

Demand Energy
 Duke Energy Corporation
 Edison Electric Institute (EEI)
 Electric Power Supply Association
 Electricity Consumers Resource Council
 Electricity Storage Association
 Energy Cache
 Exelon Corporation (Exelon)
 FirstEnergy Service Company (FirstEnergy)
 General Compression
 Grasslands Renewable Energy LLC
 ITC Companies
 MegaWatt Storage Farms, Inc.
 MidAmerican Energy Holdings Company
 Modesto Irrigation District
 National Alliance for Advanced Technology
 Batteries (NAATBatt)
 National Electrical Manufacturers
 Association
 National Grid USA
 National Hydropower Association
 National Rural Electric Cooperative
 Association (NRECA)
 New York Transmission Owners
 NGK Insulators, Ltd (NGK/TI)
 NSTAR Electric Company
 Ohio Consumers' Counsel
 Pacific Gas and Electric Company
 PJM Interconnection, L.L.C.
 Powerex Corp.
 Premium Power Corporation
 Primus Power Corporation
 PSEG Companies
 Public Interest Organizations
 Puget Sound Energy, Inc.
 Riverbank Power Corp.
 San Diego Gas & Electric Company (SDG&E)
 Six Cities CA
 Rodney G. Smith
 Southern California Edison Company (SCE)
 Southern Company Services, Inc.
 Southwest Power Pool, Inc.
 Starwood Energy Group Global, LLC.
 SunEdison
 Symbiotics, LLC
 Transmission Agency of Northern California
 Viridity Energy, Inc.
 Western Grid Development LLC
 Xtreme Power Inc. (Xtreme Power)

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BILLING CODE 6717-01-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 627

[FHWA Docket No. FHWA-2011-0046]

RIN 2125-AF40

Value Engineering

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This notice proposes updated regulations to enhance the integration of value engineering (VE) analysis in the planning and development of highway improvement projects. The intent of

these actions is to bring the FHWA's VE regulations up-to-date and consistent with prior changes in legislation and regulations.

DATES: Comments must be received on or before August 22, 2011. Late comments will be considered to the extent practicable.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or submit electronically at <http://www.regulations.gov> or fax comments to (202) 493-2251. 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 or receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Page 19477-78), or you may visit <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Obenberger, Preconstruction Team Leader, Office of Program Administration, (202) 366-2221, or Mr. Michael Harkins, Office of the Chief Counsel, (202) 366-4928, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This document and all comments received may be viewed online through the Federal eRulemaking portal at: <http://www.regulations.gov>. Regulations.gov is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Office of the **Federal Register's** home page at: <http://www.gpoaccess.gov>.

Background

This rulemaking proposes to modify existing regulations to make it consistent with several changes in applicable laws and regulations. These revisions will ensure compatibility with 23 U.S.C. 106 and the Office of

Management and Budget (OMB) Circular A-131 on Value Engineering. These revisions will also address certain findings contained in a 2007 Office of Inspector General (OIG) report on value engineering in the Federal-Aid Highway Program (FAHP) <http://www.oig.dot.gov/sites/dot/files/pdfdocs/mh2007040.pdf>) in which the OIG recommended that the FHWA make certain changes to the VE policy. This rulemaking would not change the reporting structure now in place, revise the threshold of projects for which a value engineering analysis is required, or otherwise impose any new burdens on States.

The regulation is also being revised to enhance the consistency with the VE analyses that are conducted and to enhance FHWA's stewardship and oversight of these regulations. These revisions will advance the integration of VE analysis into the planning and development of Federal-aid projects. These revisions will facilitate enhancements to the VE analyses agencies conduct and will foster the use of innovative technologies and methods while eliminating unnecessary and costly design elements, thereby improving the projects' performance, value, and quality, and reducing the time to develop and deliver projects. The proposed revisions are discussed in the section analysis below.

The VE analyses on Federal-Aid highway projects was first established by Congress in the Federal-Aid Highway Act of 1970. The OMB Circular A-131 on Value Engineering which was issued in May 1993 (http://www.whitehouse.gov/omb/circulars_a131) requires all Federal agencies to establish and maintain a VE program to improve the quality of their programs and acquisition functions. To advance these VE programs, Federal agencies are required to develop and maintain policies and procedures to ensure a VE analysis is conducted on appropriate projects and report annually on the results and accomplishments of the analyses conducted and the program's accomplishments.

In late 1995, Congress passed the National Highway System Designation Act which directed the Secretary to establish a program that required States to carry out a VE analysis for all Federal-aid highway projects on the National Highway System with an estimated total cost of \$25 million or more. On February 14, 1997, the FHWA published its VE regulations in 23 CFR 627 formally establishing the FHWA VE program along with the requirement that State Transportation Agencies (STAs) create and sustain a VE program.

Section 1904 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), required that a VE analysis be conducted for bridge projects with an estimated total cost of \$20 million or more and any other projects designated by the Secretary of Transportation.

The FHWA annually collects and reports on VE accomplishments achieved within the Federal-aid and Federal Lands Highway Programs. For VE studies conducted during the planning and development phases of projects, the FHWA tracks the number of studies conducted; the number of proposed and implemented recommendations; the value of the implemented recommendations; information regarding the STA's VE program (e.g., policies, procedures, training conducted); and FHWA's stewardship and oversight of the VE program. Conducting VE analyses continues to be an effective tool in improving the quality and cost effectiveness of the FAHP projects. In FY 2009 STAs performed VE analyses on 426 Federal-aid highway projects and approved and implemented a total of 1,444 VE recommendations, resulting in a construction cost savings of \$1.693 billion. In addition, a savings of \$44.83 million was realized as the result of approved construction VE change proposals (VECP) that were submitted by contractors and accepted by STAs. Additional information on STA, local authority, and FHWA VE programs and practices is available at: <http://www.fhwa.dot.gov/ve>.

Section-by-Section Discussion of the Proposals

The FHWA is proposing to revise the regulation at 23 CFR part 627—Value Engineering as follows:

Section 627.1—Purpose and Applicability

Section 627.1 would be amended to clarify the relationship between a VE program, the need to establish VE policies and procedures, when a VE analysis is required on applicable projects, and the need to incorporate the approved recommendations into the project's plans. These amendments would also clarify the need for VE programs to establish the policies, procedures, and functions to monitor, assess, and report on the VE program, VE analyses conducted, and VECPs accepted.

Section 627.3—Definitions

Section 627.3 would be amended to clarify and consistently reference the requirements associated with

conducting a VE analysis versus a VE study. A definition will also be added to describe what a VE job plan is and how it may be used to document the VE analysis process and results of the activities that were conducted. A definition will be added to describe what a VECP is and how it may be used as a clause in a construction project's specifications and contract.

Section 627.5—Applicable Projects

The title of sec. 627.5 would be changed from General Principles and Procedures to Applicable Projects to clarify when a VE analysis is required by FHWA. Section 627.5(b) would be amended to clarify when a VE analysis shall be conducted on projects that utilize FAHP funding so that it is consistent with the statutory changes contained in sec. 1904 of SAFETEA-LU. Section 627.5(c) and (d) would clarify the requirements associated with conducting the VE analysis and then splitting the project into multiple construction contracts in final design.

Section 627.7—VE Programs

A new section, sec. 627.7, would clarify the responsibilities and expectations associated with the existing requirement that STAs develop and sustain a VE program, and identify a VE program coordinator responsible for leading this program. Section 627.7(b) would clarify the responsibilities of STAs and local authorities to ensure that the required VE analysis is conducted on all of the required projects within their State.

Section 627.9—Conducting a VE Analysis

A new section, sec. 627.9, would clarify the responsibilities associated with conducting a VE analysis. These revisions would clarify the required analysis to be conducted, when the analysis should be conducted, identifying and selecting recommendations, implementing the approved recommendations, evaluating or validating the influence of the implemented recommendations, and encouraging the use of VECPs in the construction phase of projects.

Rulemaking Analyses and Notices

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

The FHWA has determined that this proposed rule would not be a significant regulatory action within the meaning of Executive Order 12866 and would not be significant within the meaning of the U.S. Department of Transportation regulatory policies and procedures.

The proposed amendments revise requirements for conducting VE analyses. It is anticipated that the economic impact of this rulemaking would be minimal; therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed rule on small entities and anticipates that this action would not have a significant economic impact on a substantial number of small entities. The proposed amendment addresses VE studies performed by STAs on certain projects using Federal-aid highway funds. As such, it affects only States, and States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the RFA does not apply, and the FHWA certifies that the proposed action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This NPRM would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). The actions proposed in this NPRM would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$140.8 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, 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 in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism Assessment)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this proposed action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this proposed

rule directly preempts any State law or regulation or affects 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 apply to this program.

Paperwork Reduction Act

FHWA invites public comment about our intention to request the OMB approval for a new information collection, which is summarized in Background section of this document. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

Collection Title: Value Engineering Analyses on Federal-aid Highway Projects.

Type of Request: New information collection requirement.

Respondents: 50 States, the District of Columbia, and Puerto Rico.

Frequency: One collection every year.

Estimated Average Burden per

Response: It will take approximately 30 minutes to compile the results of each VE analysis that is conducted. It will also take approximately 3 hours to compile the results of all of the VE analyses that are conducted annually in each State DOT, the District of Columbia, and Puerto Rico and to submit these results to FHWA. Nationwide on average there are approximately 400 VE analyses that are conducted annually.

Estimated Total Annual Burden

Hours: Approximately 356 hours per year.

When submitting comments for this proposed information collection, use the FHWA Docket ID Number FHWA-2011-0046. You may use by any of the following methods:

Web Site: For access to the document to read background documents or comments received go to the Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 1-202-493-2251.

Mail: Document Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery or Courier: U.S. Department of Transportation, West

Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

National Environmental Policy Act

The FHWA has analyzed this proposed action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and anticipates that this action would not have any effect on the quality of the human and natural environment, because this rule would merely establish the requirements that apply to VE analyses whenever an applicable Federal-aid highway project is to be constructed.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposed action under Executive Order 13175, dated November 6, 2000, and believes that this 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 law. This proposed rulemaking merely establish the requirements that apply to VE analyses whenever an applicable Federal-aid highway project is to be constructed and would not impose any direct compliance requirements on Indian Tribal governments, nor would it have any economic or other impacts on the viability of Indian Tribes. Therefore, a Tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

The FHWA has analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution or Use. We have determined that this proposed action would not be a significant energy action under that order because any action contemplated would not be likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, the FHWA certifies that a Statement of Energy Effects under Executive Order 13211 is not required.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interference 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)

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

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 number 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 627

Grant programs-transportation, Highways and roads.

Issued on: June 13, 2011.

Victor M. Mendez,
Administrator.

In consideration of the foregoing, the FHWA proposes to revise 23 CFR part 627 as follows:

PART 627—VALUE ENGINEERING

Sec.

- 627.1 Purpose and Applicability.
- 627.3 Definitions.
- 627.5 Applicable Projects.
- 627.7 VE Programs.
- 627.9 Conducting a VE Analysis.

Authority: 23 U.S.C. 106(e), 106(g), 106(h), 112(a) and (b), 302, 315; and 49 CFR part 18.

§ 627.1 Purpose and Applicability.

(a) The purpose of this subpart is to prescribe the programs, policies and procedures for the integration of value engineering (VE) into the planning and development of all applicable Federal-aid highway projects.

(b) Each State transportation agency (STA) shall establish and sustain a VE program. This program must establish the policies and procedures identifying when a VE analysis is required on all applicable projects. These policies and procedures should also identify when a VE analysis is encouraged on all other

projects where there is a high potential to realize the benefits of a VE analysis.

(c) STAs and local authorities shall establish the policies, procedures, functions, and capacity to monitor, assess, and report on the performance of the VE program, along with the VE analyses that are conducted and Value Engineering Change Proposals (VECP) that are accepted.

§ 627.3 Definitions.

(a) *Project*. A portion of a highway that a STA or public authority proposes to construct, reconstruct, or improve as described in the preliminary design report or applicable environmental document. A project may consist of several contracts, or phases of a project or contract, which are implemented over several years.

(b) *VE analysis*. The systematic process of reviewing and assessing a project by a multidisciplinary team not directly involved in the planning and development phases of a specific project that is conducted to provide recommendations for:

(1) Providing the needed functions, including any community and environmental commitments, safely, reliably, efficiently, and at the lowest overall life-cycle cost (as defined in 23 U.S.C. 106(f)(2));

(2) Improving the value and quality of the project; and

(3) Reducing the time to develop and deliver the project.

(c) *VE Job Plan*. A systematic and structured plan of action for conducting and documenting a VE analysis and ensuring the implementation of the recommendations. The job plan must consist of and document:

(1) Gathering of information;

(2) Analyzing functions, worth, cost, performance, and quality;

(3) Speculating using creative techniques to identify alternatives that can provide the required functions;

(4) Evaluating the lowest life-cycle cost alternatives;

(5) Developing alternatives into fully supported recommendations;

(6) Documenting VE recommendations for review, approval, and implementation;

(7) Implementing recommendations; and

(8) Evaluating the implemented recommendations.

(d) *Value Engineering Change Proposal (VECP)*. A construction contract provision by which the contractor proposes changes in the project's plans, designs, specifications, or contract documents. These proposed changes may improve the project's performance, value and/or quality,

lower construction costs, or shorten the delivery time, while having no adverse impact on the project's overall life-cycle cost.

§ 627.5 Applicable Projects.

(a) STA's and local authorities shall conduct a VE analysis on each applicable project that utilizes Federal-aid highway funding and incorporate all approved recommendations into the project's plans, specifications and estimates.

(b) Applicable projects shall include the following:

(1) Each project located on the National Highway System (NHS) (as specified in 23 U.S.C. 103(a)) with an estimated total project cost of \$25 million or more that utilizes Federal-aid highway funding;

(2) Each bridge project located on or off of the NHS with an estimated total project cost of \$20 million or more that utilizes Federal-aid highway funding;

(3) Any Major Project (as defined in 23 U.S.C. 106(h)), both on or off of the NHS, that utilizes Federal-aid highway funding in any contract or phase comprising the Major Project;

(4) Any project identified in paragraphs (1), (2) or (3) of this subsection where:

(A) A three-year delay or longer occurs from when the final plans for a project are completed and the project advances to a letting for construction and the FHWA determines a substantial change has occurred to the project's scope or design; or

(B) A change is made to a project's scope or design after the final plans for the project were completed and it advances to a letting for construction, increasing the total project cost above the thresholds for conducting a VE analysis; or

(5) Any other Federal-aid project the FHWA determines to be appropriate.

(c) An additional VE analysis is not required if, after conducting the VE analysis required under this part for any project meeting the criteria of subsection (b), the project is subsequently split into smaller projects in the final design phase or if the project is programmed to be completed by the letting of multiple construction projects. However, the STAs may not avoid the requirement to conduct a VE analysis on an applicable project by splitting the project into smaller projects, or multiple construction projects, solely for the purpose of not conducting a VE analysis.

(d) FHWA may require more than one VE analysis to be conducted in the planning and development of Major Projects. The STA's VE program's

policies and procedures shall identify when any additional VE analyses should be considered or conducted in the planning and development of Major Projects.

§ 627.7 VE programs.

(a) The STA must establish and sustain a VE program under which VE studies are conducted for all applicable projects.

(b) STA VE programs. The STA's VE program must:

(1) Establish and document VE program policies and procedures that ensure the required VE analysis is conducted on all applicable projects;

(2) Ensure the VE analysis is conducted prior to initiating the final design of a project and the approved recommendations to be implemented in the project are documented in a final VE report for each project;

(3) Monitor, assess, and disseminate an annual report to the FHWA consisting of a summary of all of the approved and implemented recommendations for all applicable projects requiring a VE analysis, the accepted VECPs, and VE program functions and activities;

(4) Establish and document policies, procedures, and contract provisions that identify if and when VECP's are allowed; the analysis, documentation, basis, and process for evaluating and accepting a VECP; and determine how the net savings of each VECP may be shared between the agency and contractor;

(5) Establish and document policies, procedures, and controls to ensure a VE analysis is conducted for applicable projects administered by local authorities and the results of these analyses are included in the VE program monitoring and reporting; and

(6) Provide for the review of any applicable project where a three-year delay or longer occurs from when the final plans are completed and the project advances to a letting for construction, to determine if a substantial change has occurred to the project's scope or design, which would require a VE analysis to be conducted.

(c) STAs and local authorities shall assure the required VE analysis has been performed on each applicable project and the approved recommendations are incorporated into the project's plans, specifications, and estimate.

(d) STA VE coordinators. STAs must designate a VE Program Coordinator to promote and advance VE program activities and functions. The VE Coordinator's responsibilities must include establishing and maintaining the STA's VE policies and procedures;

developing and sustaining a VE training and capacity building initiative; monitoring, assessing, and reporting on the VE analyses conducted and VE program; participating in periodic VE program and project reviews; submitting the required annual reports to the FHWA; and support the other elements of the VE program.

§ 627.9 Conducting a VE analysis.

(a) A VE analysis should be conducted as early as practicable in the planning or development of a project, preferably before the completion of the project's preliminary design. At a minimum, the VE analysis must be conducted prior to final design.

(b) The VE analysis should be closely coordinated with other project development activities. This assessment will improve the probability of proposed VE recommendations being accepted and incorporated into the project design without conflicting with or adversely impacting previous agency, community, or environmental commitments, the project's scope, and the development of construction schedules. The analysis to be conducted should include a consideration of combining or eliminating inefficient uses of the existing facility and explore the opportunity to refine the project's design or project plans to incorporate innovative technologies, materials, or methods to accomplish the project's purpose and design.

(c) Design-build projects meeting the applicability criteria specified in 23 CFR 627.1(b) must conduct a value analysis prior to the release of the Request for Proposals document.

(d) Projects requiring a VE analysis must:

(1) Use a multi-disciplinary team not directly involved in the planning or design of the project, with at least one individual who is trained and knowledgeable in VE analysis techniques and able to serve as the team's facilitator and coordinator;

(2) Develop and implement the VE Job Plan. The analytical methodology and tools to be used in support of the VE analysis that is conducted should follow recommended industry practices and FHWA guidance to evaluate the potential benefit and impacts that may be expected to occur with the proposed VE recommendations;

(3) Produce a formal written report outlining, at a minimum:

- (i) Project information;
- (ii) Identification of the VE analysis team;
- (iii) Background and supporting documentation, such as information obtained from other analyses conducted

on the project (e.g., environmental, safety, traffic operations, constructability);

(iv) Documentation of the stages of the VE Job Plan which would include documentation of the life-cycle costs that were analyzed;

(v) Summarization of the analysis conducted;

(vi) Documentation of the proposed recommendations and approvals received at the time the report is finalized; and

(vii) The formal written report shall be retained for at least 3 years after the completion of the project (as specified in 49 CFR 18.42).

(e) For bridge projects, in addition to the requirements in subsection (d), the VE analyses must:

(1) Include bridge substructure and superstructure requirements that consider alternative construction materials; and

(2) Be conducted based on:

(A) An engineering and economic assessment, taking into consideration acceptable designs for bridges; and

(B) Using an analysis of life-cycle costs and duration of project construction.

(f) STAs and local authorities may employ qualified consultants (as defined in 23 CFR 172.3) to conduct a VE analysis. A consulting firm or individual must not be used to conduct or support a VE analysis if they have a direct or indirect conflict of interest in connection with the subject project.

(g) VECPs. STAs and local authorities are encouraged to use a VECP clause in an applicable project's specifications and contract, allowing the construction contractor to propose changes in the project's plans, specifications, or other contract documents. The STA and local authority will consider changes that could improve the project's performance, value and quality, shorten the delivery time, or lower construction costs, while having no adverse impact on the project's overall life-cycle cost. The basis for a STA or local authority to consider a VECP is the analysis and documentation supporting the proposed benefits that would result from implementing the proposed change in the project's contract or project plans.

(h) Proposals to accelerate construction after the award of the contract will not be considered a VECP and will not be eligible for Federal-aid highway program funding participation. Where it is necessary to accelerate construction, STAs and local authorities are encouraged to use the appropriate incentive or disincentive clauses so that all proposers will take this into account

when preparing their bids or price proposals.

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BILLING CODE 4910-22-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1904

[Docket No. OSHA-2010-0019]

RIN 1218-AC50

Occupational Injury and Illness Recording and Reporting Requirements—NAICS Update and Reporting Revisions

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule.

SUMMARY: OSHA is proposing to update Appendix A to Subpart B of its Injury and Illness Recording and Reporting regulation. Appendix A contains a list of industries that are partially exempt from maintaining records of occupational injuries and illnesses, generally due to their relatively low rates of occupational injury and illness. The current list of industries is based on the Standard Industrial Classification (SIC) system. In 1997, the North American Industry Classification System (NAICS) was introduced to classify establishments by industry. The proposed rule would update Appendix A by replacing it with a list of industries based on NAICS and more recent injury and illness data.

The proposed rule would also require employers to report to OSHA, within eight hours, all work-related fatalities and all work-related in-patient hospitalizations; and within 24 hours, all work-related amputations. The current regulation requires an employer to report to OSHA, within eight hours, all work-related fatalities and in-patient hospitalizations of three or more employees.

DATES: *Written comments:* Comments must be submitted by September 20, 2011.

ADDRESSES: *Written comments:* You may submit comments, identified by docket number OSHA-2010-0019, or regulatory information number (RIN) 1218-AC50, by any of the following methods:

Electronically: You may submit comments electronically at <http://www.regulations.gov>, which is the Federal e-rulemaking portal. Follow the