 1999). According to NatureServe (2007) and Luttrell *et al.* (1999), the species has declined in Kansas and Arkansas due to dewatering of streams, and low-water dams and other obstructions, which may have fragmented habitat and blocked upstream recolonization. NatureServe (2007) claims that pollution from oil, feedlots, and pesticides is probably also preventing upstream recolonization.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Arkansas River speckled chub may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from water impoundment and diversion projects, and due to other natural or manmade factors affecting its continued existence resulting from restricted recolonization.

Chihuahua Catfish (*Ictalurus* sp. 1)

The Chihuahua catfish historically occurred in the Rio Grande basin in New Mexico, Texas, and Mexico, and possibly the Rio San Fernando basin in Nuevo Leon and Tamaulipas, Mexico (Service 1994). According to Service (1994), the species trend is declining and may be extirpated in the United States. Anderson *et al.* (1995) indicate that catfishes in general show a pattern of reduced relative abundance in most Texas rivers. The Chihuahua catfish was formerly a candidate 2 species, a taxa for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factor A: Anderson *et al.* (1995) identify causes for changes in diversity of fishes in Texas, including dam construction, proliferation of exotic species, and increasing water demands; however, no information specific to this species is included. Information in Service (1994) supports the information presented in Anderson *et al.* (1995) and notes that the aquatic habitats of this catfish are threatened with pollution and dewatering, and that nonnative species threaten native fish fauna.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Chihuahua catfish may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range, resulting from pollution, dewatering, and nonnative species.

Nueces Shiner (*Cyprinella* sp. 2)

The Nueces shiner is a small fish known to occur in clear, cool headwater creeks of the Nueces River in Texas (Richardson and Gold 1995).

Factor A: Groundwater levels for much of south-central Texas have decreased substantially over the past decade, resulting in significantly reduced water flow in spring-fed rivers, including the Nueces River (Richardson and Gold 1995; NatureServe 2007). In addition, much of the land in the Nueces River basin is used for agriculture, and both improper grazing by livestock and possible stream pollution from pesticides and other chemicals may pose serious problems for the Nueces shiner (Richardson and Gold 1995; NatureServe 2007).

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Nueces shiner may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from reduced water flow, improper grazing by livestock and pollution.

Pecos Pupfish (*Cyprinodon pecosensis*)

The Pecos pupfish is known from a small range in the Pecos River drainage of New Mexico and Texas (NatureServe 2007). The historical range of the species includes the Pecos River from Bitter Lake National Wildlife Refuge and Bottomless Lakes State Park near Roswell, New Mexico, downstream approximately 650 km (404 mi) to the mouth of Independence Creek, Texas (Service 2000). The species was also found in gypsum sinkholes and saline springs at Bitter Lake National Wildlife Refuge; sinkholes and springs at Bottomless Lakes State Park; and in Salt Creek, Reeves County, Texas. As of 2000, the species was known to occur only in the upper reach of Salt Creek in Texas, in the Pecos River from north of Malaga upstream to Bitter Lake National Wildlife Refuge, Bottomless Lakes State Park, and the Bureau of Land Management (BLM) Overflow Wetlands Wildlife Habitat Area/Area of Critical Environmental Concern (Service 2000).

Factor A: Information presented in NatureServe (2007) and verified by Service (2000) indicates Pecos pupfish habitat may be threatened by alterations

of habitat, such as dewatering, channelization, and nonnatural flow regime, due to excessive groundwater pumping and dams on the Pecos River. Lower water tables may also eliminate water flow between sinkholes, isolating small populations. Oil spills from pipelines into Salt Creek, Texas, have occurred and accidental spills or leaks may represent an ongoing threat to water quality throughout its range.

Factor B and C: No information was presented in the petition concerning threats to this species from these factors.

Factor D: In 1999, the Texas Parks and Wildlife Department; New Mexico Department of Game and Fish (NMDGF); New Mexico Energy, Minerals, and Natural Resources Department; New Mexico Department of Agriculture; New Mexico Environmental Department; New Mexico Office of the State Engineer; BLM; and Service signed a conservation agreement for the Pecos pupfish. The purpose of the agreement was to secure and protect the Pecos pupfish within its occupied and historical range (Texas Parks and Wildlife Department *et al.* 1999); however, the agreement expired in 2004 and has not been renewed.

Factor E: The Pecos pupfish may be threatened by hybridization with the sheepshead minnow (*Cyprinodon variegatus*) (NatureServe 2007; Service 2000). The sheepshead minnow was apparently introduced into the Pecos River in Texas in the 1980s (Echelle and Connor 1989). Interbreeding with the Pecos pupfish lead to hybridization and swamping of the genetic material of the Pecos pupfish with that of the sheepshead minnow and Pecos pupfish-sheepshead minnow hybrids. As of 1998, the sheepshead minnow had replaced the Pecos pupfish in about two-thirds of its former range.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Pecos pupfish may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range as a result of water quality and quantity issues, and due to other natural or manmade factors affecting its continued existence as a result of hybridization with the sheepshead minnow.

Plateau Shiner (*Cyprinella lepida*)

The Plateau shiner is a small fish known to occur in a small range in the clear, cool spring-fed headwater creeks of the Frio and Sabinal Rivers in central Texas (Nueces River system). Survey efforts indicate that population sizes have decreased appreciably and suggest that the decline in abundance is particularly evident in the Sabinal River (Richandson and Gold 1995).

Factor A: The species' decline is believed to be associated with habitat alteration resulting from dewatering, improper grazing by livestock, and possible stream pollution from pesticides and other agricultural chemicals (Richardson and Gold 1995; NatureServe 2007).

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Plateau shiner may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from dewatering, improper grazing by livestock, and possible stream pollution.

San Felipe Gambusia (*Gambusia clarkhubbsi*)

The San Felipe gambusia is a fish known to occur in San Felipe Creek, Val Verde County, Texas. The species appears to prefer edge or quiet water habitat in close association to areas with significant spring flows (Garrett and Edwards 2003). On February 13, 2007, we published a 90–day finding in response to a petition to list the species as threatened or endangered under the Act. We found that the petition did not present substantial information that the species warranted listing at that time (72 FR 6703). However, we are re-evaluating the information we considered at that time and information presented in the current petition.

Factor A: San Felipe Creek is an urban stream that has been modified for bank stabilization, flood control, public access, road bridges, and diversion of irrigation water (Garrett and Edwards 2003). As a result, the San Felipe gambusia may be threatened by water quality problems including elevated nitrate, phosphate, and orthophosphate levels (Garrett and Edwards 2003).

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the San Felipe gambusia may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from development and pollution.

Toothless Blindcat (*Trogloglanis pattersoni*)

The toothless blindcat is a catfish known to occur in five wells that penetrate the San Antonio Pool of the Edwards Aquifer in and near San Antonio, Bexar County, Texas (NatureServe 2007).

Factor A: Ono *et al.* (1983) identify decreasing water levels in the Edwards Aquifer and contamination from chemical pollution as threats to the toothless blindcat. The Edwards Aquifer supplies irrigation and drinking water to the area around San Antonio, Texas (Ono *et al.* 1983). Projected increases in the human population around San Antonio will likely result in an increase in water usage which would lower the water level in the aquifer to below the rainfall recharge zone (Ono *et al.* 1983). As such, the species may be vulnerable to pollution and depletion of the aquifer (Ono *et al.* 1983). In addition, Anderson *et al.* (1995) includes local habitat disturbances, such as the alteration of instream flow and eutrophication as threats to the species. Eutrophication is caused by an excess of nutrients, such as nitrogen and phosphorus, which stimulate excessive plant growth that results in the depletion of dissolved oxygen needed by the toothless blindcat.

Factor B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: Competition may be a threat due to the rapid increase of exotic species within the toothless blindcat's occupied habitat (Anderson *et al.* 1995).

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the toothless blindcat may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range other natural or manmade factors affecting its continued existence resulting from water drawdown and pollution, or to other natural or manmade factors affecting its continued existence resulting from competition.

White Sands Pupfish (*Cyprinodon tularosa*)

The White Sands pupfish occurs in Lincoln, Otero, and Sierra Counties, New Mexico (NatureServe 2007). The species is abundant where its habitat occurs in the Tularosa Basin within the White Sands Missile Range and

Holloman Air Force Base, where the White Sands pupfish typically occurs in clear, shallow water over a variety of substrates, ranging from sand and gravel to silt and mud (NatureServe 2007, U.S. Army *et al.* 2006).

Factor A: NatureServe (2007) identifies habitat alteration as a threat to the White Sands pupfish. According to NatureServe (2007), feral horses degrade aquatic habitats; however, no further discussion was provided. We have no information that feral horses occur in that portion of the Tularosa Basin; however, information in our files indicates that oryx (*Oryx gazelle*), an exotic African ungulate, occurs and breeds year long in the area (Rowley 2001). NatureServe (2007) states that missile impact in pupfish habitat may affect or eliminate a population. We have information in our files that missile firing activity occurs in the area (U.S. Army *et al.* 2006). According to NatureServe (2007), surface water withdrawal is prohibited, but military activities, such as road construction, may require the use of groundwater, which may affect the quality of aquatic habitats. NatureServe (2007) states that introduced salt cedar (*Tamarix* spp.) has spread throughout the area occupied by the pupfish and may affect water levels or suitability of pupfish habitat. NatureServe (2007) states that the use of off-road vehicles by recreationalists or for military activities is a threat to the species; however, no further discussion is provided.

Factors B and C: No information was presented in the petition concerning threats to this species from these factors.

Factor D: The White Sands pupfish is managed under the implementation of a management plan jointly administered by NMDGF, the Service, the U.S. National Park Service, Holloman Air Force Base, and White Sands Missile Range (NatureServe 2007). We do not have information on the effectiveness of the implementation of this management plan; however, we will evaluate it more thoroughly during our status review for the species.

Factor E: No information was presented in the petition concerning threats to this species from this factor.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the White Sands pupfish may be warranted, resulting from an exotic ungulate, missile-firing activity, water withdrawal, and the introduced plant salt cedar.

Widemouth Blindcat (*Satan eurystomus*)

The widemouth blindcat is a catfish known to occur in five artesian wells penetrating the San Antonio Pool of the Edwards Aquifer in and near San Antonio, Bexar County, Texas (NatureServe 2007).

Factor A: Ono *et al.* (1983) identify decreasing water levels in the Edwards Aquifer and contamination from chemical pollution as threats to the toothless blindcat. The Edwards Aquifer supplies irrigation and drinking water to the area around San Antonio, Texas (Ono *et al.* 1983). Projected increases in the human population around San Antonio will likely result in an increase in water usage which would lower the water level in the aquifer to below the rainfall recharge zone (Ono *et al.* 1983). In addition, Anderson *et al.* (1995) includes local habitat disturbances, such as the alteration of instream flow and eutrophication as threats to the species. Eutrophication is caused by an excess of nutrients, such as nitrogen and phosphorus, which stimulate excessive plant growth that results in the depletion of dissolved oxygen needed by the toothless blindcat.

As such, the species may be vulnerable to pollution and depletion of the aquifer (Ono *et al.* 1983). In addition, Anderson *et al.* (1995) includes local habitat disturbances, such as the alteration of instream flow and eutrophication, as being threats to the species.

Factors B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: Competition may be a threat due to the rapid increase of exotic species within the widemouth blindcat's occupied habitat (Anderson *et al.* 1995).

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the widemouth blindcat may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range other natural or manmade factors affecting its continued existence resulting from water drawdown and pollution, or to other natural or manmade factors affecting its continued existence resulting from competition.

Clams

Louisiana Pigtoe (*Pleurobema riddellii*)

The Louisiana pigtoe is a freshwater mussel historically known to occur as far west as the San Jacinto and Trinity Rivers, Texas, eastward through the Neches and Sabine systems into the Red River and Bayou Pierre of north central Louisiana (Howells *et al.* 1996, 1997). We have information in our files that in an extensive survey for mussels throughout Texas, Howells (2006) found the species at only two sites in eastern Texas and concluded that it has declined in Texas in recent decades.

Factor A: NatureServe (2007) indicates that general human modification of the area, including timber cutting, gravel and sand removal, is impacting mussel species within the region. The Louisiana Department of Wildlife and Fisheries (2007) identifies loss of habitat as a result of siltation and impoundments, and stream pollution as threats to the species in that state. Additional threats likely to affect the species in Texas are poor land and water management practices resulting in the loss of mussel habitat (Howells *et al.* 1997) and improper flow control from an upstream dam in the Neches River (Howells 2006).

Factor B: Turgeon *et al.* (1998) identify overharvesting as a threat to mussel species in general; however, no information specific to this species was presented.

Factors C and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: Turgeon *et al.* (1998) identify contamination by viruses, bacteria, harmful algal blooms, and toxic chemicals as threats to shellfish; however, no information specific to the Louisiana pigtoe was provided. Turgeon *et al.* (1998) also identify competition from introduced species as a threat to mollusk species in general; however, no information specific to the Louisiana pigtoe was provided.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Louisiana pigtoe may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from general human modification of the water and adjacent land, siltation, impoundments, and water pollution.

Sangre de Cristo Peaclam (*Pisidium sanguinichristi*)

The Sangre de Cristo peaclam is a small freshwater clam known to occur in Middle Fork Lake, Taos County, New Mexico (NMDGF 2008). It is found in mud along emergent grasses in sheltered embankments and rocky substrates. NMDGF (2008) cites Taylor (1987), who

suggested the clam may occur in other portions of the southern Rocky Mountains, but his surveys and those initiated by NMDGF in the mid-1990s have failed to find additional occurrences of the clam. We were petitioned to list the Sangre de Cristo peaclam in 1985 by NMDGF. In 1987, we published a finding on the petition indicating that the petitioned action was warranted, but precluded by work on higher priority listings (July 1, 1987; 52 FR 24485). In 1991, we classified this species as a candidate 2, a taxon for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. On December 5, 1996, we published a rule that discontinued the practice of keeping a list of category 2 candidate species (61 FR 64481), and the Sangre de Cristo peaclam was no longer considered a candidate species.

Factor A: NatureServe (2007) indicates that threats to the clam may include mining, water pollution from fish and forest fire management, and dewatering due to population growth. NMDGF (2008) supports the assertions of NatureServe (2007) in noting that runoff from placer mining and water pollution from fish and forest fire management may threaten the species, but does not speak to the threat of dewatering. NatureServe (2007) provides no discussion indicating whether dewatering due to population growth is occurring in occupied habitats. We do not consider the information presented concerning dewatering to meet the substantial information standard.

Factor B: Turgeon *et al.* (1998) identify overharvesting as a threat to mussel species in general; however, no information specific to this species was presented.

Factor C: No information was presented in the petition concerning threats to this species from this factor.

Factor D: NMDGF (2008) indicates that a conservation assessment plan for this species between the Service, U.S. Forest Service, and NMDGF was formalized in 1996. According to NMDGF (2008), the plan ''calls for multi-agency research and management efforts direct at protection of the species.'' We do not have information on the effectiveness of the implementation of this plan; however, we will evaluate it more thoroughly during our status review for the species.

Factor E: Turgeon *et al.* (1998) identify contamination by viruses, bacteria, harmful algal blooms, and toxic chemicals as threats to shellfish; however, no information specific to the Sangre de Cristo peaclam was provided. Turgeon *et al.* (1998) also identify competition from introduced species as a threat to mollusk species in general; however, no information specific to the Sangre de Cristo peaclam was provided.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Sangre de Cristo peaclam may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from water pollution.

Southern Purple Lilliput (*Toxolasma corvunculus*)

The southern purple lilliput is a small freshwater mussel reported from Swamp Creek, Whitfield County, Georgia; Village Creek, Jefferson County, Alabama; the Sipsey Fork and Cahaba River in Alabama, and historically from Lake Ashby, Volusia County, Florida (NatureServe 2007). Current information in our files indicates that it may remain in four locations: the Sipsey Fork, Little Cahaba River, two tributaries to the Middle Coosa River, and a site in the Tallapoosa drainage, all within the Mobile River basin of Georgia and Alabama (J. Powell 2009, pers. comm.). According to NatureServe (2007), Isely reported it in 1924 from Cherokee County, Oklahoma, but records remain unconfirmed, and Branson (1982; 1983; 1984) does not include this species in the mussel fauna of Oklahoma. This species is known to inhabit the same tributaries of the Coosa River in which the Georgia pigtoe mussel, interrupted rocksnail, and rough hornsnail have recently been proposed as endangered with critical habitat (74 FR 31114, June 29, 2009).

Factor A: Hurd (1974) indicates that habitat degradation as a result of human activities, such as creation of hydroelectric and other impoundments, and contamination with sewerage, insecticides, and other chemicals, threatens the species. Dams eliminate or reduce river flow within impounded areas, cause sediment deposition, alter water temperature and dissolved oxygen levels, change downstream water flow and quality, affect normal flood patterns, and block upstream and downstream movement of species (74 FR 31114). McGregor *et al.* (2000) also indicates that poor water quality in the Cahaba River from high nutrient inputs may threaten the species there.

Factor B: Turgeon *et al.* (1998) identify overharvesting as a threat to mussel species in general; however, no information specific to this species was presented.

Factors C and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: Turgeon *et al.* (1998) identify contamination by viruses, bacteria, harmful algal blooms, and toxic chemicals as threats to shellfish; however, no information specific to the southern purple liliput was provided. Turgeon *et al.* (1998) also identify competition from introduced species as a threat to mollusk species in general; however, no information specific to the southern purple liliput was provided.

Based on our evaluation of the information provided in the petition and our files, we have determined that the petition presents substantial information to indicate that listing the southern purple lilliput may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from impoundments and poor water quality.

Triangle Pigtoe (*Fusconaia lananensis*)

The triangle pigtoe is a freshwater mussel known to occur in the Neches and San Jacinto Rivers and Village Creek in three counties in eastern Texas (Howells *et al.* 1996, NatureServe 2007). It is known from collections at 45 sites on the Neches River and 13 on the San Jacinto River (Howells *et al.* 1997). It is believed to be extirpated from all but one tributary to the Neches River and possibly extirpated from the San Jacinto River (Howells *et al.* 1997). This species' habitat primarily consists of mixed mud, sand, and fine gravel in small rivers (Howells *et al.* 1996).

Factor A: According to NatureServe (2007) and Howells *et al.* (1997), sand deposition from environmental disturbances to the San Jacinto River has caused either the depletion or extirpation of the species in that river. Howells *et al.* (1997) indicate that the population declines are likely due to poor land and water management practices that have resulted in the loss of mussel habitat.

Factor B: Turgeon *et al.* (1998) identify overharvesting as a threat to mussel species in general; however, no information specific to this species was presented.

Factors C and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: Turgeon *et al.* (1998) identify contamination by viruses, bacteria, harmful algal blooms, and toxic chemicals as threats to shellfish; however, no information specific to the

triangle pigtoe was provided. Turgeon *et al.* (1998) also identify competition from introduced species as a threat to mollusk species in general; however, no information specific to the triangle pigtoe was provided.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the triangle pigtoe may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from sand deposition, and poor land and water management practices.

Snails

Bylas Springsnail (*Pyrgulopsis arizonae*)

The Bylas springsnail is a small freshwater snail known to occur in three springs on the north bank of the Gila River between Bylas and Pima in Graham County, southeastern Arizona (AGFD 2003). According to AGFD (2003), the Bylas springsnail occurs in springs that are mildly thermal, ranging from 26 to 32 degrees Celsius (79 to 90 degrees Fahrenheit). The most abundant submergent vegetation is *Chara* spp., and species of sedges and *Distichlis* (saltgrass) grow along the margins of the springs. The species is most abundant on dead wood, gravel, and pebbles (AGFD 2003). The Bylas springsnail was formerly a candidate 2 species, a taxon for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factor A: According to AGFD (2003), the snail is threatened by water development, including pond construction, and habitat degradation due to livestock grazing. AGFD (2003) recommends fencing of the springs to protect them from the effects of grazing.

Factor B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: According to AGFD (2003), the species is threatened by its restricted geographic distribution with associated potential for extinction due to chance events. In the absence of information identifying other threats to the species and linking those threats to the restricted geographic distribution of the species, we do not consider restricted geographic distribution to be a threat.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Bylas springsnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from water modification and livestock grazing.

Cook's Peak Woodlandsnail (*Ashmunella macromphaia*)

The Cook's Peak woodlandsnail is known to occur on two rock slides, 400 m (1,312 ft) apart, on Cooke's Peak in Luna County, New Mexico, and in a single isolated population located in OK Canyon in Carson National Forest, northern New Mexico (Lang 2000). According to NMDGF (2008), the snails occupy the edges of the talus, where they occur under rocks, soil, and debris. The snail also uses the vegetation surrounding the talus such as oaks (*Quercus* sp.), which provide food and shelter for the species (NMDGF 2008). Fossil shells were found at the base of Cooke's Peak (Metcalf and Smartt 1997) indicating that the species likely occupied more of the mountain. The Cook's Peak woodlandsnail was formerly a candidate 2 species, a taxon for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factor A: NatureServe (2007) indicates this species may be threatened by mining activities and wildfire. According to NMDGF (2008), natural perturbations of its habitat such as fire and rockslides, and mining (surface and underground) represent the primary threats to the species. NatureServe (2007) further notes that the mountain occupied by the species is grazed by cattle, but that the rocky slopes occupied by the woodlandsnail are not favored by cattle. Lang (2000) documented grazing at the type locality for this species and notes that although cattle likely don't graze the rocky slopes, intense grazing of the woody vegetation surrounding the rocky slope can potentially decrease leaf litter available as food for snails. To this end, Lang (2000) recommends exclusion of grazing from these areas.

Factors B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: Climate change may be a threat, based on fossil evidence that the range has contracted to higher elevations of the mountain occupied by the species (Metcalf and Smartt 1997). Its declining trend is estimated to be 10 to 30 percent due to its range contraction attributed to drying of the climate in the past ten thousand or more years (Metcalf and Smartt 1997), which suggests that the range may continue to contract with continued warming of the climate.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Cook's Peak woodlandsnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range, resulting from fire, rockslides, and mining, and to other natural manmade factors affecting its continued existence resulting from climate change.

Dona Ana Tallussnail (*Sonorella todseni*)

The Dona Ana tallussnail is known to be restricted to the Dona Ana Mountains, a small mountain range in Dona Ana County, New Mexico (Metcalf and Smartt 1997). According to NatureServe (2007), the known population size is small, estimated at less than 1,000 individuals. Although Sullivan (1997) estimated the occupied range to be 0.4 ha (1.0 ac), Lang (2000) found it at a few additional sites in the mountain range. The Dona Ana tallussnail was formerly a candidate 2 species, a taxon for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factors A: NatureServe (2007) stated that the mountain does not appear to have recreational values that would threaten the species. NatureServe (2007) further notes ''whether mining is a threat needs to be determined.'' Lang (2000) indicates extant populations are highly vulnerable to any forms of soil disturbance, including foot traffic by human or cattle, or mining activities, but does not indicate whether these activities are occurring or are likely to

occur in tallussnail habitats. We do not consider the information provided in NatureServe (2007) and Lang (2000) to be meet the substantial information standard.

Factors B and C: No information was presented in the petition concerning threats to this species from these factors.

Factor D: NatureServe (2007) indicates this species is listed by the State of New Mexico as an endangered species, which prohibits collection without a permit; however, overcollection was not identified as a threat under Factor B above. Additionally, NatureServe (2007) notes that a portion of the range of the species occurs on BLM lands in an Area of Critical Concern, although they note that the adequacy of protection due to this designation needs to be reviewed further. We have determined that this information does not meet the substantial information standard.

Factor E: NatureServe (2007) claims that restricted range and low numbers of occurrences of this species are a threat. In the absence of information identifying other threats to the species and linking those threats to the restricted range and rarity of the species, we do not consider restricted range or rarity to be a threat. Old shells found at the base of the small occupied mountain beyond the currently occupied sites (NatureServe 2007) suggest that the range of the species has contracted over time. Sullivan (1997) indicates that range contraction is attributed to drying of the climate in the past 10 thousand years and suggests that the range will continue to contract with continued warming of the climate.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Dona Ana tallussnail may be warranted due to other natural or manmade factors affecting its continued existence resulting from climate change.

Gila Tryonia (*Tryonia gilae*)

The Gila tryonia is a freshwater snail known to occur in springs on the north side of the Gila River between Bylas and Pima in Graham County, Arizona (NatureServe 2007). The species can be found on dead wood, leaves, or stones in spring or springbrooks (Taylor 1987). Its habitat consists of spring sources that are all mildly thermal, ranging from 26 to 32 degrees Celsius (79 to 90 degrees Fahrenheit) (AGFD 2003). The most abundant submergent vegetation is *Chara* spp., and species of sedges and *Distichlis* (saltgrass) grow along the margins of the springs. The Gila tryonia was formerly a candidate 2 species, a taxon for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factor A: According to AGFD (2003), the species is threatened by groundwater depletion and reduction of spring flows. AGFD (2003) further indicates that protection of spring sources is a needed management activity.

Factor B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: According to AGFD (2003), the species' restricted geographic distribution makes it vulnerable to extinction due to chance events. In the absence of information identifying other threats to the species and linking those threats to the restricted geographic distribution of the species, we do not consider restricted geographic distribution to be a threat.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Gila tryonia may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range, resulting from groundwater depletion and reduction of spring flows.

Grand Wash Springsnail (*Pyrgulopsis bacchus*)

The Grand Wash springsnail is a small freshwater snail known to occur in Grapevine, Whisky, and Tassi springs within the Grand Wash trough, Mohave County, northwestern Arizona (AGFD 2001). Empty shells suspected to be the Grand Wash springsnail were collected from the southern end of the Virgin Mountains, Clark County, southeastern Nevada (AGFD 2001). Where they occur, the snail may be very abundant, in the tens of thousands, with as many as 30 to 50 snails being found on a single submerged cottonwood leaf (AGFD 2001). The Grand Wash springsnail was formerly a candidate 2 species, a taxon for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factor A: According to the AGFD (2001), threats to the snail include groundwater depletion, subsequent loss of spring flows, and habitat degradation due to livestock use. Grapevine and Whiskey springs are fenced to prevent access by livestock, but Tassi Springs is not fenced, and livestock can access the spring complex. We also have information in our files that ungulate grazing causes degradation of spring habitats in Arizona (Service 2008c). AGFD (2001) further indicates that fencing of habitats is a needed management activity.

Factor B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Grand Wash springsnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range, resulting from groundwater depletion, loss of spring flows, and livestock use.

Huachuca Woodlandsnail (*Ashmunella levettei)*

The Huachuca woodlandsnail is known to occur in Arizona and New Mexico (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was presented.

Factors A, B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: Fairbanks and Miller (1983) documented inbreeding and the subsequent loss of heterozygosity (a measure of genetic diversity) in several populations of Huachuca woodlandsnail. We are aware that inbreeding can act as a stressor in small populations.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Huachuca woodlandsnail may be warranted due to other natural or manmade factors affecting its continued existence resulting from inbreeding.

Kingman Springsnail (*Pyrgulopsis conica)*

The Kingman springsnail is known to occur in the Burns, Dripping, and Cool

springs in the Black Mountains near Kingman, Mohave County, Arizona. The species is a gill breather and, therefore, requires perennially flowing water (AGFD 2003). Springsnails in the genus *Pyrgulopsis* are generally found on rock or aquatic plants in moderate current.

Factor A: According to AGFD (2003), the species is threatened by groundwater depletion and reduction of spring flows. AGFD (2003) also states that development is a threat to the species. AGFD (2003) further indicates that protection of the remaining known spring sources is a needed management activity.

Factor B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: According to AGFD (2003), the species' restricted geographic distribution makes it vulnerable to extinction due to chance events. In the absence of information identifying other threats to the species and linking those threats to the restricted geographic distribution of the species, we do not consider restricted geographic distribution to be a threat.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing the Kingman springsnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from groundwater depletion with loss of spring flow and human development.

Mimic Cavesnail (*Phreatodrobia imitata)*

The mimic cavesnail is known from two wells penetrating the Edwards Aquifer, Texas (NatureServe 2007).

Factor A: Several species that occur in the Edwards Aquifer are known to be facing the threats of loss of habitat due to groundwater withdrawal and groundwater contamination (Service 1996). Because the mimic cavesnail co-occurs with these species, it may be facing the same threats.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the mimic cavesnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from resulting from groundwater withdrawal and groundwater contamination.

Mineral Creek Mountainsnail (*Oreohelix pilsbryi*)

The Mineral Creek mountainsnail is a snail known to occur in a small limestone outcrop in the Black Range mountains of Sierra County, New Mexico (NatureServe 2007; Metcalf and Smartt 1997; Lang 2000). The species can be found in moist limestone crevices and in soil and leaf litter beneath limestone rocks. The occupied patches within the outcrop may total less than 0.4 ha (1 ac). Fossil shells are common throughout much of the outcrop, indicating a larger historic range (NatureServe 2007). The site is on the Gila National Forest (NatureServe 2007).

Factor A: According to NatureServe (2007), threats may include natural disturbances, such as fire and rock slides. Lang (2000) indicates the species is highly vulnerable to any form of soil disturbance or mining activity. NatureServe (2007) further indicates that the area is grazed by livestock, but the snail inhabits rocky areas that are not favored by livestock.

Factor B: According to NatureServe (2007) the site is remote and not easily accessed and does not appear to have recreation values that would threaten the species with overutilization for recreational purposes.

Factor C: No information was presented in the petition concerning threats to this species from this factor.

Factor D: According to NatureServe (2007), the species is listed by the State as endangered, which protects individuals from collection without a permit, but does not protect its habitat. The site is in the Gila National Forest, which must issue permits for mining or other activities that could impact the species.

Factor E: According to NatureServe (2007), the species may be threatened by its narrow range and low number of occurrences. In the absence of information identifying other threats to the species and linking those threats to the limited range of the species, we do not consider limited range to be a threat. NatureServe (2007) also notes that climate change may be a threat, based on fossil evidence that the range has contracted within the limestone outcrop occupied by the species; however, no supporting information was presented that allows us to verify these claims. We have determined that this information does not meet the substantial information standard.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Mineral Creek mountainsnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from habitat disturbance.

Pecos Springsnail (*Pyrgulopsis pecosensis*)

The Pecos springsnail is known to occur in southeastern New Mexico (Taylor 1987). This snail is known only from Blue and Castle springs (Eddy County), which are key habitat areas in the State (NMDGF 2008). The historic range of the Pecos springsnail includes areas in New Mexico, but is not found beyond the State's borders (NMDGF 2008). The species is an aquatic, gilled species found along edges of streams in mud and pebble substrate (NMDGF 2008). At Blue Springs, the species is most common at the spring source. The stream supports dense masses of *Chara* spp. with an abundance of emergent and riparian plants including *Salix* spp. (willows), *Cladium jamaicense* (sawgrass), cattails, and watercress (NMDGF 2008). Flows in this spring are substantial, and the water quality is excellent (NMDGF 2008). At Castle Springs, habitat is smaller and lower in water quality due primarily to lower flows and more frequent flood-scouring of the arroyo into which the spring issues (NMDGF 2008).

Factor A: NMDGF (2008) indicates that a significant threat to the Pecos springsnail is dewatering, which results from diversion, drought, and underground pumping in the area. Additional threats may include loss or alteration of habitat due to pollution from oil and gas exploration and production in the vicinity. According to NMDGF (2008), the problem of flood-scouring is present at both Blue and Castle springs due to improper range-management and the disturbance of surface soils.

Factor B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Pecos springsnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from dewatering, pollution, and flood scouring.

Pinaleno Talussnail (*Sonorella grahamensis*)

The Pinaleno talussnail is a land snail found in rockslides from the northeast slope of Mount Graham south to the vicinity of Arcadia Campground in the Pinaleno Mountains, Graham County, Arizona (AGFD 2003). The Pinaleno talussnail was formerly a candidate 2 species, a taxon for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factor A: The species is known to co-occur with the federally endangered Mount Graham squirrel in the Pinaleno Mountains and may be facing threats such as potential intense fires resulting from increased fuel loads (Service 1993, pp. 22). Because fires have been suppressed for a period of time, dead brush and decayed plant matter has built up on top of the talus slopes so that the heat of a large fire may be intense enough to kill the snails in the talus below (AGFD 2003).

Factor B: The snail inhabits land primarily used for recreation; however, the telescope complex on Mount Graham and an increase in camping and recreational sites are not expected to impact these snails to a great extent (AGFD 2003).

Factors C and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: AGFD (2003) indicates this snail faces restricted and declining distribution with associated potential for extinction due to chance events. In the absence of information identifying other threats to the species and linking those threats to the restricted distribution of the species, we do not consider restricted distribution to be a threat. AGFD (2003) further notes that since 1954, the mimic talussnail *(Sonorella imitator*) is becoming more common over the range previously inhabited by the Pinaleno talussnail, although the reason for and impact of this replacement is unknown.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Pinaleno talussnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from fire.

Quitobaquito Tryonia (*Tryonia quitobaquitae*)

The Quitobaquito tryonia is a freshwater snail known to occur in Quitobaquito Springs, Pima County, Arizona (AGFD 2003). The species has been documented from three springs in the spring complex (NatureServe 2007). According to AFGD (2003), the species requires flowing water and has been extirpated from parts of the spring complex. The Quitobaquito tryonia was formerly a candidate 2 species, a taxon for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factor A: According to AGFD (2003), the Quitobaquito tryonia is threatened with habitat loss and degradation from groundwater pumping, water depletion, and growth of thick vegetation which inhibits free flowing water. AGFD (2003) further indicates that protection of spring source and restoration of previously occupied habitats are needed management actions.

Factor B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: According to AGFD (2003), the Quitobaquito tryonia is restricted in distribution with the associated potential for extinction due to chance events. In the absence of information identifying other threats to the species and linking those threats to the restricted distribution of the species, we do not consider restricted distribution to be a threat.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Quitobaquito tryonia may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range, resulting from groundwater pumping and loss of free flowing water.

San Xavier Talussnail (*Sonorella eremita*)

The San Xavier talussnail is known from one location in the Mineral Hills of Pima County, Arizona (NatureServe 2007).

Factor A: NatureServe (2007) notes that potential threats include nearby construction and mining. According to AGFD (2003), development of habitat, including mine expansion and prospecting, may be a threat to the species. AGFD (2003) further indicates that protection of habitat from direct and indirect effects of mining is a needed management activity. We have information readily available in our files indicating that the general area occupied by the talussnail is known for its mining potential (El Paso Natural Gas Company *et al.* 1998).

Factors B: NatureServe (2007) indicates overcollection may be a threat to this species, but provides no additional information indicating that over-collection may be occurring. We have determined that this information does not meet the substantial information standard.

Factor C: AGFD (2003) notes that predation by rodents may be a potential threat to the species, but provides no information indication that predation is occurring or is likely to occur in the future. We have determined that this information does not meet the substantial information standard.

Factor D: The El Paso Natural Gas Company, Arizona Electric Power Cooperative, AGFD, and Service are parties to a conservation agreement for the San Xavier talussnail that was signed in 1998 (El Paso Natural Gas Company *et al.* 1998). We do not have information on the effectiveness of the implementation of this conservation agreement; however, we will evaluate it more thoroughly during our status review for the species.

Factor E: AGFD (2003) identifies restricted distribution as a threat to the San Xavier talussnail. In the absence of additional information identifying other threats to the species and linking one or more of those threats to the species, we do not consider rarity to be a threat.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the San Xavier talussnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range as a result of mining activities.

Squaw Park Talussnail (*Maricopella allynsmithi*)

The Squaw Park talussnail is known to occur at Squaw Peak Park and Mummy Mountain in Maricopa County, Arizona. The snail's habitat is north facing talus slopes; fourteen occur in Squaw Peak Park and two on Mummy Mountain (Hoffman 1994). These snails must inhabit very deep, open, talus

where they can seal their shell openings to solid rock while being protected from heat and dryness by rock layers and plants above (AGFD 2009). Some of the sites are within a park managed by the city of Phoenix. The Squaw Park talussnail was formerly a candidate 2 species, a taxon for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factor A: According to AGFD (2009), the Squaw Park talussnail is restricted in distribution and may be threatened by residential development, which may modify or destroy its occupied habitat. The city of Phoenix occurs in Maricopa County, and its population is predicted to continue to grow at a rapid rate (Gammage *et al.* 2008, p. 51), which supports the claim that development may threaten the species. AGFD (2009) also states that the species may be threatened by habitat modification or destruction due to human recreational activity such as hiking and climbing off trails.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of the Squaw Park talussnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from residential development and recreational activities such as hiking and climbing off trails.

Verde Rim Springsnail (*Pyrgulopsis glandulosa*)

The Verde Rim springsnail is a small freshwater snail known to occur in the Nelson Place Spring complex in Yavapai County, Arizona (AGFD 2003). The spring complex has two springs 150 m (500 ft) apart (AGFD 2003). The Verde Rim springsnail was formerly a candidate 2 species, a taxon for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factor A: According to the AGFD (2003), the species is threatened by water development and groundwater depletion. AGFD (2003) further indicates that protection of spring sources is a needed management action.

Factors B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: The AGFD (2003) identifies a restricted geographic range as a threat to the species. In the absence of additional information identifying other threats to the species and linking one or more of those threats to the species, we do not consider rarity to be a threat.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Verde Rim springsnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range, resulting from water development and groundwater depletion.

Wet Canyon Talussnail (*Sonorella macrophallus*)

The Wet Canyon talussnail is a land snail found only in talus slopes above approximately a 1-mile length of Wet Canyon on the northeast slope of the Pinaleno Mountains in Graham County, Arizona (AGFD 2004). No other locations are known at this time. Recent surveys in 2001 and 2002 by the AGFD (2004) documented live talussnails further upstream and downstream in the Wet Canyon watershed than was previously reported, but the identity of the talussnails has not been confirmed. They also reported finding several live unidentified talussnails in the nearby Twilight Canyon drainage, upstream of Highway 366, and in an unnamed drainage uphill of Twilight Creek (AGFD 2004). This species requires a somewhat wetter and possibly a lower elevation habitat when compared to other talus-inhabiting snails (AGFD 2004).

Factor A: Human recreational activity from a nearby campground and hiking trail may negatively impact this species and its habitat by causing talus removal and infilling of the crevices in the talus that the snail occupies (AGFD 2004). Fire suppression in the area has increased fuel loads, which threatens the species with intense wildfires and post-fire ash flows (AGFD 2004). Information readily available in our files supports the assertions by AGFD (2004) that recreational activities and intense fires represent threats to this species (U.S. Forest Service *et al.* 1999).

Factor B and C: No information was presented in the petition concerning threats to this species from these factors.

Factor D: The U.S. Forest Service, Service, and Arizona Game and Fish Commission are parties to a conservation agreement for the Wet Canyon talussnail that was signed in 1999 (U.S. Forest Service *et al.* 1999). We do not have information on the effectiveness of the implementation of this conservation agreement; however, we will evaluate it more thoroughly during our status review for the species.

Factor E: AGFD (2004) indicates that this species has a highly restricted distribution with associated potential for extinction due to chance events. In the absence of information identifying other threats to the species and linking those threats to the restricted distribution of the species, we do not consider restricted distribution to be a threat.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Wet Canyon talussnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from recreation and fire.

Insects

Colorado Tiger Beetle *(Cicindela theatina*)

The Colorado tiger beetle, also known as the Great Sand Dunes tiger beetle, is a narrow endemic known only from the sand dunes of the Great Sand Dunes National Park and adjacent lands in the San Luis Valley, Colorado (NatureServe 2007). Adult Colorado tiger beetles prefer sandy slopes with sparse bunches of vegetation, generally less than 15-percent vegetative cover, but are not found on open sand (Pineda and Kondratief 2003, p. 1). Larvae are restricted to burrowing in the cooler, more moist, and leeward, especially northeast, sides of the dunes. Suitable habitat is restricted to 290 square kilometers (Pineda and Kondratief 2003, p. 1). No accurate population estimates are available, although Nature Serve (2007) provided an educated guess of 1000 to 10,000 individuals.

Factor A: (NatureServe 2007) identifies the off-site depletion of groundwater in the San Luis Valley as an imminent threat to the species; it could change the hydrology of the sand dunes, possibly altering moisture gradients in the sands and decreasing

the stability of the dunes. A reduced water table could also result in increased shrubby vegetation, which would reduce the quality of the habitat for the tiger beetle (P. Bovin 2009, pers. comm.). NatureServe (2007) states that visitor use at the park may cause trampling of tiger beetle burrows. Approximately three-quarters of the known tiger beetle locations occur within the Great Sand Dunes National Park, where tiger beetles are generally protected from ground-disturbance impacts, such as off-road vehicles (P. Bovin 2009, pers. comm.). At the remaining known locations of the tiger beetle on lands adjacent to the National Park, access is limited, offering some protection from ground-disturbance impacts (P. Bovin 2009, pers. comm.). It is unclear from the information reviewed the degree to which ground-disturbance may be at threat to the Colorado tiger beetle; however, we intend to investigate the ground-disturbance factor more thoroughly in our status review for the species.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition and in NatureServe, we have determined that the petition presents substantial information to indicate that listing of the Colorado tiger beetle may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from off-site depletion of groundwater.

Edwards Aquifer Diving Beetle (*Haideoporus texanus*)

The Edwards Aquifer diving beetle is known to occur in underground freshwater in the San Marcos pool of the Edwards Aquifer, Hays County, Texas. According to NatureServe (2007), it is uncommon in water samples taken from the aquifer.

Factor A: According to NatureServe (2007), the Edwards Aquifer diving beetle is threatened by aquifer drawdown and loss of water quality due to increasing human population growth in large cities using the water supply. We have information in our files that substantiates this claim (Service 1996, pp. 16-19).

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Edwards Aquifer diving beetle may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from water drawdown and loss of water quality due to development.

Ferris's Copper (*Lycaena ferrisi)*

Ferris's copper is a butterfly known to occur in the White Mountains of Apache County, near McNary and Maverick, and in Greer County, Arizona (NatureServe 2007). The species can be found in meadows and marshes near *Rumex hymeospalus* (wild rhubarb), the plant species on which the larvae feed (NatureServe 2007).

Factor A: AGFD (2002) indicates that fire suppression is a threat because it results in the invasion of meadow habitats by dense conifer forests and an understory of grasses. Eventual warm season fires could be intense and eliminate some populations or permanently alter previously suitable habitats. Although it is not explicitly stated by AGFD (2002), we interpret their claim that fire suppression is a threat to be because the larval food plant, *Rumex hymeospalus*, and possibly individual larvae, would be destroyed or reduced in abundance as a result of fire suppression.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Ferris's copper may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from fire suppression.

Notodontid Moth (no common name) (*Astylis* sp. 1)

This notodontid moth is known to occur in Ash Canyon of the Huachuca Mountains in Cochise County, Arizona. The AGFD (2005) indicates that further study is needed to determine the moth's population status and range, as well as its life history traits.

Factor A: According to AGFD (2005) and NatureServe (2007), this species is threatened by its limited range and that a single event, such as an extensive fire, could destroy or modify its habitat in all or a significant portion of the moth's small range. We have information in our files that fire suppression in southern Arizona forests has resulted in excessive fuel loads that encourage large, vegetation-destroying wildfires (DeBano and Neary 1996; Swetnam and Baisan 1996; Dahms and Geils 1997; Danzer *et al.* 1997).

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition and information in our files, we have determined that the petition presents substantial information to indicate that listing of this Notodontid moth species may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from fire.

Notodontid Moth (no common name) (*Heterocampa* sp. 1 nr. *amanda)*

This Notodontid moth is known to occur in oak-juniper woodland in southern Arizona. It is known from Ash and Garden Canyons of the Huachuca Mountains, Cochise County, and at two localities in the Atascosa Mountains, Santa Cruz County (AGFD 2005).

Factor A: According to AGFD (2005) and NatureServe (2007), this species is threatened by its limited range and states that a single event, such as an extensive fire, could destroy or modify its habitat in significant portions of the moth's small range. We have information in our files that fire suppression in southern Arizona forests has resulted in excessive fuel loads that encourage large, vegetation-destroying wildfires (DeBano and Neary 1996; Swetnam and Baisan 1996; Dahms and Geils 1997; Danzer *et al.* 1997).

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition and information in our files, we have determined that the petition presents substantial information to indicate that listing of this Notodontid moth species may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from fire.

Notodontid Moth (no common name) (*Litodonta* sp. 1 nr. *alpina*)

This Notodontid moth is known to occur only in upper Pinery Canyon on the west slope of the Chiricahua Mountains in Cochise County, in southeastern Arizona (AGFD 2005).

Factor A: AGFD (2005) indicates that this species is threatened by its limited range and that a single event, such as an extensive fire, could eliminate significant portions of the moth's small range. We have information in our files that fire suppression in southern

Arizona forests has resulted in excessive fuel loads that encourage large, vegetation-destroying wildfires (DeBano and Neary 1996; Swetnam and Baisan 1996; Dahms and Geils 1997).

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition and information in our files, we have determined that the petition presents substantial information to indicate that listing the Notodontid moth may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from fire.

Notodontid Moth (no common name) (*Ursia furtiva*)

This Notodontid moth is known to occur from two widely separated locations in San Antonio, Bexar County, and Pine Canyon in the Chisos Mountains, Big Bend National Park, Texas (NatureServe 2007). The San Antonio habitat is on private property, while Big Bend National Park is part of the National Park Service system (NatureServe 2007).

Factor A: NatureServe (2007) indicates that the moth may be threatened by its limited range. A catastrophic fire in the Chisos Mountains and urban development in the San Antonio area could eliminate significant portions of its two known occurrences. Information in our files supports the claim that the City of San Antonio is growing at a rapid rate (Draft Bexar County Karst Invertebrates Recovery Plan, p. 1.5-1).

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Notodontid moth may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from fire and development.

Rattlesnake-Master Borer Moth (*Papaipema eryngii*)

The rattlesnake-master borer moth is historically known to occur in portions of Illinois, Indiana, Iowa, Kentucky, North Carolina, Oklahoma, Arkansas, and maybe Missouri (NatureServe 2007). As of 2004, the species is believed to be extant in Illinois, Arkansas, Oklahoma, and Kentucky (NatureServe 2007). The moth appears to have declined more than any of the other prairie moths in the same genus, at least in the northern part of its range (NatureServe 2007). It is apparently restricted to mesic prairies and associated wetlands in the midwest, often but not always with limestone (NatureServe 2007). The rattlesnake-master borer moth was formerly a candidate 2 species, a taxon for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factor A: NatureServe (2007) indicates that most or all sites for the moth could be vulnerable to catastrophic events, including wildfires that occur while the species is dormant. NatureServe (2007) also indicates that its prairie habitat has been reduced to remnants except possibly in eastern Oklahoma where it is documented to occur in one county.

Factor B: NatureServe (2007) cites a case in Illinois that documents a collector damaging the moth's needed food plants on a large scale while looking for larvae. It is likely that some of the moth's populations are small enough that overcollecting may be a threat. NatureServe (2007) also notes damage from collectors in Kentucky where the population is small. Specifically, collecting immatures is a potential problem (NatureServe 2007).

Factors C and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: Due to very low number of populations and the likelihood that most or all have survived major genetic bottlenecks during past fires, loss of genetic variability could be a concern (NatureServe 2007). NatureServe (2007) also indicates that colonization between habitat remnants must be very rare and only plausible today in Oklahoma.

Although the references cited in NatureServe were not readily available to us, the information in NatureServe for this species was provided by Dr. D. F. Schweitzer, who is a reputable lepidopterist. Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the rattlesnake-master borer moth may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from fire, or to overutilization for commercial, recreational, scientific, or educational purposes resulting from collection, or to other natural or manmade factors affecting its continued existence resulting from loss of genetic variability and inability to colonize remnant habitat.

Royal Moth (no common name) (*Sphingicampa blanchardi)*

This royal moth is known to occur in a few isolated localities in Cameron and Hidalgo Counties, Texas (NatureServe 2007). The range of the moth likely extends into Mexico; however, no occurrences are documented there (NatureServe 2007). No further information regarding the historical or current distribution or status of the species was provided.

Factor A: NatureServe (2007) identifies conversion of habitat to agricultural lands and proposed construction in the area as threats to the royal moth and its habitat. Jahrsdoerfer and Leslie (1988) indicate that native brushland in the Lower Rio Grande Valley, which includes Cameron and Hidalgo Counties, has been converted to agriculture. They claim that agricultural clearing is the greatest threat to the vegetation communities and wildlife in that region. They further explain that habitat alterations likely have been detrimental to the invertebrate fauna as well.

Factors B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: NatureServe (2007) identifies pesticide drift from adjacent agricultural lands as a threat to the royal moth. This may be a reasonable assertion considering information in Jahrsdoerfer and Leslie (1988) that extensive agriculture occurs in the Lower Rio Grande Valley; however, no information is presented which indicates that pesticide drift is in fact occurring or how it may be impacting the royal moth. We have determined that this information does not meet the substantial information standard.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing this royal moth may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from agricultural clearing.

Sabino Dancer (*Argia sabino*)

The Sabino dancer is a damselfly known to occur in Sabino Canyon in the Santa Catalina Mountains of Arizona. In

Sabino Creek, the species' range has constricted over the past 35 years, previously including Lower and Upper Sabino Creek but now restricted to the latter area (AGFD 2001). It is probable that additional populations of the Sabino dancer exist in other parts of southeastern Arizona or northern Mexico (AGFD 2001). Access to remote high-gradient streams is difficult, and many habitats have never been surveyed (AGFD 2002). The Sabino dancer was formerly a candidate 2 species, a taxon for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factor A: AGFD (2001) states that the decline of Sabino dancer's population size and geographic distribution is due to hydrological alteration resulting in reduced water flow. Recreational use of Upper Sabino Creek is controlled by preventing vehicle access and requiring recreationists to access it by a tram (AGFD 2001).

Factor B: No information was presented in the petition concerning threats to this species from this factor.

Factor C: AGFD (2001) indicates that the species' habitat is experiencing pool contraction that increases the likelihood that exotic green sunfish (*Lepomis cyanellus*) and crayfish (*Procambarus* sp.) have the potential to expand their ranges up Sabino Creek into the core of Sabino dancer's current range, increasing predation impacts on the Sabino dancer.

Factor D: No information was presented in the petition concerning threats to this species from this factor.

Factor E: AGFD (2001) indicates that the species' habitat is experiencing pool contraction that may have direct negative effects on the Sabino dancer larvae, reducing the time available for larval development.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Sabino dancer may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from hydrological alteration resulting in reduced water flow, to disease and predation resulting from pool contraction that allows increased predation, or to other natural or manmade factors affecting its continued existence resulting from decreased time for larval development.

Stonefly (no common name) (*Anacroneuria wipukupa*)

This stonefly is only known to occur in Oak Creek, Yavapai County, Arizona (NatureServe 2007). NatureServe (2007) notes that it may also occur in similar habitats in Sonora, Mexico.

Factor A: According to AGFD (2004), threats to the stonefly may include impacts to its aquatic habitats, especially pollution. Information in our files substantiates this claim. The site is in close proximity to a State fish hatchery, which appears to drain fish-rearing waste water into Oak Creek, and it is downstream from the town of Sedona (D. Smith 2009, pers. comm.). In the spring of 2008, David Smith, a Service biologist, visited the site and found most of the aquatic insects there were tolerant of higher nutrients in the water (D. Smith 2009, pers. comm.), which is indicative of pollution.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing this stonefly may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range as a result of pollution.

Tamaulipan Agapema (*Agapema galbina*)

The Tamaulipan agapema is a moth known to occur in the lower Rio Grande Valley of Texas, in southern Arizona, and in Tamaulipas and Baja California, Mexico (Struttman 1997). The species is thought to be extirpated from the United States portion of its range (Struttman 1997), but is currently known to occur in Tamaulipas, Mexico (Tuskes *et al.* 1996). In Tamulipas and formerly in Texas, its habitat is Tamaulipan thornscrub, which is open, low vegetation characterized by thorny trees with short trunks and low, branching crowns that rarely meet to form a closed canopy.

Factor A: Jahrsdoerfer and Leslie (1988) indicate this species faces the loss and degradation of its habitat in the Lower Rio Grande Valley. With the conversion of its Tamaulipan thornscrub habitat there to agricultural field crops, such as cotton, only up to 5 percent of native vegetation remained in the 1980s and 1990s (Jahrsdoerfer and Leslie 1988; Tuskes *et al.* 1996).

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing of Tamaulipan agapema may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat resulting from its conversion to agricultural field crops.

Arachnid

Grand Canyon Cave Scorpion (*Archeolarca cavicola*)

The Grand Canyon cave scorpion is a pseudoscorpion, lacking a stinger that true scorpions possess (AGFD 2003). It occurs on or very near the soil surface in Cave of the Domes, Grand Canyon National Park, Coconino County, Arizona. The subterranean cave habitat is also occupied by bats and rodents, which are thought to be necessary to support the arthropod food base for the Grand Canyon cave scorpion (AGFD 2003). This pseudoscorpion was formerly a candidate 2 species, a taxon for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factor A: According to AGFD (2003), threats to the scorpion include groundwater pollution and recreational impacts from cave visitation.

Factors B and C: No information was presented in the petition concerning threats to this species from these factors.

Factor D: AGFD (2003) indicates that Cave of the Domes is the only cave in Grand Canyon National Park for which visitation is not regulated, although the National Park Service has the authority to regulate recreational visitation.

Factor E: No information was presented in the petition concerning threats to this species from this factor.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Grand Canyon cave scorpion may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from groundwater pollution and recreational

impacts, and to inadequacy of existing regulatory mechanisms resulting from unregulated visitation.

Crustaceans

Delaware County Cave Crayfish (*Cambarus subterraneus*)

The Delaware County cave crayfish is thought to be restricted to three caves in Delaware County, Oklahoma (Hobbs 1993, NatureServe 2007) in the Neosho River watershed. No additional populations have been found despite recent surveys of over 50 caves that provide suitable habitat within the vicinity of the occupied caves (Graening and Fenolio 2005). The species is considered to have fewer than 50 individuals in the three different caves (NatureServe 2007).

Factor A: NatureServe (2007) identifies groundwater contamination, specifically the disposal of untreated animal waste from hog farms and poultry houses, as the greatest threat to this species. In a study of the recharge areas for groundwater impacting two of the three caves, Aley and Aley (1990) identified petroleum storage areas, including gas stations and sawmills; large storage tanks that might contain petroleum; confined hog and poultry buildings; dairies and livestock sale barns; and dumps, landfills, and auto salvage yards within the recharge areas of the caves. They identified six such sites in the recharge area for one cave and five in the recharge area of the other and concluded that these were potential sources of water pollution for those two caves. They also concluded that disposal of untreated animal wastes is probably the greatest single threat to aquatic life in those caves.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing of Delaware County cave crayfish may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat resulting from pollution.

Kiamichi Crayfish (*Orconectes saxatilis)*

The Kiamichi crayfish is known to occur in the upper Kiamichi River and its associated tributaries above Whitesboro, Oklahoma (NatureServe 2007). The species can be found in slowly to moderately flowing streams with rocky bottoms, and usually with emergent vegetation, such as *Typha* sp. (cattails), in shallower areas (NatureServe 2007). Historically, the Kiamichi crayfish was known from fewer than 20 adults until a recent survey in which 696 individuals were found 7 rivers in the upper Kiamichi River watershed in Oklahoma. The Kiamichi crayfish is known to co-occur with Ouachita rock pocketbook (*Arkansia wheeleri*), a federally endangered mussel, which suggests the species faces the same threats listed in the Ouachita rock pocketbook recovery plan (Service 2004, pp. 20-30).

Factor A: Impoundment, channelization, and water quality degradation have been identified as principal factors causing the decline of the Ouachita rock pocketbook (Service 2004, p. 20), and since it co-occurs with the Kiamichi crayfish, we conclude these same factors may threaten that species as well. NatureServe (2007) identifies dewatering as a threat to the Kiamichi crayfish. Surface water in the Kiamichi River watershed is the primary source of drinking water and the proposed site of additional water resource development projects needed to meet the demands of the growing population in neighboring States. These proposed projects may cause stream drying and may play a role in the decline in Kiamichi crayfish. Siltation resulting from poor tree-harvesting techniques, road construction, or large-scale changes in land use is also identified as a threat to the species (NatureServe 2007).

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Kiamichi crayfish may be warranted due to the present or threatened destruction, modification, or curtailment of the species' habitat or range resulting from impoundment, channelization, water quality degradation, and dewatering.

Oklahoma Cave Crayfish (*Cambarus tartarus*)

The Oklahoma cave crayfish is known to occur at two caves in a single watershed of Spavinaw Creek, a small creek in Delaware County, Oklahoma, and potentially at three additional caves in that watershed (Graening *et al.* 2006). Graening *et al.* (2006) estimate the species' abundance to be 80 individuals. The Oklahoma cave crayfish was formerly a candidate 2 species, a taxon for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factor A: Spavinaw Creek is designated an impaired waterbody by the State of Oklahoma under section 303(d) of the Clean Water Act due to excessive nutrient loading; many confined animal feeding operations occur upstream from the caves in which this species occurs, and the City of Colcord discharges sewage effluent into the Spavinaw Creek Watershed (Graening *et al.* 2006). Graening *et al.* (2006) noted that cave crayfish are likely susceptible to contaminants in cave water due to adaptations to otherwise stable conditions and as a result of the species' longevity which could allow toxins to accumulate to lethal levels. Graening *et al.* (2006) further indicate this species remains vulnerable to extirpation, primarily because of water quality degradation and recent habitat transformation.

Factor B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing the Oklahoma Cave crayfish may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from water pollution and habitat transformation.

Texas Troglobitic Water Slater (*Lirceolus smithii*)

The Texas troglobitic water slater is an isopod known to occur in an aquifer under several counties in central Texas (NatureServe 2007), the Edwards Aquifer, which supports numerous species of underground aquatic species (Service 1996, pp. 16-19). Within its limited range, it is considered to be abundant (NatureServe 2007). Records of its occurrence represent different sampling sites rather than different populations within its occupied range (NatureServe 2007).

Factor A: NatureServe (2007) identified aquifer drawdown and declining water quality in the aquifer as threats to the species. Drawdown of the Edwards Aquifer's water level and decreasing water quality are the result of a rapid population increase (Service 1996, pp. 16-19) in that area of Texas.

Factors B, C, D, and E: No information was presented.

Based on our evaluation of the information provided in the petition and our files, we have determined that the petition presents substantial information to indicate that listing of the Texas troglobitic water slater may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from aquifer drawdowns and decreasing water quality.

Flowering Plants

Agalinis navasotensis (Navasota False Foxglove)

Agalinis navasotensis is an herbaceous plant in the family scrophulariaceae that is known from Grimes County, Texas. One population of approximately 330 individuals is located on the shallow soil of a sandstone outcrop (Canne-Hilliker and Dubrule 1993; NatureServe 2007). There are two subpopulations, one with approximately 300 individuals and one with approximately 30 (Canne-Hilliker and Dubrule 1993). Canne-Hilliker and Dubrule (1993) describe the outcrop as a distinct island surrounded by a sea of post oak savannah, blackland prairie, and farmland. Similar outcrops may harbor additional populations (NatureServe 2007), although there are no other such outcrops in that county (Canne-Hilliker and Dubrule 1993).

Factor A: NatureServe (2007) states that the most likely foreseeable threat to the *Agalinis navasotensis* is habitat degradation and loss. Individual plants are reported to occur close to a road, making them and their habitat susceptible to destruction from road widening (Canne-Hilliker and Dubrule 1993; NatureServe 2007). Road widening would probably destroy the main subpopulation (Canne-Hilliker and Dubrule 1993; NatureServe 2007). There are no known plans to put the site into cultivation or to graze it (NatureServe 2007). Trampling by humans and off-road vehicle use are potential threats because the site is not fenced (Canne-Hilliker and Dubrule 1993; NatureServe 2007).

Factor B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing of *Agalinis navasotensis* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from road widening, trampling, and off-road vehicle use.

Amoreuxia gonzalezii (Santa Rita Yellowshow)

Amoreuxia gonzalezii is an herbaceous plant known to occur from Santa Cruz and Pima Counties, Arizona, south to Sonora, Mexico, and probably Baja California (AGFD 2003; NatureServe 2007). It has been reported from two subpopulations in the Santa Rita Mountains, in Pima County and from four populations in northern Mexico (NatureServe 2007). In Arizona, *A. gonzalezii* grows on rocky limestone hillsides, but in Sonora, Mexico, it prefers decomposed granite on slopes (AGFD 2003). One of the Arizona populations of *A. gonzalezii* has fewer than 65 plants on a limestone outcrop (AGFD 2003).

Factor A: According to NatureServe (2007), *Amoreuxia gonzalezii* is threatened by degradation of habitat due to livestock grazing, urban development, and mining. AGFD (2003) concurs, but points out that the grazing threat is due to herbivory, not habitat degradation (see Factor C).

Factor B: No information was presented in the petition concerning threats to this species from these factors.

Factor C: Herbivory by cattle is a management problem because the species is very palatable to cattle (AGFD 2003; NatureServe (2007). Javelina (*Pecari tajacu*) dig up and consume the roots, which NatureServe (2007) and AGFD (2003) indicate is a threat.

Factor D: No information was presented in the petition concerning threats to this species from this factor.

Factor E: According to AGFD (2003), competition is likely occurring with the introduced *Cenchrus ciliaris* (buffelgrass), *Eragrostis lehmanniana* (Lehmans lovegrass), and other aggressive, exotic plants.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing of *Amoreuxia gonzalezii* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from development and mining, to predation by cattle and javelina, and to other natural or manmade factors affecting its continued existence resulting from competition.

Amsonia tharpii (Tharp's Blue-star)

Amsonia tharpii is an herbaceous plant found in open areas in shortgrass grasslands or shrublands in Eddy County, New Mexico, and Pecos County, Texas. Soils are shallow, well-drained, and generally composed of sand, silt, and clay over limestone (NatureServe 2007). One population in New Mexico is small with less than 100 plants and the other two contain a few thousand individuals (NatureServe 2007).

Factor A: NatureServe (2007) indicates that habitat degradation and loss is a likely threat. In New Mexico, Desert Botanical Garden (2008) indicates that *Amsonia tharpii* is subject to extirpation due to environmental changes brought about by improper grazing, such as severe erosion resulting in loss of habitat. Regular monitoring of the New Mexico populations may also cause additional erosion (NatureServe 2007). There is active gas development in the vicinity of two of the New Mexico populations (New Mexico Rare Plant Technical Council 1999). In Texas, *Amsonia tharpii* may be threatened by mowing of the highway easement along which plants grow (NatureServe 2007).

Factor B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: According to the Desert Botanical Garden (2008), environmental changes brought about by past improper grazing such as change in species composition has resulted in increased competition with nonnative species.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing of *Amsonia tharpii* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from erosion, gas development and mowing, or other natural or manmade factors affecting its continued existence resulting from competition.

Asclepias prostrata (Prostrate Milkweed)

Asclepias prostrata is a perennial, low-growing plant found in areas of little or no vegetation in grasslands or shrub-invaded grasslands within Starr and Zapata Counties, Texas and Tamaulipas, Mexico (NatureServe 2007). It is reportedly known from fewer than 10 occurrences in southern Texas (NatureServe 2007), at least four of which are along roadsides (Damude and Poole 1990).

Factors A, B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: NatureServe (2007) indicates that roadside mowing is a threat to

Asclepias prostrata. Damude and Poole (1990) indicate that frequent roadside mowing can cut individuals of the species if the mowing blade is set low enough. NatureServe (2007) further indicates that *Asclepias prostrata* is threatened by competition from widely planted and escaped nonnative pasture grasses, such as *Cenchrus ciliaris* (buffelgrass) (NatureServe 2007). According to Damude and Poole (1990), seeding *Cenchrus ciliaris* for pasture improvement has introduced a competitior to *Asclepias prostrata* that may be the greatest threat to the species.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing of *Asclepias prostrata* may be warranted, resulting from roadside mowing and planting of an exotic grass.

Astragalus hypoxylus (Huachuca Milk-vetch)

Astragalus hypoxylus is an herbaceous plant found on hillsides with slopes of 25 to 30 percent in open, limestone rocky clearings in oak-juniper-pinyon woodland within the Huachuca and Patagonia Mountains of Arizona. Despite surveys for the species in Sonora, Mexico, it has not been found there (NatureServe 2007). *Astragalus hypoxylus* was described from a collection made in the Huachuca Mountains in 1882. The description of the location of where the specimen was found, ''Mahoney's Ranch, near Ft. Huachuca'', was not sufficient to relocate the site (NatureServe 2007). The species was not seen again in the field until a collection in 1986 in the Patagonia Mountains south of Harshaw (NatureServe 2007). Searches elsewhere in the Patagonia Mountains have not extended the known range in that area by more than 1 mile (NatureServe 2007). Since 1986, other populations of *A. hypoxylus* have been located in the Huachuca Mountains. One population was found on the southwest side of the Huachuca Mountains near lower Bear Canyon along Bear Creek (NatureServe 2007). Another population was located in Scotia Canyon in 1990, and as many as 600 to 700 individuals were found there in the spring of 1991. The majority of the Scotia Canyon population is located on private land, and the other sites are managed by the Coronado National Forest (AGFD 1999). According to AGFD (1999), the Bear Creek population is extirpated, but NatureServe (2007) cites a personal communication with T. Deecken and indicates that the population there occurs in a collection of sub-populations.

Factor A: According to AGFD (1999) and NatureServe (2007), improper grazing has the greatest impact to the species and its habitat. Seedling survivorship was found to be lower in heavily trampled areas at that site (NatureServe 2007). Livestock grazing occurs at all of the known sites (NatureServe 2007). According to AGFD (1999), recreation at the Bear Creek site also results in destruction of *Astragalus hypoxylus* and its habitat, and NatureServe (2007, citing T. Deecken) considers recreation to be a greater threat to that population than livestock grazing. An informal dirt parking lot has already damaged one sub-population and its habitat, and increased use of the area may destroy other plants and habitat in the future (NatureServe 2007, citing T. Deecken).

Factor B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: NatureServe (2007) indicates that possible indirect threats to the species could come from threats to the bee population; bees are the main pollinators for *Astragalus hypoxylus*. Pesticide use and the trampling of occupied bee nests may be harmful to the bees and, ultimately, to the plants they pollinate (Karron 1991, NatureServe 2007).

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing of *Astragalus hypoxylus* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from recreation and livestock grazing and other natural or manmade factors affecting its continued existence resulting from impacts to its pollinator.

Castilleja ornata (Glowing Indian-paintbrush)

Castilleja ornata is an herbaceous plant known to occur in western Chihuahua and west-central Durango, Mexico; and at a single site in Hidalgo County in southwestern New Mexico (NatureServe 2007). The plant is a predominantly Mexican species, but is possibly now extinct there (NatureServe 2007). NatureServe (2007) indicates that *Castilleja ornata* occurs in flat seasonally wet areas in arid grasslands. According to New Mexico Rare Plant Technical Council (1999), searches of historical collection sites in Chihuahua failed to locate a single population there.

Factor A: NatureServe (2007) and the New Mexico Rare Plant Technical Council (1999) indicate that the seasonally wet habitat of *Castilleja ornata* is often improperly grazed or converted to cultivated cropland. According to New Mexico Rare Plant Technical Council (1999), the sites in Chihuahua, Mexico, were fully converted to agriculture.

Factor B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing of *Castilleja ornata* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from improper grazing or conversion to cultivated cropland.

Erigeron piscaticus (Fish Creek Fleabane)

Erigeron piscaticus is an herbaceous plant found in moist, sandy canyon bottoms associated with continuously flowing streams. It is known historically from two sites in Fish Creek Canyon, Superstition Mountains, Maricopa County; and Turkey Creek and Oak Grove Canyon (Aravaipa Canyon tributaries), Galiuro Mountains, Graham County, Arizona (AGFD 2001). Currently, it is known only from the Oak Grove Canyon location, which has been annually monitored since 1992 (AGFD 2001). According to AGFD (2001), surveys conducted in 1993 and 1994 at the Oak Grove Canyon site found 79 plants in both years, which suggests that the population is small, but stable. Two surveys conducted in 1994 showed continued population stability, and greater germination after summer rains, evidence that plants can germinate and flower following summer rains (AGFD 2001). *Erigeron piscaticus* was formerly a candidate 2 species, a taxon for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factor A: According to AGFD (2001), the location at Turkey Creek was in area used as a casual camping site; the Oak Grove Canyon site, the only site where the species is known to be extant, is also used for camping. There is also hiking

traffic at the site, which can destroy or modify the habitat (AGFD 2001). AGFD (2001) indicates poor watershed conditions and flooding in Oak Grove Canyon also threaten the species with habitat loss or modification.

Factors B, C and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: According to AGFD (2001), the small range and population size of about 80 plants in Oak Grove Canyon make it vulnerable to natural and human-caused disturbances. In the absence of information identifying other threats to the species and linking those threats to the restricted range of the species, we do not consider restricted range to be a threat.

Based on our evaluation of the information provided in the petition and our files, we have determined that the petition presents substantial information to indicate that listing of *Erigeron piscaticus* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from recreational activities, poor watershed conditions, and flooding.

Eriogonum mortonianum (Morton's Wild Buckwheat)

Eriogonum mortonianum is a woody perennial plant known from a single site on the Kaibab-Paiute Indian Reservation in Mojave County, Arizona. The species is usually found along small drainages in red clay hills of very shallow soils containing gypsum within sandstone and shale uplands (AGFD 2001; NatureServe 2007). AGFD (2001) reports that in 1980 the population contained approximately 750 plants and at that time appeared stable with several size and age classes represented.

Factor A: NatureServe (2007) reports that in 1992, many plants were destroyed by highway maintenance. According to AGFD (2001), *Eriogonum mortonianum* is threatened by highway right-of-way maintenance along State Highway 389 which would modify the habitat. AGFD (2001) also identifies livestock use and developments associated with livestock use as threats to the species.

Factors B, C, and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: According to AGFD (2001), the highly restricted geographic distribution is a management issue for the species. In the absence of information identifying other threats to the species and linking those threats to the restricted geographic distribution of the species, we do not consider restricted geographic distribution to be a threat.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing of *Eriogonum mortonianum* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from road maintenance and livestock use.

Genistidium dumosum (Brush-pea)

Genistidium dumosum is a woody shrub known to occur in Brewster County, Texas, and Coahuila, Mexico (NatureServe 2007). The genus is monotypic (contains only one species) (Poole 1992, NatureServe 2007). There are three Texas occurrences within a few km of one another, and three in Mexico. The Texas occurrences consist of fewer than 50 plants (Poole 1992; NatureServe 2007). The status of the Mexican occurrences is unknown, although they are disjunct from the Texas occurrences and may differ genetically from them (Poole 1992). *Genistidium dumosum* was formerly a candidate 2 species, a taxon for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factor A: According to Poole (1992), highway construction at one of the Texas occurrences probably initially destroyed a few plants, and erosion of roadcuts probably threatens a few more. Any future highway widening could destroy additional plants and their habitat at that site (Poole 1992). Poole (1992) also reports that a tract of private land was developed for an annual recreational event, which may threaten the species and its habitat with destruction or modification from trampling, erosion and wildfire.

Factor B: According to Poole (1992), individuals at the highway site in Texas are threatened by collection pressure due to easy access to the site and the rarity and uniqueness (being in a monotypic genus) of the species.

Factors C and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: Although individuals of *Genistidium dumosum* occasionally produce numerous fruits, no seedlings or juveniles have been observed (Poole 1992). Poole (1992) concluded that the major threat to the species is its low population numbers and lack of recruitment (survival of individuals to sexual maturity and joining the reproductive population).

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing *Genistidium dumosum* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from highway construction and recreation, or to overutilization resulting from collection, or to other natural or manmade factors affecting its continued existence resulting from lack of recruitment.

Hexalectris revoluta (Chisos Coralroot)

Hexalectris revoluta is an orchid known from widely separated mountain ranges in Texas, Arizona, and Mexico (NatureServe 2007). Few total individuals of this species have been located throughout its range; however, surveys may be difficult because above ground portions of this plant are not produced in dry years (NatureServe 2007). *Hexalectris revoluta* was formerly a candidate 2 species, a taxon for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factor A: Louie (1996) indicates this species is subject to inadvertent destruction through maintenance activities, but does not identify the types of maintenance activities likely to occur in occupied habitats. We have determined that this information does not meet the substantial information standard. AGFD (2004) identifies mining as a threat to this species. Citing Coleman (2002), AGFD (2004) notes ''some of its habitat in Arizona is at extreme risk from mining development. One of its major locations was briefly part of a planned land exchange between the U.S. Forest Service and a mining company until falling copper prices forced postponement of the deal.''

Factor B: NatureServe (2007) and Louie (1996) indicate that collection may be a threat to this species, but provide no additional information concerning the likelihood of overcollection or the impacts to the

species of these activities. We have determined that this information does not meet the substantial information standard.

Factors C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing *Hexalectris revoluta* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range as a result of mining development.

Lesquerella kaibabensis (Kaibab Bladderpod)

Lesquerella kaibabensis is a perennial herb known to occur in the Kaibab Plateau in the Kaibab National Forest in Coconino County, Arizona (NatureServe 2007). It occurs on limestone-clay knolls with a high percentage of exposed rock on the surface, within open windswept meadows and along the sides of a State highway (AGFD 2001).

Factor A: NatureServe (2007) identifies road widening and maintenance as a threat to *Lesquerella kaibabensis*. According to AGFD (2001), the Forest Service Regional Botanist at the time made specific recommendations for widening of the State highway intended to minimize the impact to *Lesquerella kaibabensis*. However, those recommendations were not followed (AGFD 2001). NatureServe (2007) also identifies OHV use in occupied meadows as a threat to the species. AGFD (2001) and NatureServe (2007) acknowledge that the Kaibab National Forest has prohibited all OHV in the meadows adjacent to the State highway, but neither addresses whether the prohibition is effectively enforced.

Factor B: No information was presented in the petition concerning threats to this species from this factor.

Factor C: NatureServe (2007) identifies grazing as a threat to *Lesquerella kaibabensis*. According to AGFD (2001) the Kaibab National Forest Plan establishes that livestock utilization in these meadows should not exceed 30 percent, but utilization probably exceeds this level in most years.

Factors D and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing *Lesquerella kaibabensis* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from highway widening and maintenance and OHV use or to disease or predation resulting from grazing.

Paronychia congesta (Bushy Whitlow-wort)

Paronychia congesta is a woody perennial shrub known to occur in openings in shrublands on calcareous outcrops of a particular geologic formation, the Bordas Escarpment in Jim Hogg County, Texas (NatureServe 2007). This species was removed from the Service's list of candidate species for listing under the Act on September 12, 2006 (71 FR 53755). The two known populations occur within two miles of each other. The species was first collected in 1963 at a site where the population was estimated to have 2,000 plants; a second locality was found nearby in 1987 was estimated then to have 100 plants (Service 2006). In 1987, five additional sites were searched, but the species was not found at them (Service 2006). The known occupied sites are on private land, which has not been accessed since the early 1990s (Service 2006).

Factor A: NatureServe (2007) states that *Paronychia congesta* may be threatened by right-of-way construction and maintenance, pipeline installation, oil and gas exploration, and well pad construction. Both populations occur on private rangeland that overlays oil fields, and are bissected by rights-of-way (NatureServe 2007), one by a road and the other by a pipeline (Service 2006). *Paronychia congesta* may also be threatened by brush clearing, herbicide use, and replanting to nonnative forage grasses, such as *Pennisetum ciliare* (Service 2006). However, the practice of replanting to nonnative forage grasses may be declining (NatureServe 2007).

Factor B, C, and D: No information was presented in the petition concerning threats to this species from this factor.

Factor E: NatureServe (2007) identifies rarity as a threat to *Paronychia congesta*. Restricted geographic range may exacerbate the impacts to the species of potential threats, such as chance events like fire and flood. For instance, the Service (2006) noted that in 1990, the number of individuals, and the apparent vigor of the plants in the second, smaller population, was reduced due to two consecutive years of drought and freezes.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing *Paronychia congesta* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from right-of-way construction and maintenance, pipeline installation, oil and gas exploration, and well pad construction, or to other natural or manmade factors affecting its continued existence resulting from drought or freezes.

Pediomelum pentaphyllum (Chihuahua Scurfpea)

Pediomelum pentaphyllum is a perennial plant that grows up to 25 centimeters (9.8 inches) tall and has a long, swollen taproot (Tonne 2000; Sivinski 1993). The taproot apparently allows the plant to remain dormant or restrict growth in dry years (BLM 2004). As such, *P. pentaphyllum* may not send up an aerial portion (stem, leaves, and flowers) in dry years, making ground surveys more difficult (Tonne 2000).

Pediomelum pentaphyllum historically occurred in Texas, New Mexico, Arizona, and Chihuahua, Mexico (NatureServe 2007). It is currently only known from two disjunct sites in New Mexico and Arizona, despite multiple survey attempts across its range (WildEarth Guardians 2008). The New Mexico site occurs on BLM and New Mexico State Trust lands in Hidalgo County, and consists of 396 plants in an approximately 1,214 ha (3,000 ac) area (Tonne 2008). The Arizona site occurs on private land and includes a documented 32 plants in a 13 ha (32 ac) area (Tonne 2008).

Factor A: The petitioner asserts that livestock grazing may be a threat to *Pediomelum pentaphyllum*; however, information in NatureServe (2007) indicates that the impacts of livestock grazing on this species are unknown. The petitioner further asserts that oil development may be a potential threat, but provides no information indicating whether oil development is occurring or is likely to occur in occupied habitats nor does the petitioner provide information indicating how this species may be impacted by oil development. We have determined that the information provided concerning grazing and oil development does not meet the substantial information standard.

Factor B: The petitioner notes that *Pediomelum pentaphyllum* may have historically been threatened by overcollection. Tarahumara Indians used *P. pentaphyllum* to reduce fever (Sivinski 1993; Tonne 2000). According to Robert Bye, an ethnobotanist who has worked in Mexico, this species was

regularly available in the Chihuahua market in 1908, but has not been available in recent years (R. Bye, pers. comm. cited in Sivinski 1993). The reasons for the plant's disappearance from the market are unclear but may have been due to overcollection (Tonne 2000). However, historic overcollection is not considered a threat to current populations and no information was presented in the petition concerning current overutilization pressures.

Factor C: No information was presented in the petition concerning threats to this species from this factor.

Factor D: The petitioner asserts that existing regulatory mechanisms are not adequate to protect *Pediomelum pentaphyllum* from the threats it faces. The petition reports that *P. pentaphyllum* is listed as endangered by the State of New Mexico. As such, *P. pentaphyllum* is protected from unauthorized collection, transport, or sale by the New Mexico Endangered Plant Species Act, 9-10-10 NMSA. This law prohibits the taking, possession, transportation and exportation, selling or offering for sale any listed plant species. Listed species can only be collected under permit from the State of New Mexico for scientific studies and impact mitigation; however, this law does not provide any protection for *P. pentaphyllum* habitat.

The petition reports that *Pediomelum pentaphyllum* is considered a sensitive species by the BLM. According to BLM (2008), actions authorized by the BLM shall further the conservation of BLM-sensitive species. However, as noted by the petitioner, BLM-sensitive species status does not confer any requirement to protect populations or their habitats.

The petitioner further notes that the Service has identified *Pediomelum pentaphyllum* as a species of concern. While not a formal legal designation under Service regulations, a species of concern is defined as a taxon for which further biological research and field study are needed to resolve its conservation status or which is considered sensitive, rare, or declining on lists maintained by Natural Heritage Programs, State wildlife agencies, other Federal agencies, or professional/academic scientific societies (Service 2009). Species of concern are identified for planning purposes only and the title confers no regulatory protection.

Factor E: The petitioner asserts that *Pediomelum pentaphyllum* is threatened by herbicide use. Information cited in the petition indicates that the herbicide Tebuthiuron is being used to control shrub encroachment and improve rangelands in the area occupied by *P. pentaphyllum* in New Mexico (BLM 2004). Howard (2005) notes that *P. pentaphyllum* is negatively impacted by Tebuthiuron use as evidenced by a greater proportion of absent plants, a greater proportion of non-normal looking plants, and a greater proportion of non-flowering plants in areas treated with Tebuthiuron as compared to control areas not treated with Tebuthiuron.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing *Pediomelum pentaphyllum* may be warranted due to other natural or manmade factors affecting the species' continued existence resulting from herbicide use.

Salvia pentstemonoides (Big Red Sage)

Salvia pentstemonoides is a plant found in moist or seasonally wet areas, especially creekbeds within the Edwards Plateau of Texas. *Salvia pentstemonoides* was thought to be extinct until one large and several small populations were found in the late 1980s. In 1997, an early and long summer flood killed a large portion of the largest population, leaving only a few hundred total individuals left in the wild (NatureServe 2007). NatureServe (2007) states that the plant consists of six small extant populations and about a dozen historical occurrences, some of which are of uncertain location or occur on private land and haven't been searched for in recent years. *Salvia pentstemonoides* was formerly a candidate 2 species, a taxon for which information in our possession indicated that proposing to list was possibly appropriate, but for which persuasive data on biological vulnerability and threat were not available to support a proposed listing rule. This species has had no Federal Endangered Species Act status since the practice of maintaining a list of candidate 2 species was discontinued in 1996.

Factor A: According to NatureServe (2007) the species is threatened with lowering of the water table due to development, drought, grazing, and erosion. We have information in our files that aquifer drawdown due to increasing human population growth in this area is occurring (Service 1996, pp. 16-19). No additional discussion was presented for the claims that drought, grazing, and erosion threaten the species, and thus we have determined that the information presented concerning drought, grazing, and erosion does not meet the substantial information standard.

Factor B: According to NatureServe (2007) Austin area nurseries extensively cultivate *Salvia penstemonoides*. NatureServe (2007) further notes that wild populations are potentially threatened by loss of genetic integrity due to hybridization as well as horticultural collecting.

Factors C and D: No information was presented in the petition concerning threats to this species from these factors.

Factor E: *Salvia penstemonoides* may be threatened by potential extinction from chance events due to its restricted geographic distribution and small remaining number of individuals. In 1997, an early and long summer flood killed the largest part of the largest population, leaving only a few hundred total individuals left in the wild (NatureServe 2007, citing Texas Parks and Wildlife Department 1999), indicating that natural chance events may threaten the species.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing *Salvia penstemonoides* may be warranted due the present or threatened destruction, modification, or curtailment of its habitat or range resulting from aquifer drawdown; overutilization for commercial, recreational, scientific, or educational purposes as a result of commercial uses; or to other natural or manmade factors affecting its continued existence resulting from flooding.

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Donrichardsia macroneuron (no common name)

Donrichardsia macroneuron is an aquatic moss known to occur at Seven Hundred Springs on the South Llano River, Edwards County, Texas (Crum and Anderson 1981, Wyatt and Stoneburner 1980). It grows partially submerged in shaded areas in rapidly flowing water (Wyatt and Stoneburner 1980). Following an unsuccessful search of 11 similar spring sites in the Llano River watershed by Wyatt and Stoneburner (1980), they concluded that there are no longer sites downstream suitable for the species, although they believe such sites were historically occupied by the species.

Factor A: According to NatureServe (2007) and Wyatt and Stoneburner (1980), the one occurrence at Seven Hundred Springs is threatened by drying due to drought. A prolonged drought in 1950-1958 dried the 11 springs that were later searched for the species by Wyatt and Stoneburner (1980). NatureServe (2007) also claims the species is threatened by changes in hydrology, such as a rise in water level.

Wyatt and Stoneburner (1980) indicate that flooding is a potential threat to the species.

Factors B, C, D, and E: No information was presented in the petition concerning threats to this species from these factors.

Based on our evaluation of the information provided in the petition, we have determined that the petition presents substantial information to indicate that listing of *Donrichardsia macroneuron* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from drought or changes in hydrology.

Finding

We reviewed and evaluated 192 of the 475 petitioned species, based on the information in the petition and the literature cited in the petition, and we have evaluated the information to determine whether the sources cited support the claims made in the petition relating to the five listing factors. We also reviewed reliable information readily available in our files.

On the basis of our determination under section 4(b)(3)(A) of the Act, we have determined that the petition does not present substantial scientific or commercial information indicating that listing may be warranted for 125 species.

We find that the petition presents substantial scientific or commercial information that listing the remaining 67 of the 192 species that we evaluated as threatened or endangered under the Act may be warranted. Because we have found that the petition presents substantial information that listing these 67 species may be warranted, we are initiating a status review to determine whether listing any of these 67 species under the Act is warranted. We will issue a 12–month finding as to whether any of the petitioned actions are warranted.

We previously determined that emergency listing of any of the 192 species is not warranted. However, if at any time we determine that emergency listing of any of the species is warranted, we will initiate an emergency listing.

The petitioners also request that critical habitat be designated for the species concurrent with final listing under the Act. If we determine in our 12–month finding, following the status review of the species, that listing is warranted, we will address the designation of critical habitat in the subsequent proposed rule.

The ''substantial information'' standard for a 90–day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90–day finding does not constitute a status review under the Act. In a 12–month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90–day finding. Because the Act's standards for 90–day and 12–month findings are different, as described above, a substantial 90–day finding does not mean that the 12–month finding will result in a warranted finding.

References Cited

A complete list of references cited is available on the Internet at Docket No. FWS-R2-ES-2008-0130 at *http://www.regulations.gov* and upon request from the Southwestern Regional Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this document are the staff members of the Southwestern Regional Ecological Services Offices (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (U.S.C. 1531 *et seq.*).

Dated: December 4, 2009

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service

[FR Doc. E9–29699 Filed 12–15– 09; 8:45 am]

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