

based companies in domestic and export markets.

#### List of Subjects in 21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

For the reasons set out above, 21 CFR part 1301 is proposed to be amended as follows:

#### PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

1. The authority citation for part 1301 continues to read as follows:

**Authority:** 21 U.S.C. §§ 821, 822, 823, 824, 871(b), 875, 877, 886a, 951, 952, 953, 956, 957.

2. § 1301.28 is proposed to be amended by revising paragraph (b)(1)(iii) and removing paragraph (b)(1)(iv) to read as follows:

**§ 1301.28 Exemption from separate registration for practitioners dispensing or prescribing Schedule III, IV, or V narcotic controlled drugs approved by the Food and Drug Administration specifically for use in maintenance or detoxification treatment.**

\* \* \* \* \*

(b)(1) \* \* \*

(iii) The total number of patients to whom the individual practitioner will provide narcotic drugs or combinations of narcotic drugs under this section will not exceed 30 at any one time unless, not sooner than 1 year after the date on which the practitioner submitted the initial notification to the Secretary of Health and Human Services, the practitioner submits a second notification to the Secretary of the need and intent of the practitioner to treat up to 100 patients. A second notification under this subparagraph shall contain the certifications required by subparagraphs (i) and (ii) of this paragraph. The Secretary of Health and Human Services may promulgate regulations to change the total number of patients.

\* \* \* \* \*

Dated: September 13, 2007.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control.*

[FR Doc. E7-18531 Filed 9-19-07; 8:45 am]

BILLING CODE 4410-09-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:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** As required under section 1604(b)(6) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), this proposed rule specifies 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 SAFETEA-LU. Specifically, this notice proposes to require facilities operating with authority under section 1604 of SAFETEA-LU to use electronic toll collection systems and for these systems to address their interoperability with other toll facilities. Although a nationwide interoperability standard has not yet been established, this proposed rule seeks to accelerate progress toward achieving nationwide interoperability by requiring these facilities to upgrade their electronic toll collection systems to the national standards whenever adopted. This document also provides notice of public meetings on this proposed regulation.

**DATES:** The public meeting will be held on Thursday, October 11, 2007, from 1:30 p.m. to 5 p.m., at the U.S. Department of Transportation headquarters conference center. Comments must be received on or before November 19, 2007. Late-filed comments will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period.

**ADDRESSES:** The October 11, 2007, public meeting will be held at the U.S. Department of Transportation headquarters conference center, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit electronically at <http://dmses.dot.gov/submit> or fax comments to (202) 493-

2251. Alternatively, comments may be submitted to the Federal eRulemaking portal at <http://www.regulations.gov>.

All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477-78) or you may visit <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** For technical questions or information about this notice of proposed rulemaking, contact Mr. Robert Rupert, FHWA Office of Operations, (202) 366-2194. For legal questions, please contact 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 and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: <http://dmses.dot.gov/submit>. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. Alternatively, internet users may access all comments received by the DOT Docket Facility by using the universal resource locator (URL) <http://dms.dot.gov>. 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 by accessing the Office of the Federal Register's home page at: <http://www.archives.gov> or the Government Printing Office's Web page at <http://www.gpoaccess.gov/nara>.

#### Introduction

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 maximize to the extent practicable three other areas:

(1) Accelerate progress toward the national goal of achieving a nationwide interoperable electronic toll collection 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 five years; and

(3) Minimize additional costs and maximize convenience to users of toll facility and to the toll facility owner or operator.

### Background

States are increasingly turning to tolling as a means of supplementing traditional methods of roadway financing and enhancing transportation mobility. The electronic collection of these tolls, which began in the mid 1980s, has grown dramatically over the past 25 years and is expected to grow even more over the next decade. The percentage of toll lanes capable of using electronic toll collection has grown from 36% in 1997 to nearly 80% in 2005.<sup>1</sup> According to a June 2006 report from the United States Government Accountability Office, 23 States have plans to build toll road facilities, including 7 States that are planning their first toll roads.<sup>2</sup>

As the toll industry has grown, toll agencies have used a variety of toll devices manufactured by various competitive companies. This resulted in islands of unique proprietary toll devices throughout the country. The early electronic toll collection systems

used a variety of electronic and radio communications technologies to identify accountholders as they traveled through toll collection lanes and then charge the appropriate toll against the appropriate account. There was little interoperability among the systems, and users had to establish multiple accounts and obtain multiple radio devices in order to use electronic toll collection on different toll facilities.

The various toll agencies in the New York City area recognized the need to allow their users to move among their facilities with a common electronic toll collection technology and formed the Inter Agency Group (IAG). The IAG established a common accounting system that would enable users to set up an account with one toll collection agency that would be useable across multiple toll facilities. In the early 1990s, the IAG coined the term "E-ZPass" as a service mark for its common electronic toll collection system, and selected a vendor that all participating agencies would use for electronic tolling applications. The IAG and E-ZPass have grown to include 21 agencies in the mid-Atlantic, northeast, and Illinois. Similar efforts to regionalize electronic toll collection took place in Florida and California, resulting in common toll collection technologies for those areas.

As of 2005, there were about 20 million electronic toll customers across the country. The largest concentrations of electronic toll customers are on the east coast, with about 17 million users, and on the west coast, with over 2 million users.

### Existing Noncash Electronic Toll Collection Technologies

Currently, the electronic toll collection systems in any given geographic region typically use similar techniques, but are not interoperable from region to region. These existing toll facilities use a communications technology known as Dedicated Short Range Communications (DSRC). DSRC is a short range microwave radio that is capable of communication with the roadside while a vehicle is moving at highway speeds. Currently, all DSRC devices used for electronic toll collection operate in the unlicensed 902 Megahertz (MHz) to 928 MHz band of the radio frequency spectrum. Tolls can be collected from motorists through a device called a "transponder," which is about the size of a compact disk or a pocket calculator and is installed in a motorist's car or truck. The transponder communicates via DSRC with a "reader" installed over or near the lane of travel. The reader communicates with

the appropriate financial accounting system and the motorist's toll account is debited for the proper toll amount without the need for stopping at a toll plaza.

Although the future will bring new entrants and new innovation, the electronic toll collection market has evolved in recent years such that there are essentially three de-facto "standards" employed in large numbers.

(1) The E-ZPass toll device is employed on virtually all of the toll roads in the mid-Atlantic, northeast coast, and Illinois with approximately 14 million users. This is a proprietary device whose intellectual property rights are owned by Mark IV Industries of Toronto, Canada. There are also other proprietary toll collection technologies used by smaller numbers of systems and users in Texas, Georgia, and Florida.

(2) The California Title 21 Electronic Toll Collection standard is used on the west coast with approximately 2 million users. This California specification is an "open" standard and currently there are two manufacturers, Transcore and Sirit.

(3) The American Society of Testing Materials (ASTM) V6 standard is used by the trucking industry for the electronic clearance of commercial vehicles by both Help Inc.'s Prepass system and by the I-75 Coalition NorPass system. This is an open standard currently manufactured by Raytheon and Mark IV.

### National Interoperability

None of these de-facto standards are interoperable with one another. In an attempt to achieve interoperability in 1996 and 1997, the DOT encouraged and supported the development of a single standard for electronic toll collection. The ASTM established a standards committee; however, the companies in the toll market at that time could not agree on a single standard that would allow national interoperability.

During that same time frame, the DOT pursued the examination of a new frequency for DSRC devices that could be licensed and thus used for a variety of transportation applications including electronic toll collection. In 1997, the Intelligent Transportation Society of America (ITS America), acting on behalf of the transportation industry, filed a petition with the Federal Communications Commission (FCC) requesting the allocation of 75 MHz of spectrum at 5.85 Gigahertz (GHz) to 5.925 GHz. This allocation was granted by the FCC in late 1999, and is licensed for public safety and private applications.

As a result of the FCC's action, the DOT initiated the support of the

<sup>1</sup> U.S. DOT Intelligent Transportation Systems Joint Program Office, ITS Deployment Statistics Web site, <http://www.itsdeployment.its.dot.gov/Trendsgraph.asp?comp=ETC>; 2006.

<sup>2</sup> U.S. Government Accountability Office, Report number GAO-06-554, "Highway Finance: States' Expanding Use of Tolling Illustrates Diverse Challenges and Strategies" June 2006; <http://www.gao.gov/new.items/d06554.pdf>.

development of a new set of standards for DSRC at 5.9 GHz. ("5.9 GHz" is the term used to refer to the spectrum between 5.85 GHz and 5.925 GHz.) The standards are being developed under the auspices of the Institute of Electrical and Electronic Engineers (IEEE). All of the current toll device manufacturers in the United States are participating in the development of these open standards and have agreed upon the electronic communications technology to be employed. In addition, the DOT is sponsoring the development of prototype DSRC equipment to implement the standards under development. The four manufacturers of electronic toll collection equipment in the United States as of 2005—Mark IV, Raytheon, Sirit, and Transcore—united to form the DSRC Industry Consortium to conduct this development. The current DSRC program is conducting tests of prototype equipment and these open standards for technical feasibility.

However, even if the technical communications standards are interoperable technologically, more must be done to ensure interoperability for electronic toll collection. Specifically, interoperability also requires "back-office" interoperability, i.e., properly identifying and accounting for electronic toll collection tags. The IAG provides this integrated accounting service for its members through its E-ZPass application. True national interoperability will require greater exchange of accounting and fiscal information among toll authorities and their financial agents. OmniAir, an independent, not-for-profit trade association created as a result of the International Bridge, Tunnel and Turnpike Association's (IBTTA) 5.9 GHz DSRC Next Generation Task Force, has developed a draft electronic toll collection requirements document and is developing a national interoperability specification for electronic payment services. Toll agencies that adopt the OmniAir specifications will be positioned to provide interoperable services for all toll users.

Development and approval of an open technical communications standard will be a significant step toward nationally interoperable electronic toll collection services. The adoption of an approved open standard by the DOT for use on all Federal-aid projects and other projects receiving tolling authority from the DOT will help to accelerate progress toward national interoperability. Any interoperability test for electronic toll collection would need to include not only the electronic communications, but also the accounting compatibility necessary to allow motorists to use

various toll facilities without requiring multiple accounts.

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 increases. 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 electronic toll collection on the Tappan Zee Bridge in New York. The manual collection lane accommodated up to 400–450 vehicles per hour while an electronic lane peaked at 1000 vehicles per hour.<sup>3</sup> Also, in another example, the E-ZPass electronic toll collection system saved commuters approximately 2.1 million hours of delay on the New Jersey Turnpike in 2000.<sup>4</sup> Electronic tolling may also address vehicle safety and property damage concerns associated with toll barriers. The FHWA solicits comments from States, toll authorities, or other groups that may have conducted studies to analyze the effects of electronic tolling on safety and property damage.

#### DOT Outreach Efforts

In preparing this NPRM, the FHWA met with representatives of the IBTTA to gather technical information and insight on its members' current state-of-practice for electronic toll collection. In addition, IBTTA shared information about activities it has been conducting related to interoperability, including establishing OmniAir as an independent, not-for-profit trade association addressing 5.9 GHz and interoperability.

#### General Discussion of the Proposal

This proposal is intended 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. Although the ultimate goal of 1604(b)(6) of SAFETEA-LU is to achieve a nationwide interoperable electronic toll

collection system, the Department does not believe that it can effectively establish a national standard at this time. As explained above, the DSRC program is conducting tests of prototype equipment and open standards for technical feasibility. These new standards, when published, may form the basis of a future rulemaking that would establish the standards for a nationwide interoperable electronic toll collection system. However, with respect to this proposal, the Department believes that requiring toll agencies to take interoperability issues into consideration in developing its toll collections systems will address the objective of the statute to accelerate progress toward the goal of nationwide interoperability in the best way possible at the present time. As such, the FHWA proposes to require that the toll collection agency for any facility operating pursuant to authority under section 1604 of SAFETEA-LU consult with the FHWA regarding its proposed method for electronic toll collection, and explain how the toll collection technique achieves the highest reasonable degree of interoperability possible with other facilities. The selection and explanation should consider not only current toll collection technologies but also emerging technologies and standards that may come into use.

Additionally, this proposal would require toll agencies to develop reasonable methods to enable vehicle operators that are not enrolled in an interoperable toll collection program to use the toll facility. Agencies that operate tolling facilities that rely exclusively on electronic toll collection must address how they would accommodate users that have not enrolled in a compatible accounting system that provides for the collection of toll fees for use of the facility.

Lastly, the FHWA recognizes that privacy issues may arise in connection with the implementation, operation, and enforcement of electronic toll collection systems, largely as a result of toll tags being linked to an individual's account with a toll agency or transportation authority or through alternative accommodations. In order to mitigate this concern, this rulemaking proposes to require toll agencies to develop, implement, and make publicly available privacy policies designed to protect against the inappropriate, unnecessary, or unauthorized disclosure of any data that may be collected regarding a user's use of an electronic toll collection system. These policies would not be subject to Departmental approval, however. The Department solicits

<sup>3</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>4</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>.

comments related to the methods or means by which privacy concerns can be balanced with the environmental and congestion reducing advantages of electronic tolling.

This NPRM applies only to the tolling programs authorized under section 1604 of SAFETEA-LU. The authority to toll under a section 1604 program will be granted on a case-by-case basis and in accordance with the criteria listed in statute and this regulation.

In consideration of the above discussion, the FHWA requests comments on the following questions:

(1) How should a national electronic toll collection standard be pursued?

(2) What aspects of electronic toll collection should be standardized?

(3) How critical is the timing for establishing a national electronic toll collection standard?

(4) How should the national standard incorporate current technologies and functions?

(5) How should the national standard allow for changes in technologies over time?

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

### Section-by-Section Discussion of the Proposal

#### Section 950.1 Purpose

This section states that the proposed regulations establish interoperability requirements, standards, and performance specifications for facilities that are granted tolling authority by any program authorized under section 1604 of SAFETEA-LU.

#### Section 950.3 Definitions

The specific terms that have special significance to agencies or facilities that are subject to these proposed regulations are defined in this section.

#### Section 950.5 Requirement To Use Electronic Toll Collection Technology

This section establishes the proposed requirement that all facilities that are granted tolling authority by any program under section 1604 of SAFETEA-LU must use electronic toll collection systems as the method for collecting tolls from vehicle operators unless the toll agency can demonstrate to the FHWA that some other method is either more economically efficient or will result in a safer operating conditions for the facility. However, since section 1604(b)(5) of SAFETEA-LU requires exclusive electronic toll collection for the Express Lanes Demonstration Program, the FHWA is not authorized to

grant an exception to the electronic toll collection requirement for facilities granted toll authority under section 1604(b) of SAFETEA-LU. This rule further requires toll agencies to make reasonable accommodations to allow potential users who may not be enrolled in the applicable toll collection program to use the facility. Since subsection 1604(b)(6)(A) states that the interoperability rule be applied for "automated toll collection systems implemented under this section," which includes subsections 1604(a), 1604(b), and 1604(c), this proposed interoperability requirement would apply the mandatory use of electronic toll collection to all the programs authorized under section 1604.

Additionally, this section clarifies that a toll agency may use 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.

Additionally, this rule would require toll agencies to develop and implement privacy policies to safeguard the disclosure of any data that may be collected concerning any user of a toll facility operating pursuant to authority under a 1604 toll program. The FHWA specifically requests comments on the privacy implications of this rule and potential measures that could be taken to ensure that these privacy interests are protected.

#### Section 950.7 Interoperability Requirements

This section establishes the proposed requirements for interoperability among electronic tolling systems for agencies or facilities that are granted tolling authority by any program authorized under section 1604 of SAFETEA-LU. Because of the differences that may arise in defining the potential users of a facility while maintaining interoperability, the FHWA requests comments on whether these proposed regulations allow for toll agencies to use different technologies.

In section 950.7(a), we propose to require the toll agency having jurisdiction over a facility that is tolled pursuant to any of the tolling programs under section 1604 of SAFETEA-LU to: identify the projected users of the facility; and identify the predominant electronic toll collection systems likely utilized by the users of the facility.

In section 950.7(b), we propose to require the toll agency to receive the FHWA's concurrence on its selection of the facility's electronic toll collection system. In section 950.7(c), we propose to require, in order to receive the

FHWA's concurrence, the toll agency to demonstrate to the FHWA how the selected toll collection system achieves the highest reasonable degree of interoperability possible with other toll facilities. Additionally, the toll agency must explain, as provided at section 1604(b)(6)(B)(ii) of SAFETEA-LU, how the toll collection system takes into account the use of noncash electronic technology currently deployed within an appropriate geographic area of travel, as defined by the toll agency, and identify the noncash electronic technology likely to be in use within the next five years in that area. The facility's electronic toll collection system's design must include the communications requirements between roadside equipment and electronic 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.

In section 950.7(d), we propose to require all electronic toll collection systems on any facility that is tolled pursuant to any of the tolling programs under section 1604 of SAFETEA-LU to upgrade to the nationwide interoperability standards if established in a future rulemaking by the FHWA. As explained above, this proposed rule seeks to accelerate progress toward nationwide interoperability by requiring any facility that is tolled pursuant to authority from any of the toll programs at section 1604 of SAFETEA-LU to upgrade its electronic toll collection system to operate under any nationwide standard subsequently established.

In section 950.7(e), we propose to exempt all toll facilities that are currently being tolled under the Value Pricing Pilot Program from this proposed rule. The value pricing program was originally established in the section 1012(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102-240). Thus, applying this rule to electronic toll collection systems that are already operational may be burdensome. However, 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.

#### Section 950.9 Enforcement

This section discusses remedial actions for agencies or facilities that fail to comply with the proposed requirements in section 950.7.

We propose to suspend the tolling authority of any facility that does not comply with the requirements of this rule. However, we would be able to extend the tolling authority for any such

facility if the applicable toll agency demonstrates that it is taking the necessary steps to come into compliance with the regulations.

#### Public Meeting

The public meeting will be held on Thursday, October 11, 2007, at the U.S. Department of Transportation headquarters conference center. The meeting will be held from 1:30 p.m. to 5 p.m.

#### Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received before, during, and after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

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

The FHWA has determined preliminarily that this action would be a significant regulatory action within the meaning of Executive Order 12866 and would be 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 rulemaking proposes interoperability requirements, standards, and performance specifications for toll projects initiated under section 1604 of SAFETEA-LU that use electronic toll collection. 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 3 tolling projects. This rulemaking 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 anticipated that the economic costs of this rulemaking would be minimal while the benefits could be significant. These proposed changes are not anticipated to adversely affect, in a material way, any sector of the economy. Since this proposed 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 both 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, the new electronic toll collection 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. 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 electronic toll collection lane. In contrast, the Authority spent approximately \$176,000 per year to operate a manual toll collection lane. Third, there are also environmental savings as noted above. Finally, increasing access to electronic toll lanes will decrease time spent waiting to pay tolls. For example, attended toll collection facilities can process approximately 300 vehicles per hour, or 12 seconds per vehicle. Dedicated electronic toll collection facilities can process approximately 1,200 vehicles per hour, or 3 seconds per vehicle.<sup>5</sup> Using a conservative estimate for a queue of 4 vehicles for processing per lane, the delay for not using electronic toll collection 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 electronic toll collection 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. The Department seeks comments on these issues from both government entities and the public.

Therefore, this proposed rulemaking will result in only minimal costs to those affected. In addition, these changes would not interfere with any action taken or planned by another agency and would 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 proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities.

This rulemaking does not change the roles or responsibilities of small entities in electronic toll collection projects. The rulemaking neither improves nor worsens small entities opportunities to participate in electronic toll collection projects, so results in no economic affect on the small entities. For these reasons, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

#### Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48). This proposed 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). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector. Additionally, the definition of "Federal Mandate" in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made to the program by the Federal

<sup>5</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.

Government. The Federal-aid highway program permits this type of flexibility. This rulemaking 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 proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this proposed action would not have sufficient federalism implications to warrant consultation with the States. The FHWA has also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

#### **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. Accordingly, the FHWA solicits comments on this issue.

#### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposal does not contain collection of information requirements for the purposes of the PRA.

#### **National Environmental Policy Act**

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

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

The FHWA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interface with Constitutionally

Protected Property Rights. The FHWA does not anticipate that this proposed 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)**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action would 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 the proposed 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 proposed rulemaking addresses interoperability requirements, standards, or performance specifications for toll projects initiated under section 1604 of SAFETEA-LU that use electronic toll collection and would not impose any direct compliance requirements on Indian tribal governments.

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

We have 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 12, 2007.

**J. Richard Capka,**

*Federal Highway Administrator.*

In consideration of the foregoing, the FHWA proposes to add a new part 950 to 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, standards, and performance specifications 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.**

*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.

*Dedicated short-range communications* means a microwave radio that is capable of short-range communication with the roadside while a vehicle is moving at highway speeds.

*Electronic toll collection* means the ability for vehicle operators to pay tolls without stopping their vehicles through the use of dedicated short-range communications between onboard vehicle and roadside devices.

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

(b) Based on the identification conducted under subsection (a), the toll agency shall receive the FHWA's concurrence on the proposal for the facility's toll collection system's standards and design.

(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 possible with other toll facilities. The toll agency shall also explain to the FHWA how the toll collection system takes into account the use of noncash

electronic technology currently deployed within an appropriate geographic area of travel (as defined by the toll agency) and identify the noncash electronic technology likely to be in use within the next five years in that area. The facility's toll collection system's 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 is changed or upgraded after the effective date of the regulations in this part.

**§ 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. E7-18529 Filed 9-19-07; 8:45 am]

BILLING CODE 4910-22-P

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[REG-103842-07]

RIN 1545-BG33

**Qualified Films Under Section 199; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document cancels a public hearing on proposed regulations under section 199 of the Internal Revenue Code. These regulations involve the deduction for income attributable to domestic production activities under section 199 and affect taxpayers who produce qualified films under section 199(c)(4)(A)(i)(II) and (c)(6) and taxpayers who are members of an expanded affiliated group under section 199(d)(4).

**DATES:** The public hearing, originally scheduled for October 2, 2007, at 10 a.m., is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Hurst of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irscounsel.treas.gov*.

**SUPPLEMENTARY INFORMATION:** A notice of public hearing that appeared in the **Federal Register** on Thursday, June 7, 2007 (72 FR 31478), announced that a public hearing was scheduled for October 2, 2007, at 10 a.m., in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 199 of the Internal Revenue Code.

The public comment period for these regulations expired on September 5, 2007. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Tuesday, September 11, 2007, no one has requested to speak. Therefore, the public hearing scheduled for October 2, 2007, is cancelled.

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. E7-18507 Filed 9-19-07; 8:45 am]

BILLING CODE 4830-01-P

**DEPARTMENT OF THE TREASURY****Alcohol and Tobacco Tax and Trade Bureau****27 CFR Parts 4, 5, 7, and 24**

[Notice No. 75; Re: Notice No. 73]

RIN 1513-AB07

**Labeling and Advertising of Wines, Distilled Spirits and Malt Beverages; Comment Period Extension**

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