

**AGENCY FOR INTERNATIONAL DEVELOPMENT****22 CFR Part 226**

RIN 0412-AA65

**Administration of Assistance Awards to U.S. Non-Governmental Organizations; Correction to Financial Reporting for Grants and Cooperative Agreements****AGENCY:** Agency for International Development.**ACTION:** Technical amendment.

**SUMMARY:** This document contains an amendment to the regulations published as an interim final rule in the **Federal Register** of Thursday, January 19, 1995, (60 FR 3743). The rule relates to the administration of assistance awards to U.S. Non-Governmental Organizations.

**DATES:** Effective on October 8, 2009.**FOR FURTHER INFORMATION CONTACT:** Michael Gushue, Telephone: 202-712-5831, E-mail: [mgushue@usaid.gov](mailto:mgushue@usaid.gov).**SUPPLEMENTARY INFORMATION:****Background**

On January 19, 1995, USAID issued an interim final rule at 22 CFR part 226 which implemented Office of Management and Budget (OMB) Circular A-110.

**Need for Amendment**

As published, the regulation unduly limits the use of financial reporting forms to Standard Form 269 and Standard Form 270. The purpose of the amendment is to relieve this restriction and allow any such forms as OMB approves. OMB now requires Federal Agencies to use the Federal Financial Report (Standard Form 425 or 425a) to give recipients of grants and cooperative agreements a standard format for reporting the financial status of their grants and cooperative agreements (68 FR 17097, 73 FR 47246).

**List of Subjects in 22 CFR Part 226**

Grants administration.

■ Accordingly, 22 CFR part 226 is amended by making the following technical amendment:

**PART 226—ADMINISTRATION OF ASSISTANCE AWARDS TO U.S. NON-GOVERNMENTAL ORGANIZATIONS**

■ 1. The authority citation for part 226 continues to read as follows:

**Authority:** 22 U.S.C. 2381(a) and 2401.

■ 2. Revise § 226.52 to read as follows:

**§ 226.52 Financial reporting.**

USAID requires recipients to use the Standard Form 425 or Standard Form 425a, Federal Financial Report, or such other forms authorized for obtaining financial information as may be approved by OMB.

**Drew Lutens,**

*Acting Assistant Administrator, Bureau for Management, USAID.*

[FR Doc. E9-23680 Filed 10-7-09; 8:45 am]

**BILLING CODE 6116-01-P****DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****23 CFR Part 950**

[FHWA Docket No. FHWA-06-23597]

RIN 2125-AF07

**Interoperability Requirements, Standards, or Performance Specifications for Automated Toll Collection Systems****AGENCY:** Federal Highway Administration (FHWA); DOT.**ACTION:** Final rule.

**SUMMARY:** The FHWA is adding a new part to the Code of Federal Regulations, to add regulations specifying the interoperability requirements for automated toll collection systems for the facilities that are tolled under any of the tolling programs contained in section 1604 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). Specifically, this rulemaking requires facilities operating with authority under section 1604 of SAFETEA-LU to use electronic toll collection (ETC) systems and to maximize their system's interoperability with other toll facilities. Although a nationwide interoperability standard has not yet been established, this rule seeks to accelerate progress toward achieving nationwide interoperability by requiring these facilities to upgrade their ETC systems to the national standards whenever adopted.

**DATES:** This rule becomes effective November 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Rupert, FHWA Office of Operations, (202) 366-2194 or Mr. Michael Harkins, Attorney Advisor, FHWA Office of the Chief Counsel, (202) 366-4928, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours for the FHWA 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 rulemaking (NPRM), and all comments received may be viewed on line through the Federal eRulemaking portal at: <http://www.regulations.gov>. The Web site is available 24 hours each day, 365 days each year. Please follow the instructions.

An electronic copy of this document may also be downloaded by accessing the Federal Register's home page at: <http://www.archives.gov> and the Government Printing Office's Web page at <http://www.gpoaccess.gov/nara>.

**Background***History*

Section 1604 of SAFETEA-LU (Pub. L. 109-59, 119 Stat. 1144) includes provisions related to tolling of highways and facilities. Specifically, section 1604 establishes or amends three tolling programs: (1) The Value Pricing Pilot Program; (2) the Express Lanes Demonstration Program; and (3) the Interstate System Construction Toll Pilot Program. For each toll program under this section, section 1604(b)(6) requires the Secretary of Transportation to promulgate a final rule specifying requirements, standards, or performance specifications for automated toll collection systems.

Section 1604(b)(6) also requires that in developing the final rule to maximize the interoperability of electronic collection systems, the Secretary shall, to the maximum extent practicable:

- (1) Accelerate progress toward the national goal of achieving a nationwide interoperable ETC system;
- (2) Take into account the use of noncash electronic technology currently deployed within an appropriate geographical area of travel and the noncash electronic technology likely to be in use within the next 5 years; and
- (3) Minimize additional costs and maximize convenience to users of toll facility and to the toll facility owner or operator.

An NPRM proposing the creation of a new Part 950 of 23 CFR was published on September 20, 2007, at 72 FR 53736. The purpose was to comply with the mandate of section 1604(b)(6) of SAFETEA-LU to promulgate a final rule specifying the requirements, standards, or performance specifications for automated toll collection systems implemented under section 1604. As stated in the NPRM, FHWA does not believe that it can effectively establish a

national standard at this time. However, FHWA believes that requiring toll agencies to take interoperability issues into consideration in developing their toll collections systems addresses the objective of the statute to accelerate progress toward the goal of nationwide interoperability.

FHWA held two public meetings and received 40 responses to the NPRM. A major focus of the comments was that the current IntelliDrive<sup>SM</sup> Program (formerly referenced as the Vehicle Infrastructure Integration or VII Program) is expected to result in establishing interoperable ETC standards using the 5.9 Gigahertz (GHz) band of the communications spectrum allocated for IntelliDrive<sup>SM</sup> by the Federal Communications Commission. Commenters stated that efforts at this time to develop an interoperability standard prior to realization of the standards from the IntelliDrive<sup>SM</sup> program were seen as being counterproductive and imposed unnecessary costs without apparent benefits to toll operators.

#### Summary Discussion of Comments Received in Response to the NPRM

The following presents an overview of the comments received in response to the NPRM.

##### Profile of Respondents

Comments were submitted by a representative cross-section of roadway tolling organizations and an individual. The respondents included tolling agencies or commissions; State departments of transportation; an automobile manufacturer; an international organization representing the interests of tolling authorities and supporting services; automobile trade associations; a government coalition; an association of tolling authorities; and individual firms providing tolling equipment and supporting services. The international organization representing the interests of tolling authorities that provided comments was the International Bridge, Tunnel, and Turnpike Association (IBTTA) which is comprised of 280 members in 25 countries. The government coalition comments were provided by the I-95 Corridor Coalition which is comprised of 17 transportation authorities located along Interstate 95. The association of tolling authorities' comments were provided by E-ZPass Interagency Group (IAG) which is comprised of 23 agencies in 12 States. The automobile trade association comments were provided by the VII Consortium which is comprised of 6 automobile manufacturers and the DOT through a cooperative agreement,

and the Association of International Automobile Manufacturers (AIAM) which is comprised of 14 international automobile manufacturers.

There were 40 entries into the docket for comments on the proposed rule. Of these entries, 10 were letters of transmittal. Three were posted by FHWA (the proposed rule, a copy of the presentation material used by the FHWA during the public meetings, and the minutes of the proceedings of the public meeting). Two entries were requests to reschedule the public meeting or to hold an additional meeting (a second public meeting was held). And one entry was a duplicate of a previous entry. Of the remaining 23 entries into the docket, the comment of 8 entries was to endorse the E-ZPass IAG's comments.

Half of the respondents expressed support of FHWA's basic goal of improving mobility through national tolling interoperability. However, most emphasized the importance of considering existing regional interoperability standards and the financial investments that have been made in them throughout the United States during the establishment of national standards, and that the national standard should be backward compatible to them.

The respondents directed their comments within four categories. These categories are general comments, comments directed to the NPRM preamble, comments directed to specific sections of the proposed rule, and comments directed to the questions contained in the NPRM. The following summarizes the comments within each category.

#### General Comments

*Most of the general comments received are reflected in the following excerpts taken from the comments of IBTTA:*

○ Some members are concerned that an effort by the Federal Government to establish a technical standard for ETC is premature without having a better understanding and recognition of the financial needs and methods of the toll agencies in assuring financial interoperability. More research is needed on the transition and coordination of "back rooms."

○ Even though the NPRM clearly establishes a narrow scope for the application of interoperability standards, some members are concerned that codification of a "standard to be determined" will give Congress the impression that ETC interoperability is a function subject to their control. In reality, interoperability is more

accurately a function of the agencies running the toll facilities and their relationships with other toll operators.

○ The NPRM language suggests a potential for creating conflict with existing State laws, as in the case of California which requires all toll operators to use Title 21 compliant systems.

○ Though the current proposal makes no effort to set an ETC standard, it alludes to a future period when FHWA concurrence would be required on technology selection and could potentially require the use of an ETC system incompatible with the State's requirements. Many IBTTA members are concerned about this possibility.

○ The NPRM is vague in establishing a time frame for compliance at such time as a Federal standard might be established. Electronic toll collection represents an enormous investment of capital in the transponders and associated data and communications systems. Toll agencies require adequate time to amortize prior investments and facilitate the very complex logistics needed to replace millions of transponders among their customers.

○ Is there a business case to be made for national interoperability? More analysis is needed to determine if sufficient value exists, for example, for the occasional traveler from California to pay their toll in New Hampshire with their California-based account. The tens of millions of dollars it would cost the toll industry to establish national account reciprocity may not be worth the limited benefit to a few consumers.

○ Barring a significant infusion of Federal funding into a tolling system that has historically been denied Federal support raises the issue of a potential unfunded Federal mandate that would be borne by the customers of current and future toll facilities.

The FHWA appreciates IBTTA's candor and has carefully considered their recommendations. The FHWA believes that this rule accommodates the concerns expressed.

This rule requires toll agencies to consider regional interoperability, which should mitigate potential conflicts with State laws and FHWA's review, and concurrence will ensure the selection of the toll collection technique addresses regional interoperability concerns.

Also, FHWA concurs that the complexity associated with "back office" billing and financial issues requires caution in addressing interoperability. We will cooperate with the industry in identifying, studying, and addressing accountability issues in nationwide interoperable ETC.

Additionally, this rule does not create Federal standards for automated toll collection. If and when FHWA creates such standards, a separate rulemaking action will be required. Any future rulemaking action would address business concerns with nationwide standardization, including the economic analysis of the cost and benefit distribution. Also, any interested party would be permitted to submit comments to FHWA to consider in developing the final rule as part of the rulemaking process.

The North Carolina Turnpike Authority (NCTA) requested clarification from FHWA on whether NCTA is considered "eligible" by FHWA's proposed rulemaking and whether they fall under section 1604(b)(6) of the SAFETEA-LU provisions. It is unclear from NCTA's comment exactly what NCTA is asking FHWA to clarify with respect to its eligibility. With respect to funding, the Value Pricing Pilot Program is the only 1604 toll program with funding. Under the Value Pricing Pilot Program, State and local governments and other public authorities are eligible grant recipients. Since NCTA appears to be a public authority, NCTA is eligible to receive a grant under the Value Pricing Pilot Program. Also, NCTA may apply directly for toll authority under the Value Pricing Pilot Program and Express Lanes Demonstration Program, and jointly with North Carolina DOT for toll authority under the Interstate System Construction Toll Pilot Program. If NCTA receives toll authority under any of these toll programs, NCTA would be subject to the requirements of this rule.

*Comments directed at the*  
**SUPPLEMENTARY INFORMATION:**

### Background

The following comments were received in response to the background information provided in the NPRM.

*[72 FR 53738, first paragraph]*

The AIAM pointed out that, in addition to the Institute of Electrical and Electronic Engineers (IEEE), other standards development organizations are involved in developing standards for 5.9 GHz Dedicated Short-Range Communication (DSRC), particularly the Society of Automotive Engineers (SAE) (see SAE standard J2735).

The omission of the contribution of SAE in the development of standards related to DSRC in the background discussion was not intentional, and FHWA acknowledges the efforts of SAE.

*[72 FR 53738, second paragraph]*

The AIAM also commented that if the requirements document referenced in the NPRM is the document OmniAir recently circulated entitled "*Vehicle Infrastructure Integration (VII), Tolling and Payment Applications Concept of Operations*," there are some fundamental assumptions in that document that need to be revised based on a consensus of the major IntelliDrive<sup>SM</sup> stakeholders. This document has not yet been sufficiently vetted with the affected IntelliDrive<sup>SM</sup> stakeholders.

The OmniAir document referenced in the NPRM is its Electronic Payment Services National Interoperability Specification, which predates the VII document noted by the AIAM.

*[72 FR 53738, paragraph under heading "DOT Outreach Efforts"]*

With reference to the NPRM's statement about IBTTA sharing information on their activities, AIAM commented that although ETC represents an important subset of the intended uses of 5.9 GHz DSRC, there are other major stakeholders planning higher-priority safety uses of 5.9 GHz DSRC with whose requirements the ETC requirements must be harmonized. The toll collection interoperability requirements and specifications should therefore be framed within the constraints of the overall IntelliDrive<sup>SM</sup> system and a National IntelliDrive<sup>SM</sup> Program, which take into account both technical and policy requirements of the major stakeholders anticipated to use this IntelliDrive<sup>SM</sup> system.

The FHWA concurs with the potential of IntelliDrive<sup>SM</sup> to address a range of applications beyond toll collection; however, this rulemaking does not specifically address the requirements of IntelliDrive<sup>SM</sup>.

### Comments Directed at Specific Sections of the Proposed New Part 950 to 23 CFR

#### Section 950.1 Purpose

Raytheon commented that this section states that the proposed regulations establish interoperability requirements, standards, and performance specifications, but does not present or establish performance specifications in the proposed regulations. The FHWA concurs and herein revises section 950.1 to reflect that the purpose of the rule is to establish interoperability requirements.

#### Section 950.3 Definitions

Washington DOT and Raytheon commented that the ETC definition is too restrictive. They suggested that the

language be strengthened to indicate a preference for the use of ETC where tolls are collected at highway speed and vehicles are not required to slow down. They recommended that the definition of ETC be changed to read:

*"Electronic toll collection (ETC) is defined as the ability for vehicle operators to automatically pay tolls without altering their driving speed or course."*

They noted that if this change were made, then there would be no need for a definition of DSRC, because the term DSRC is never used in the proposed rule. Similar comments were made by others in response to the questions in the NPRM. The FHWA concurs and substantially adopts the alternate definition of ETC in section 950.3.

#### Section 950.5 Requirements to use electronic toll collection technology

Washington and Texas DOT, the Port Authority of New York and New Jersey, and several toll support firms indicated support of section 950.5(a), if the definition of ETC in section 950.3 is generalized. As noted previously, FHWA concurs and the definitions in section 950.3 have been modified to remove reference to radio communication and to clarify the collection of tolls without altering speed or course.

Rummel, Klepper and Kahl, LLP commented that this section appears to contain ambiguous language when stating cash payments are allowed when the use of such methods do not create an unsafe condition. The commenter proposed that all cash tolling facilities are unsafe due to the stopping of traffic. The commenter based this on a National Transportation Safety Board (NTSB) report following a fatal accident at a cash tolling facility where the toll plaza was in the main stream of traffic. As demonstrated in the NTSB report, toll plazas in main lanes of travel may present some risks, which is one of the reasons these regulations prohibit toll booths from being located in the main lanes of travel. While FHWA believes that ETC systems are essential to facilitating efficient and safe operating conditions, FHWA wants toll collection agencies to provide a means for travelers that may not be enrolled in an ETC system to use the facility without incurring a legal infraction. The FHWA believes that toll agencies are capable of designing and implementing the necessary specifications that ensure the safe and efficient operation of a toll facility in accordance with the standards in this rule. Therefore, FHWA has not made any changes as a result of this comment.

### Section 950.7 Interoperability requirements

The Washington DOT requested a description and more information about the design documents that will be required or needed by FHWA to provide concurrence on system design and a definition of non-cash electronic technology. They also requested clarification of the sentence, “\* \* \* only applies if tolls are imposed on a facility after the effective date of this rule.” They noted that Washington State’s Route 167 high occupancy toll (HOT) lane facility toll system is in design, but tolls are not yet being collected and inquired if FHWA would consider a system that is in design to meet this rule.

The FHWA will require the same design documentation that is routinely required for a Federal-aid project as specified in 23 CFR part 940. This documentation must show compliance with 23 CFR 950.7 of this rule.

If a facility is granted toll authority under a section 1604 toll program and tolls are not imposed at the time this rule becomes effective, the requirements of this rule apply. Section 1604 toll programs include only the Value Pricing Pilot Program, Express Lanes Demonstration Program, and Interstate System Construction Toll Pilot Program. However, this rule does not apply, for example, to facilities granted toll authority under section 166 of Title 23 of the United States Code, *i.e.*, conversion of high occupancy vehicle to HOT facilities.

Raytheon expressed concern that some of the proposed requirements in sections 950.7(b) and 950.7(c) could actually inhibit progress toward the deployment of a next generation national system based on open standards. They expressed concerns that if FHWA approval is required, and if such approval demands that proposed toll system designs maximize compatibility with the most widely deployed DSRC devices, then agencies seeking approval will have no incentive to specify tolling systems with advanced capabilities or open standards. This could extend and expand the use of some proprietary or stagnant technologies beyond their natural lifetime, and could diminish innovation, competition, and user convenience. They suggested that any FHWA approval process would need to carefully balance the benefits of technological innovation with those of legacy system compatibility. In some cases it may be financially or technically impractical to support multiple technologies concurrently, and

the benefits of a new or more capable technology may outweigh the benefits of supporting “legacy” users.

The FHWA appreciates the concern expressed by Raytheon. The intent of the rule is to advance interoperability and is not technology specific. It is incumbent on the tolling authority to demonstrate how it is addressing interoperability, including the incorporation of any emerging technologies. The review and concurrence by FHWA will evaluate the information provided by the tolling authority toward achieving interoperability. Accordingly, FHWA has made two changes to this rule. First, FHWA has modified subsection 950.7(b) to clarify that FHWA’s concurrence is not intended to force the use of any particular type of technology, and subsection 950.7(c) to clarify that FHWA’s concurrence will give appropriate weight to current and future interoperability with toll facilities. Second, FHWA has added a new subsection 950.7(f) to expressly provide that the rule is technology neutral.

TransCore commented that the NPRM states that ETC systems already in operation will not be subject to the present rulemaking. However, the NPRM further states in subsection 950.7(e) that “\* \* \* any change to the facility’s toll collection system after the effective date of the final rule would be subject to the regulations proposed in this rule.” TransCore believes that this proposed language was unclear as to whether the rule would apply to facilities that change in technology or change in facility size. TransCore believes that because adoption of a national standard is not urgent, regions that use existing technologies to meet their current and future needs should not be hampered from expanding their networks or unduly forced to change anything in their systems unless they have compelling internal reasons to do so.

The FHWA believes that the intent and wording of this section provides the flexibility needed to permit an assessment based on regional needs and requirements. The FHWA concurs with the need to clarify section 950.7(e) and modified it to clarify that changes to the method or technology for collecting tolls would cause the facility to be subject to this rule.

### Summary of Responses to NPRM’s Request for Comment Questions

The NPRM requested comments on six questions to provide additional information for this or potential future rulemaking actions. Twelve of the respondents submitted specific

comments to these questions. Comments on the questions were received from two tolling authorities (NCTA and the Port Authority of New York and New Jersey), two State departments of transportation (California and Texas), one automobile manufacturer (General Motors), two automobile trade associations (AIAM, Inc. and VII Consortium), one international tolling and supporting services association (IBTTA), one tolling authority association (E-ZPass IAG), and three tolling systems firms (Mark IV IVHS, Raytheon Highway Transportation Management Systems, and TransCore). Their responses are summarized below.

#### 1. How should a national electronic toll collection standard be pursued?

In the NPRM, the background discussion states that to ensure national interoperability, an ETC standard would need to include interoperability consideration for both the “front-end” toll collection communications technology and the “back-office” operations of properly identifying and accounting for ETC activities. None of the respondents disagreed with this premise and several suggested that the pursuit of a national standard should address both.

Back-office activities identified for standardization included the data exchanges that govern transaction details, financial reciprocity and settlement, and customer service and accounting. This includes the sharing of customer information regarding account status and includes confidential information such as name, address, credit card information, and vehicle owner information. Several commenters suggested that the financial aspect can be addressed by business agreements that include standards that identify and validate the transponders and standards for reporting toll activities and settling payments.

The IAG proposed that the business agreements and processing standards developed by the IAG be accepted by FHWA as a basis for developing the financial and administrative aspects of national interoperability. Others suggested that the regional solutions to interoperability such as the IAG should be studied to extract the lessons learned, but TransCore felt that most of these consolidations were done in a “brute-force” way that is not readily extrapolated to a full national system. The tolling Concept of Operations document generated by OmniAir was also suggested as a good resource document for the back-office standards.

It was pointed out that back-office standardization is further complicated

by the many and varied restrictions and requirements bound into the local authority's existing bonding agreements and other binding documents. Many of these requirements and restrictions must be handled legally before any further consolidation actions can be taken.

The FHWA appreciates the comments and information provided by the respondents concerning the back-office and financial perspectives to be considered when developing a national interoperable tolling standard.

For the front-end standardization activities, several commented that any effort to develop interoperability standards at the lane-level should support existing technologies. A common front-end technology was identified as desirable in the long run, but it is not necessarily the only solution. Several commented that an interoperable lane-level solution is relatively easy to achieve today using multiprotocol readers, but cannot be implemented because of intellectual property and patent restrictions. It was suggested that FHWA should focus its efforts on making existing regional systems interoperable through negotiation to mitigate these restrictions that prevent existing proprietary systems' interoperability on an interim basis while working toward an open national standard.

The FHWA concurs that lane-level interoperability is potentially easier to accomplish than back-office interoperability because of advances in communication technology, but there may be issues related to intellectual property rights. All of these responses are valuable inputs in consideration of future development of Federal standards either for vehicle-to-roadside communications or back-office transactions.

As part of the interoperability effort, several respondents encouraged FHWA to improve the accuracy, timeliness, and accessibility of Department of Motor Vehicle or Motor Vehicle Commission records across the United States. The commenters indicated that tolling agencies need cost-effective access to accurate license plate information. The FHWA was also encouraged to work with the States to establish a more consistent look and coding structure of license plates. The FHWA will use these recommendations in considering future rulemaking for toll collection interoperability standards and in developing any guidance related to automated toll collection systems.

Several commented that interoperability standards should be open to new technologies and governed

by data exchange standards. TransCore commented that there should be no attempt to specify or dictate specific technologies to be used for toll collection, noting that radio frequency identification, global positioning system, and video technologies all play a role in modern toll collection systems. TransCore recommended that any technology standards imposed should, at a minimum, allow these proven approaches to continue to develop, while simultaneously encouraging new technologies that can further improve toll collection efficiencies. The FHWA concurs and believes the modifications to the rule related to technology neutrality clarify the use of technology independent solutions.

Over one-half of those responding to the NPRM's questions indicated that a national toll collection standard should be pursued as an integrated part of the overall National IntelliDrive<sup>SM</sup> Program. They indicated that toll collection systems should use standard interfaces that are being defined for the IntelliDrive<sup>SM</sup> system and should function within the operational rules of a National IntelliDrive<sup>SM</sup> Program to provide an integrated technical and policy framework that supports nationwide interoperability beyond the confines of the tolling applications. General Motors indicated that safety applications should have the highest priority.

It was pointed out that government and industry are working cooperatively in IEEE technical committees to define 5.9 GHz DSRC standards and with OmniAir to define 5.9 GHz interoperability testing and e-payment transaction standards enabling back-office interoperability. These efforts should be continued. The IAG also noted that pilot projects should be initiated to validate the resulting standards.

Several respondents observed that the NPRM suggests that some sort of interim standard is necessary. They contended that implementation of an interim standard to be followed by a federally developed 5.9 GHz DSRC standard will place undue financial, operational, and logistical burdens on those entities covered by the rule without any real prospect of attaining the goal of national interoperability. One respondent stated, "The proposed rule should be set aside in favor of the inevitable adoption of 5.9 GHz DSRC standards."

With the exception of the comment that the rule suggests imposing interim standards, the responses and comments above reinforce statements presented in the proposed rule. Specifically, the General Discussion of the Proposal

section of the NPRM stated that, "the Department does not believe that it can effectively establish a national standard at this time." The General Discussion also states that standards published as a result of the DSRC program may form the basis for future rulemaking to establish standards for a nationwide interoperable toll collection system. The FHWA agrees that any 5.9 GHz toll standards should be developed in concert with the IntelliDrive<sup>SM</sup> Program. The Department continues to support the IntelliDrive<sup>SM</sup> program and related activities including the IEEE, SAE and OmniAir efforts described previously.

One commented that the national standard should be developed with the FHWA supplying funds to multiple vendors to develop prototype equipment which is then tested for interoperability and specification compliance by an independent contractor.

Several commented that when a national interoperability standard is adopted, there will need to be a significant window of time for toll agencies to migrate to this standard to allow toll agencies to fully amortize their existing system costs and facilitate the complex logistics needed to replace millions of transponders among their customers.

These comments are appropriate considerations if future rulemaking actions are undertaken to identify and adopt a national standard for automated toll collection interoperability. These responses and comments do not necessitate any changes to this rule.

## *2. What aspects of electronic toll collection should be standardized?*

Many of the responses to this question were variations of the responses provided to question 1 that the front-end, lane-level solution, and the back-office data processing solution should be considered for standardization. The communications protocols, message sets, and all data flows for all transactions should be an open specification. Advancing standards that are independent of any specific technology allows toll operators the ability to fully amortize existing investments in roadside infrastructure and on-board units, while allowing for technological evolution and innovation to create new functionality, accuracy, and efficiency.

Several respondents emphasized standardization for the data structures, and the format and rules for exchanging ETC that support the full spectrum of ETC functions to clear the transactions and successfully transfer funds between account holders and facility operators. It

was suggested that the FHWA should develop technology-neutral unified standards for data exchange that address transaction details, financial reciprocity and settlement, customer service and accounting, and revenue collection enforcement. One respondent noted that the most important aspects to be standardized are the data structures, formats, and exchange protocols that support the full spectrum of ETC functions.

The NCTA commented that, "Until a true standard file specification for all on-board unit transactions exists, FHWA should either select the most suitable file specification in operation or facilitate creation of a bridge file specification that includes minimum information as to the issuer of the account, the class of the vehicle, the vehicle weight, and the entry and exit point for transactions occurring on a closed system roadway."

Several suggested a standardized vehicle classification system such that agencies have common framework for metrics, such as vehicle size, axles and configurations to appropriately determine the toll charge.

The IAG repeated its recommendation that the E-ZPass standards provide a basis until such time as a uniform, low cost, easily verifiable point of service payment system is established and accepted.

Several commented that a national clearinghouse should be used for financial transactions with the suggestion that the credit card transaction system may be a good model to study. The Port Authority of New York and New Jersey observed that "Existing ETC systems in the U.S. have largely been developed by having some combination of toll operators, systems integrators and back office contractors providing the financial clearing functions for toll reciprocity and settlement. This has resulted in inherent inefficiencies, redundant investments and systems, and delays from extended financial settlement processes. As the U.S. considers electronic tolling interoperability, the focus should be on more fully integrating established financial institutions in the financial clearing functions."

At the lane level, it was suggested that it is important to avoid specifying a single technical approach to allow the industry to take maximum advantage of new technologies as they emerge. As a general statement, the eventual standards should not be overly prescriptive and should allow as much latitude as possible to the local toll authorities.

General Motors suggested that regulatory requirements for ETC devices must help ensure that operation does not interfere with other vehicle signal transmissions, operations, and functionality. The standard should specify testing to specific performance criteria stipulated in the regulations for vehicle-based ETC and for automated tolling booths to allow developers of on-board vehicle devices to develop and validate independent of the manufacturers of the automated tolling booth technology. Testable performance criteria were mentioned by several other responders as well.

Both of the automobile associations indicated that the Human Machine Interface in the vehicle, or other internal vehicle system components or operations, should not be standardized and are not part of the IntelliDrive<sup>SM</sup> system. Further, the applications themselves should not be standardized; rather message sets should be standardized to support interoperability allowing for proprietary application differentiation and innovation.

Mark IV IVHS, Inc. indicated that, in the short-term, none of the aspects should be standardized pending the outcome of the 5.9 GHz program. In the long-term, both technical and financial compatibility aspects should be standardized, although the latter is not an absolute requirement, as the same device can be registered for use in multiple systems with different accounts.

The FHWA appreciates the comments and contributions of the respondents. The information provided will serve as valuable input if a national interoperability tolling standard is developed. Since this rule does not address development of a specific standard, no changes are needed based on these comments.

### *3. How critical is the timing for establishing a national electronic toll collection standard?*

One-third of the respondents considered the timing to be non-critical, with one referring to it as a "back-burner" issue. Another respondent felt the timing of the proposed rule is ill-conceived and counter to the federally sponsored 5.9 GHz DSRC effort. The California DOT commented that the timing of a national standard is critical. They suggested that it should have a rapid development time with an aggressive implementation plan.

Almost one-half of the respondents felt it was important to harmonize the timing for establishment of a national ETC standard with the overall National IntelliDrive<sup>SM</sup> Program development

and potential deployment. This is considered important so that consensus on common issues can be maintained. Such harmonization would help to foster coordinated deployment of the necessary vehicle, infrastructure communications equipment, and complementary applications. Several commenters indicated that the tolling community should take advantage of the capabilities afforded by the national IntelliDrive<sup>SM</sup> initiative, but it is not practical to mandate its use in the near future.

General Motors suggested that regulatory requirements for ETC systems should be paced to, and coordinated with, the standards for vehicle safety and mobility applications. The IAG observed that a critical concern with the 5.9 GHz system is the rollout of the fleet and the timing for massive capital investments in roadside equipment to support a small portion of the users. A program, providing for an initial in-vehicle device that is provided as an after market transponder, could make the establishment of a national standard more realistic.

The IAG stated that establishment of a national standard must be done in a manner that takes into consideration existing standards and the financial investments made in deployed systems. They emphasized that it is important that any call for implementation recognize that the E-ZPass network alone has over 3,000 toll lanes, which would have to be equipped or renovated to make the overall system work. The time to replace or supplement existing systems would be critical since most lanes must operate with daily traffic. They believe that at least a 4-year window would be necessary between the date on which the standards are established and the day the ETC systems are expected to be fully operational. Another respondent suggested it should be fully deployed within 5 years of adoption.

Several respondents stated that hardware interoperability is available to any who need it through use of multimode, multiprotocol devices that are available today. It was suggested that FHWA should explore facilitating a negotiation process to mitigate current patent restrictions to allow agencies to utilize multiprotocol readers. This should be accompanied by the timely implementation of the data interchanges, financial, and procedural requirements to allow current and future interoperable systems.

As noted previously, FHWA concurs that any national interoperable tolling standard developed for the 5.9 GHz DSRC effort must be coordinated with

the overall IntelliDrive<sup>SM</sup> Program. Implementation and adoption of any future standard must address the transition to the new standard and consider current and future investments by the tolling authorities.

*4. How should the national standard incorporate current technologies and functions?*

The Port Authority of New York and New Jersey recommended that a plan for national interoperability should begin with an evaluation of the applicability of the E-ZPass standards for data exchange, file formats and financial reciprocity, and settlement practices to a national approach. The Texas DOT suggested that the first step was to emphasize video aspects that enhance ETC and establish uniform standards for the collection of data between the camera, the classification system, and the data network. The second step was to establish standards to create a national data repository to facilitate the exchange of information between agencies, similar to that used by the credit card industry. The IBTTA suggested that any national standard should incorporate the functions articulated by IBTTA's ETC performance specification document.

A majority of the respondents stated that compatibility with existing standards should be incorporated in a national interoperability standard to lessen the impact of transitioning from regional standards to the national standards. Any movement toward a national standard must recognize that there is a large investment in place in roadside equipment, transponders, and multiyear back-office contracts that support regional interoperability today. Several noted that the migration period must include a transitional period for the current technologies to operate in parallel with the national standard until tolling agencies are assured it mirrors and captures all of the transactions that the legacy system capture. One respondent commented, "It would be unconscionable to develop a national standard that does not recognize the investment made in ETC systems and accommodate the existing technologies and functions."

Several respondents recommended integrating the ETC standard into the overall IntelliDrive<sup>SM</sup> technology approach so that compatibility with planned technologies under development will be ensured, including the collective agreement of the major IntelliDrive<sup>SM</sup> stakeholders. General Motors suggested that national interoperability standards should focus on performance-based standards that

include requirements to ensure ETC devices do not impact vehicle operation and safety communications.

Raytheon suggested that a national 5.9 GHz DSRC standard should not incorporate legacy technologies; rather, it should focus on the next generation. They also suggested that current tolling functions will apply to future systems. However, Raytheon does not believe that it is necessary or efficient for FHWA to standardize all tolling functions and performance parameters.

The comments above will provide valuable input should a national interoperable tolling standard be developed and adopted in the future. As noted previously, this rule does not impose the creation of standard; hence, there are no changes needed to the rule.

*5. How should the national standard allow for changes in technologies over time?*

A number of the responses reiterated points made in response to previous questions. The point reiterated that the standard should provide a way for any system to evolve over time, but remain backward compatible for a reasonable time. Electronic identification appears to remain the most cost-effective means going forward, but other forms of electronic identification will also be important and should be anticipated and provided for in the standards. The standard should emphasize approach rather than a technology, device, or vendor. It was again noted that the national standard should be harmonized with the IntelliDrive<sup>SM</sup> program.

The Texas DOT recommended that technology should be viewed as a tool to support the interoperable network, by focusing on not only ETC, but also the supporting agreements, networks, and procedures, plus video tolling so that changes in technology can be more easily integrated into the manner in which revenue is collected. Several others responded that if there are to be changes in any of the standardized fundamental technologies, these changes should always be accomplished in a way that allows backward compatibility to support existing vehicles and infrastructure equipment. General Motors suggested focusing on performance-based requirements with open-standards developed through industry voluntary consensus process consistent with the National Technology Transfer and Advancement Act of 1995.

It was suggested that the national standard must provide for flexibility to handle future methods for charging a toll to customers by providing expandability within the financial standards to associate potential multiple

devices and business rules to an account. The standards should extend beyond today's norms for ETC by considering electronic payment systems that would employ more ubiquitous data collection, account management, and payment methods than are available in today's transponder-based electronic tolling business models.

Several suggested that a national ETC standard should focus on the data protocol, how the data is stored in a device, and how it is presented to the toll agency, not the means by which the data is transmitted. Similarly, the automobile manufacturers' associations suggested that by focusing on standards for message sets, rather than applications, innovation in applications development may proceed unabated. Similarly, by not standardizing the vehicle human machine interface, automobile manufacturers may proceed rapidly with innovation and product differentiation in this area to best meet the needs of their customers.

Mark IV noted that toll operators must be allowed to realize the safety, efficiency, and environmental benefits of the investments they have made and commitments to amortization schedules. They must be allowed to make their own decisions on conversion based upon the financial, operational, political, and practical considerations unique to their organization.

The FHWA generally agrees with the comments. They will provide valuable input should a national interoperable tolling standard be developed and adopted in the future. As noted previously, this rule does not impose the creation of standards; hence, there are no changes needed to the rule.

*6. What are the personal privacy aspects of a national electronic toll collection standard and the technologies that may be used to achieve it?*

All of the respondents expressed the importance of preservation of personal privacy. However, Mark IV IVHS commented that there are no personal privacy aspects related to the technology. They indicated that privacy issues should be legislated rather than regulated and, in that context are beyond the scope of this proposed rule.

The NCTA recommended that privacy principles be developed under the national ETC standard to ensure that individuals using the national standard equipped vehicles may be able to do so anonymously. They recommended that personal information used within a national standards program should be limited to information necessary to carry out an articulated and valid national standard purpose.

More than one-half responded that transaction information, spending patterns, and all information related to the personal and financial sources backing an account should be adequately protected. Personal information including account status, credit card information, address information, and travel must be kept private and used solely for the collection of tolls and fines. If the standards accommodate devices that exchange information for multiple purposes, there should be safeguards to ensure that the data flow involving payment transactions is unique and not able to be replicated by legitimate equipment designed for other purposes.

The NCTA noted that, for the collection of tolls for non-toll applications, it recommends the practice of utilizing fair information practices, such as notice and consent by patrons that will establish their agreement that certain private information will be used in the conduct of the business function in which they have agreed to participate. The national standard must contain the tools necessary for the careful protection of personal information and set limits that can be audited on how long personal information will be retained by users and administrators in a national program. The national standard must also provide the opportunity for a customer to terminate their participation (*i.e.*, opt-out) in a non-ETC function.

The automobile manufacturers' associations noted that the VII Coalition has devoted considerable effort and consensus-building into the development and adoption of the "VII Privacy Policies Framework." This document forms the basis for privacy rules expected to govern a National IntelliDrive<sup>SM</sup> Program. As a potential IntelliDrive<sup>SM</sup> application, it is important that ETC systems intending to use the IntelliDrive<sup>SM</sup> system are designed in ways that meet the principles and limits expressed in the "VII Privacy Policies Framework."

Raytheon suggested that FHWA should consider requiring that the subject privacy policies be developed in accordance with specific recognized guidelines such as the Organization for Economic Cooperation and Development Privacy Guidelines on the Protection of Privacy or the more recently developed Asia Pacific Economic Cooperation Privacy Framework.

The previous comments provide valuable input toward potential development of national interoperable tolling standards, or guidance for

implementing toll collection interoperability. The comments reiterate the need for privacy policies as required in section 950.5(c) of this rule. No changes to the rule are needed based on these comments.

#### Rulemaking Analysis and Notices

##### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

The FHWA has determined that this rule is a significant regulatory action within the meaning of Executive Order 12866 and is significant within the meaning of Department of Transportation regulatory policies and procedures. This action is considered significant because of the substantial State and local government and public interest in the requirements for automated toll collection systems. This rule provides interoperability requirements, standards, or performance specifications for toll projects initiated under section 1604 of SAFETEA-LU that use ETC. Section 1604 of SAFETEA-LU establishes or amends three tolling programs: (1) The Value Pricing Pilot Program, which has a maximum of 15 cooperative agreements; (2) the Express Lanes Demonstration Program, which has a maximum of 15 tolling projects; and (3) the Interstate System Construction Toll Pilot Program, which has a maximum of three tolling projects. This rule only establishes conditions on a Federal grant of authority for toll programs under section 1604 and does not require a State to impose tolls on any particular facility nor mandate how a State or toll authority operates, maintains or enforces its tolling program.

It is expected that the economic costs of this rule will be minimal while the benefits could be significant. These changes are not anticipated to adversely affect, in a material way, any sector of the economy. Since this rule only applies to new projects initiated under section 1604 of SAFETEA-LU, no significant encumbrances are added to the project's design or implementation.

Interoperability will afford potential reductions in implementation and operating costs in several ways for the implementing agencies and the public. First, it will allow the leveraging of existing resources, specifically the toll transponders that are being used by vehicle operators. By designing for interoperability, a new ETC project will not need to distribute as many toll transponders as it would if it designed a unique toll collection system. The public users will not need to purchase or fund additional devices and

accounts. According to the proceedings of a seminar conducted by the World Bank Group in March 1999, agencies implementing a toll facility may realize additional cost savings of installed equipment of \$5,000 per toll collecting lane for ETC versus traditional manual methods.<sup>1</sup> Studies indicate that the costs for adding ETC to existing or already constructed roadways varies from \$1.7 million (in 2005 dollars) for seven collection sites along 26 miles of Interstate route 5 in San Diego<sup>2</sup> to \$35.7 million for 31 miles of roadway in Dade County, Florida.<sup>3</sup> Different levels of communication and technology infrastructure help account for the variation in implementation costs.

Second, the operating cost for an electronic toll lane is less than one-tenth that of a standard lane. A 1997 report indicated that the Oklahoma Turnpike Authority spent approximately \$16,000 per year on the operational cost of an ETC lane. In contrast, the Authority spent approximately \$176,000 per year to operate a manual toll collection lane. While this report represents a rural implementation, and may not be fully representative of a more metropolitan implementation with a great number of transactions, the increased number of tolled lanes and the cost savings of automating toll collection lanes versus staffed lanes provides for similar cost savings for operations.

Third, there are also environmental savings associated with congestion reduction. Increasing access to electronic toll lanes will decrease time spent waiting to pay tolls. As an example of reduced delays, attended toll collection facilities can process approximately 300 vehicles per hour, or 12 seconds per vehicle. Dedicated ETC facilities can process approximately 1,200 vehicles per hour, or 3 seconds per vehicle.<sup>4</sup> Using a conservative

<sup>1</sup> Seminar proceedings on "Tolling Options" from "Asian Toll Road Development in an Era of Financial Crisis," March 1999, World Bank Group and the Japanese Ministry of Construction. Link: [http://www.worldbank.org/transport/roads/toll\\_rds.htm#options](http://www.worldbank.org/transport/roads/toll_rds.htm#options).

<sup>2</sup> I-5 North Coast Managed Lanes Value Pricing Study: Concept Plan Volume 1, prepared by PBConsult for the San Diego Association of Governments (SANDAG), California; April 2006. Link to Portable document format (PDF) file: [http://www.sandag.org/uploads/publicationid/publicationid\\_1227\\_5523.pdf](http://www.sandag.org/uploads/publicationid/publicationid_1227_5523.pdf).

<sup>3</sup> Miami-Dade Expressway Authority: Open Road Tolling Master Plan 2007-2011, prepared by Dade Transportation Consultants for Miami-Dade Expressway Authority, Florida; March 2006. Link ITS Costs database: <http://www.itscosts.its.dot.gov/its/beneccost.nsf/ID/9A6D1C1362BD54C3852573EC0049CD49>.

<sup>4</sup> Tollways Volume 2, Number 3, by IBTTA, 2005; The Path to Open Road Tolling, by Timothy O. Gallagher and Harold W. Worrall, pgs. 11-21.

estimate for a queue of four vehicles for processing per lane, the delay for not using ETC equals 36 seconds. During peak periods, queues would be longer and delays increased. When multiplied by the number of transactions, these time savings can be considerable based on the value of \$15+ per hour that an average person in the United States earns. While the total savings are dependant on how many new systems are built, they could be considerable. Costs would be dependent on the methods that are instituted to collect payments. For example, it may take longer to pay using a lane that allows for multiple types of payment as opposed to lanes dedicated to ETC or barrier-free collection techniques. However, the Department believes that these differences would be minimal or more than offset by the delays caused by current systems.

Toll plazas and barriers reduce a facility's throughput of vehicles, resulting in traffic congestion and its associated hazards as the demand and volume of vehicles increase. Electronic tolling helps to mitigate congestion by eliminating the bottlenecks caused by toll plazas and barriers. For example, in 1995, researchers compared vehicle throughput on lanes with manual toll collections versus ETC on the Tappan Zee Bridge in New York. The manual collection lane accommodated up to 400 to 450 vehicles per hour while an electronic lane peaked at 1,000 vehicles per hour.<sup>5</sup> Also, in another example, the E-ZPass ETC system saved commuters approximately 2.1 million hours of delay on the New Jersey Turnpike in 2000.<sup>6</sup> An evaluation from Florida indicated that enhancing ETC with open road tolling decreased delay by 50 percent for manual cash customers and by 55 percent for automatic coin machine customers, and increased speed by 57 percent in the open road tolling lanes. The addition of open road tolling also decreased crashes by an estimated 22 to 26 percent.<sup>7</sup>

<sup>5</sup> Lennon, L. "Tappan Zee Bridge E-ZPass System Traffic and Environmental Studies," Paper presented at the 64th ITE Annual Meeting: 1995. ITS Benefits Database Link: <http://www.itsbenefits.its.dot.gov/its/benecost.nsf/0/BFFD6D277991A8C385269610051E2BE>.

<sup>6</sup> Operational and Traffic Benefits of E-ZPass to the New Jersey Turnpike, Prepared by the Wilbur Smith Associates for the New Jersey Turnpike Authority, New Jersey: August 2001. ITS Benefits Database Link: <http://www.itsbenefits.its.dot.gov/its/benecost.nsf/0/78B2ACEBB79ED67785256AC0006E29ED>.

<sup>7</sup> Klodzinski, J. and Gordin, E. and Al-Deek, H. M. "Evaluation of Impacts from Deployment of an Open Road Tolling Concept for a Mainline Toll Plaza." Paper presented at the 86th Annual Meeting of the Transportation Research Board, January 2007. ITS Benefits Database Link: <http://www.itsbenefits.its.dot.gov/its/benecost.nsf/0/78B2ACEBB79ED67785256AC0006E29ED>.

Therefore, this rule will result in only minimal costs to those affected. In addition, these changes will not interfere with any action taken or planned by another agency and will not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, 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 this rule on small entities and has determined that the rule will not have a significant economic impact on a substantial number of small entities.

This rule does not change the roles or responsibilities of small entities in ETC projects. The rule neither improves nor worsens small entities' opportunities to participate in ETC projects, so it results in no economic effect on the small entities. For these reasons, FHWA 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 will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48). This rule will not result 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). This rule only establishes conditions on a Federal grant of authority for toll programs under section 1604 and does not require a State, public authority, or private entity designated by a State, to impose tolls on any particular facility nor mandates how a State or toll authority operates, maintains or enforces its tolling program.

#### *Executive Order 13132 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and FHWA has determined that this action will not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this action will not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

[www.itsbenefits.its.dot.gov/its/benecost.nsf/ID/0786EF6A8384D176852573E5006D0C33](http://www.itsbenefits.its.dot.gov/its/benecost.nsf/ID/0786EF6A8384D176852573E5006D0C33).

#### *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 do not 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 of information requirements for the purposes of the PRA.

#### *National Environmental Policy Act*

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this action will not have any effect on the quality of the environment.

#### *Executive Order 12630 (Taking of Private Property)*

The FHWA has analyzed this rule under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights. The FHWA does not anticipate that this action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

#### *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, eliminate ambiguity, and reduce burden.

#### *Executive Order 13045 (Protection of Children)*

The FHWA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this action will not cause any environmental risk to health or safety that might disproportionately affect children.

#### *Executive Order 13175 (Tribal Consultation)*

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that this

action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. The rule addresses interoperability requirements, standards, or performance specifications for toll projects initiated under section 1604 of SAFETEA-LU that use ETC and would not impose any direct compliance requirements on Indian tribal governments.

#### *Executive Order 13211 (Energy Effects)*

The FHWA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001. We have determined that this is not a significant energy action under that order since it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

#### *Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

#### **List of Subjects in 23 CFR Part 950**

Communications equipment, Electronic products, Highways and roads, Motor vehicles, Radio, Telecommunication, Transportation.

Issued on: September 29, 2009.

**Victor Mendez,**  
*Administrator.*

■ In consideration of the foregoing, the FHWA adds a new part 950 to subchapter K, chapter I, title 23, Code of Federal Regulations, to read as follows:

#### **PART 950—ELECTRONIC TOLL COLLECTION**

- Sec.  
950.1 Purpose.  
950.3 Definitions.  
950.5 Requirement to use electronic toll collection technology.  
950.7 Interoperability requirements.  
950.9 Enforcement.

**Authority:** 23 U.S.C. 109, 315; sec. 1604(b)(5) and (b)(6), Pub. L. 109–59, 119 Stat. 1144; 49 CFR 1.48.

##### **§ 950.1 Purpose.**

The purpose of this part is to establish interoperability requirements for toll

facilities that are tolled under section 1604 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109–59; 119 Stat. 1144) that use electronic toll collection.

##### **§ 950.3 Definitions.**

As used in this part:  
*1604 toll program* refers to any of the tolling programs authorized under section 1604 of SAFETEA-LU. These programs include the Value Pricing Pilot Program, the Express Lanes Demonstration Program, and the Interstate System Construction Toll Pilot Program.

*Electronic toll collection* means the ability for vehicle operators to pay tolls automatically without slowing down from normal highway speeds.

*Toll agency* means the relevant public or private entity or entities to which toll authority has been granted for a facility under a 1604 toll program.

##### **§ 950.5 Requirement to use electronic toll collection technology.**

(a) Any toll agency operating a toll facility pursuant to authority under a 1604 toll program shall use an electronic toll collection system as the method for collecting tolls from vehicle operators for the use of the facility unless the toll agency can demonstrate to the FHWA that some other method is either more economically efficient or will make the facility operate more safely. If a facility is collecting tolls pursuant to section 1604(b) of SAFETEA-LU, the toll agency shall only use electronic toll collection systems. Nothing in this subsection shall prevent a toll agency from using cash payment methods, such as toll booths, in areas that are not located in the toll facility's lanes of travel if the location and use of such methods do not create unsafe operating conditions on the toll facility.

(b) A toll agency using electronic toll collection technology must develop and implement reasonable methods to enable vehicle operators that are not enrolled in a toll collection program that is interoperable with the toll collection system of the relevant toll facility to use the facility.

(c) A toll agency using electronic toll collection technology must develop, implement, and make publicly available privacy policies to safeguard the disclosure of any data that may be collected through such technology concerning any user of a toll facility operating pursuant to authority under a 1604 toll program, but is not required to submit such policies to FHWA for approval.

##### **§ 950.7 Interoperability requirements.**

(a) For any toll facility operating pursuant to authority under a 1604 toll program, the toll agency shall—

(1) Identify the projected users of the facility;

(2) Identify the predominant toll collection systems likely utilized by the users of the facility; and

(3) Identify the noncash electronic technology likely to be in use within the next five years in that area.

(b) Based on the identification conducted under subsection (a), the toll agency shall receive the FHWA's concurrence that the facility's toll collection system's standards and design meet the requirements of this part.

(c) In requesting the FHWA's concurrence, the toll agency shall demonstrate to the FHWA that the selected toll collection system and technology achieves the highest reasonable degree of interoperability both with technology currently in use at other existing toll facilities and with technology likely to be in use at toll facilities within the next five years in that area. The toll agency shall explain to the FHWA how the toll collection system takes into account both the use of noncash electronic technology currently deployed within an appropriate geographic area of travel (as defined by the toll agency) and the noncash electronic technology likely to be in use within the next five years in that area. FHWA, in determining whether to concur in the toll agency's proposal, will give appropriate weight to current and future interoperability with toll facilities in that area. The facility's toll collection system design shall include the communications requirements between roadside equipment and toll transponders, as well as accounting compatibility requirements in order to ensure that users of the toll facilities are properly identified and tolls are charged to the appropriate account of the user.

(d) A toll agency that operates any toll facility pursuant to authority under a 1604 toll program must upgrade its toll collection system to meet any applicable standards and interoperability tests that have been officially adopted through rulemaking by the FHWA.

(e) With respect to facilities that are tolled pursuant to the Value Pricing Pilot Program, this part only applies if tolls are imposed on a facility after the effective date of this rule. However, such facility is subject to this part if the facility's toll collection system's method or technology used to collect tolls from vehicle operators is changed or

upgraded after the effective date of the regulations in this part.

(f) Nothing in this part shall be construed as requiring the use of any particular type of electronic toll collection technology. However, any such toll collection technology must meet the interoperability requirement of this section.

#### § 950.9 Enforcement.

(a) The tolling authority of any facility operating pursuant to authority under a 1604 toll program shall be suspended in the event the relevant toll agency is not in compliance with this part within six (6) months of receiving a written notice of non-compliance from FHWA. If the toll agency demonstrates that it is taking the necessary steps to come into compliance within a reasonable period of time, FHWA shall extend such tolling authority.

(b) The FHWA may take other action as may be appropriate, including action pursuant to § 1.36 of this title.

[FR Doc. E9-24296 Filed 10-7-09; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

#### 27 CFR Part 9

[Docket No. TTB-2008-0008; T.D. TTB-82; Re: Notice No. 89]

RIN 1513-AB52

#### Establishment of the Happy Canyon of Santa Barbara Viticultural Area (2007R-311P)

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau, Treasury.

**ACTION:** Final rule; Treasury decision.

**SUMMARY:** This Treasury decision establishes the 23,941-acre "Happy Canyon of Santa Barbara" American viticultural area in Santa Barbara County, California. This viticultural area lies within the larger Santa Ynez Valley viticultural area and the multicounty Central Coast viticultural area. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

**DATES:** *Effective Date:* November 9, 2009.

**FOR FURTHER INFORMATION CONTACT:** Brady Groscoast, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G St. NW., Room

200E, Washington, DC 20220; phone 202-927-8210.

#### SUPPLEMENTARY INFORMATION:

##### Background on Viticultural Areas

###### *TTB Authority*

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

###### *Definition*

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

###### *Requirements*

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;

- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features, found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

##### Petition for Happy Canyon of Santa Barbara

TTB received a petition from Wes Hagen, Vineyard Manager and Winemaker at Clos Pepe Vineyards, Lompoc, California, on behalf of Happy Canyon vintners and grape growers, proposing the establishment of the Happy Canyon of Santa Barbara American viticultural area. According to the petitioner, the proposed viticultural area encompasses 23,941 acres, 492 acres of which are in commercial viticulture in 6 vineyards. The proposed viticultural area is entirely within the Santa Ynez Valley viticultural area (27 CFR 9.54), which in turn is completely within the multicounty Central Coast viticultural area (27 CFR 9.75).

The petitioner stated that the viticulture of the proposed Happy Canyon of Santa Barbara viticultural area, in eastern Santa Ynez Valley, is distinguishable from that of the rest of the valley, including the Sta. Rita Hills viticultural area (27 CFR 9.162), in western Santa Ynez Valley. We summarize below the supporting evidence submitted with the petition.

###### *Name Evidence*

According to the petitioner and USGS maps, the "Happy Canyon of Santa Barbara" name applies to a canyon located in Santa Barbara County. TTB notes that a search of the USGS Geographical Names Information System (GNIS) includes 10 hits for "Happy Canyon," 3 of which are in California. The petitioner originally proposed "Happy Canyon" as the name of the viticultural area. However, based on results of the GNIS search, TTB determined that the Happy Canyon name would require a geographical modifier to pinpoint its physical location and avoid potential consumer confusion with other identical or similar names. After careful consideration, the petitioner modified the name of the petitioned-for viticultural area to