12–12–97
Vol. 62 No. 239
Pages 65309–65592

federal register

Friday
December 12, 1997

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see the announcement on the inside cover of this issue.

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on ***GPO Access*** products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the **Federal Register** on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $555, or $607 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC
Subscriptions:
Paper or fiche **202–512–1800**
Assistance with public subscriptions **512–1806**
General online information **202–512–1530; 1–888–293–6498**
Single copies/back copies:
Paper or fiche **512–1800**
Assistance with public single copies **512–1803**
FEDERAL AGENCIES
Subscriptions:
Paper or fiche **523–5243**
Assistance with Federal agency subscriptions **523–5243**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: December 16, 1997 at 9:00 am.
WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW
Washington, DC
(3 blocks north of Union Station Metro)
RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register

Vol. 62, No. 239

Friday, December 12, 1997

Separate Parts In This Issue

Reader Aids

Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board

Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Federal Register
Vol. 62, No. 239
Friday, December 12, 1997

Presidential Documents

Title 3—

The President

Proclamation 7059 of December 9, 1997

Human Rights Day, Bill of Rights Day, and Human Rights Week, 1997

By the President of the United States of America

A Proclamation

Human rights are the cornerstone of American democracy. The founders of our democracy, in their wisdom, recognized the inherent dignity of every human being and enshrined in the Bill of Rights our profound commitment to freedom of speech, religion, and assembly and the right to due process and a fair trial. Through more than two centuries of challenge and change, these guiding principles have sustained us. They form the common ground on which our racial, religious, and ethnic diversity can flourish.

It is a measure of our greatness as a Nation that each new generation of Americans has sought to advance and extend the rights set forth by Thomas Jefferson in the Declaration of Independence and by the framers of our Constitution. Promoting human rights and democracy around the world is a central pillar of our foreign policy. We seek to protect and advance human rights for all, not only because a world that respects such rights will be freer, safer, and more prosperous, but also so that we may keep faith with the vision of our founders, who knew that these rights are the deepest reflection of America's fundamental values.

This week marks the beginning of the world's celebration of the 50th anniversary year of the Universal Declaration of Human Rights. The adoption of this set of principles by the United Nations on December 10, 1948, was a landmark event in the course of modern human history. The Declaration represented a collective condemnation by nearly 50 U.N. member states of the widespread and devastating human rights abuses committed prior to and during World War II, and it reflected a consensus on what the postwar world should seek to become. Among the Declaration's 30 articles are affirmations of the right to life, liberty, and personal security; the right to freedom of thought, religion, and expression; and the right to freedom from slavery, torture, and arbitrary arrest and detention.

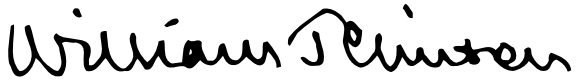
It was fitting that a great American, Eleanor Roosevelt, played a pivotal role in the development of the Universal Declaration of Human Rights, which so closely reflected the tenets of our own Bill of Rights. As Chair of the U.N. Commission on Human Rights, she led the efforts of its 18 members to define basic rights and freedoms and to draft the international affirmation of rights that was ultimately adopted by the General Assembly. Today, thanks to those efforts, scores of countries across the globe have incorporated these fundamental principles into their laws and practices, and millions of people are leading freer, happier, and more fulfilling lives.

Now our challenge is to reaffirm the universality of these precepts and to ensure that all the world's peoples share in their protections. While we have made great progress in this endeavor, we must recognize that intolerance, discrimination, and persecution continue to darken our vision of a better future. Each of us has a part to play in upholding human rights for men and women of all political, ethnic, religious, and racial backgrounds. The words of Eleanor Roosevelt are both an inspiration and a challenge, not only to Americans, but also to citizens throughout the

international community: ''The destiny of human rights is in the hands of all of our citizens and all of our communities.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 1997, as Human Rights Day; December 15, 1997, as Bill of Rights Day; and the week beginning December 10, 1997, as Human Rights Week. I call upon the people of the United States to celebrate these observances with appropriate programs, ceremonies, and activities that demonstrate our national commitment to the Bill of Rights, the Universal Declaration of Human Rights, and the promotion of human rights for all people.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of December, in the year of our Lord nineteen hundred and ninety-seven, and of the Independence of the United States of America the two hundred and twenty-second.



[FR Doc. 97–32685
Filed 12–11–97; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register

Vol. 62, No. 239

Friday, December 12, 1997

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AH65

Pay Under the General Schedule; Locality Pay Areas for 1998

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations to remove two metropolitan areas from the ''Rest of U.S.'' locality pay area and establish two new locality pay areas in January 1998 corresponding to these metropolitan areas. The two metropolitan areas affected by this regulation are Hartford, CT, and Orlando, FL. The President's Pay Agent made the final determination on the boundaries of the new locality pay areas after considering the recommendations of the Federal Salary Council and public comments.

EFFECTIVE DATE: The regulations are effective on January 1, 1998, and are applicable on the first day of the first pay period beginning on or after January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Jeanne D. Jacobson, (202) 606-2858, FAX: (202) 606–0824, or email: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: On October 25, 1996, the Office of Personnel Management (OPM) published proposed regulations to remove two metropolitan areas from the ''Rest of U.S.'' locality pay area and establish two new locality pay areas in January 1998 corresponding to these metropolitan areas based on the recommendations of the Federal Salary Council. (See 61 FR 55227.) OPM received no public comments on the proposed regulations. Therefore, after considering the views of the Federal Salary Council, the President's Pay Agent (consisting of the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of OPM) decided to adopt the Federal Salary Council's recommendations on the two new locality pay areas. This determination was reflected in the Pay Agent's November 27, 1996, report to the President. These final regulations list the locality pay areas for 1998, including the two new locality pay areas corresponding to the following Metropolitan Statistical Areas (MSA's) as defined by OMB—Hartford, CT, including that portion of New London County, CT, outside the Hartford, CT MSA, and Orlando, FL.

The definitions of the MSA's and Consolidated Metropolitan Statistical Areas (CMSA's) that comprise the locality pay areas are found in OMB Bulletin No. 96–08, June 28, 1996. Based on these definitions, the two new locality pay areas for 1998 will be composed of the following geographic areas:

Hartford, CT, Locality Pay Area

Hartford County (part):

Avon town
Berlin town
Bloomfield town
Bristol city
Burlington town
Canton town
East Granby town
East Hartford town
East Windsor town
Enfield town
Farmington town
Glastonbury town
Granby town
Hartford city
Manchester town
Marlborough town
New Britain city
Newington town
Plainville town
Rocky Hill town
Simsbury town
Southington town
South Windsor town
Suffield town
West Hartford town
Wethersfield town
Windsor town
Windsor Locks town

Litchfield County (part):

Barkhamsted town
Harwinton town
New Hartford town
Plymouth town
Winchester town

Middlesex County (part):

Cromwell town
Durham town
East Haddam town
East Hampton town
Haddam town
Middlefield town
Middletown city
Portland town

New London County (all)

Tolland County (part):

Andover town
Bolton town
Columbia town
Coventry town
Ellington town
Hebron town
Mansfield town
Somers town
Stafford town
Tolland town
Vernon town
Willington town

Windham County (part):

Ashford town
Chaplin town
Windham town

Orlando, FL, Locality Pay Area

Lake County
Orange County
Osceola County
Seminole County

Hartford, CT, Locality Pay Area

In its November, 27, 1996, report to the President, the President's Pay Agent accepted the Federal Salary Council's recommendation that Hartford, CT, be established as a separate locality pay area for General Schedule (GS) workers in 1998, including the Hartford, CT MSA, plus that portion of New London County, CT, outside the Hartford, CT MSA. The Pay Agent also adopted the following criteria recommended by the Federal Salary Council for consideration of partial counties as ''areas of application'' in New England. These criteria are needed because OMB uses cities and townships, instead of full counties, to define metropolitan areas in New England.

Criteria for partial-county areas of application in New England:

1. The partial-county area must be contiguous to the pay locality (exclusive

of any other areas of application) and must currently be included in the ''Rest of U.S.'' locality pay area.

2. The partial-county area must contain at least 2,000 GS employees.

3. The entire county must have a population density of more than 200 per square mile or at least 90 percent of the population in urbanized areas.

4. The entire county must demonstrate some economic linkage with the pay locality, defined as commuting at a level of 5 percent or more into or from the areas in question. (The areas in question are the entire county under consideration and the central core of the MSA as defined by the Census Bureau for use in establishing metropolitan areas.)

Because New London County, CT, met all of the above-stated criteria, the Pay Agent accepted the Federal Salary Council's recommendation that that portion of New London County, CT, outside the Hartford, CT MSA be included in the Hartford, CT, locality pay area as an ''area of application'' for 1998.

After the Pay Agent issued its November 1996 report to the President reflecting its determination to establish Hartford, CT, as a new locality pay area for 1998, OPM received a letter from a Member of Congress expressing interest in including the city of Springfield, MA, in the Hartford, CT, locality pay area. The Federal Salary Council determined that Hampden County, MA, which includes the city of Springfield, does not meet the Federal Salary Council's criteria for consideration as an ''area of application.''

Prior to the implementation of locality pay in 1994, the President's Pay Agent adopted the Federal Salary Council's recommendation that the boundaries of locality pay areas follow the boundaries of MSA's and CMSA's as defined by OMB. The Federal Salary Council also recommended that certain areas outside the boundaries of an MSA or CMSA (i.e., ''areas of application'') be included in the locality pay area if they meet certain criteria.

In order for the Federal Salary Council to recommend an area as a county-wide area of application, the affected county must—

1. Be contiguous to a pay locality;

2. Contain at least 2,000 GS–GM employees;

3. Have a significant level of urbanization, based on 1990 Census data. A ''significant level of urbanization'' is defined as a population density of more than 200 per square mile or at least 90 percent of the population in urbanized areas; and

4. Demonstration some economic linkage with the pay locality, defined as commuting at a level of 5 percent or more into or from the areas in question. (The areas in question are the contiguous county under consideration and the central counties (or in the case of New England, the central cores) identified by the Census Bureau for the process of defining the CMSA's and MSA's involved.)

The Federal Salary Council considered Hampden County, MA, under these criteria as a potential area of application before making its October 1996 recommendation to the Pay Agent regarding the new Hartford, CT, locality pay area. However, because Hampden County did not pass the Federal Salary Council's criterion for GS employment (having only 908 GS employees as of March 1996), the Federal Salary Council did not recommend it as an ''area of application'' to the Hartford, CT, locality pay area.

Orlando, FL, Locality Pay Area

The President's Pay Agent accepted the Federal Salary Council's recommendation that Orlando, FL, be established as a separate locality pay area. Although Bureau of Labor Statistics (BLS) surveys showed the pay disparity in Orlando was slightly below the pay disparity for the ''Rest of U.S.'' locality pay area, the Federal Salary Council's established policy provides that any surveyed area with a pay disparity of less than 2/10ths of a percentage point below the ''Rest of U.S.'' pay disparity may qualify to be established or continued as a locality pay area.

The Pay Agent also accepted the Federal Salary Council's recommendation that the Orlando, FL, locality pay percentage be set equal to the ''Rest of U.S.'' locality pay percentage in 1998 and that the Orlando, FL, pay gap be averaged with the ''Rest of U.S.'' pay gap to determine the combined pay gap for the two areas. This is consistent with past practices for dealing with locality pay areas in which the pay disparity is below the ''Rest of U.S.'' pay disparity. BLS will continue to conduct surveys in Orlando, and the Pay Agent and the Federal Salary Council will reconsider these issues in the future.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make these regulations effective in less than 30 days. The regulations are being made effective on January 1, 1998, in order for the locality payments for each locality pay area authorized for 1998 to be applicable on the first day of the first pay period beginning on or after January 1, 1998.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 531 of title 5, Code of Federal Regulations, as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682;

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

Subpart F—Locality-Based Comparability Payments

2. In § 531.603, paragraph (b) is revised to read as follows:

§ 531.603 Locality pay areas.

* * * * *

(b) The following are locality pay areas for the purpose of this subpart:

(1) Atlanta, GA—consisting of the Atlanta, GA MSA;

(2) Boston-Worcester-Lawrence, MA–NH–ME–CT—consisting of the Boston-Worcester-Lawrence, MA–NH–ME–CT CMSA;

(3) Chicago-Gary-Kenosha, IL–IN–WI—consisting of the Chicago-Gary-Kenosha, IL–IN–WI CMSA;

(4) Cincinnati-Hamilton, OH–KY–IN—consisting of the Cincinnati-Hamilton, OH–KY–IN CMSA;

(5) Cleveland-Akron, OH—consisting of the Cleveland-Akron, OH CMSA;
(6) Columbus, OH—consisting of the Columbus, OH MSA;
(7) Dallas-Fort Worth, TX—consisting of the Dallas-Fort Worth, TX CMSA;
(8) Dayton-Springfield, OH—consisting of the Dayton-Springfield, OH MSA;
(9) Denver-Boulder-Greeley, CO—consisting of the Denver-Boulder-Greeley, CO CMSA;
(10) Detroit-Ann Arbor-Flint, MI—consisting of the Detroit-Ann Arbor-Flint, MI CMSA;
(11) Hartford, CT—consisting of the Hartford, CT MSA, plus that portion of New London County, CT, not located within the Hartford, CT MSA;
(12) Houston-Galveston-Brazoria, TX—consisting of the Houston-Galveston-Brazoria, TX CMSA;
(13) Huntsville, AL—consisting of the Huntsville, AL MSA;
(14) Indianapolis, IN—consisting of the Indianapolis, IN MSA;
(15) Kansas City, MO–KS—consisting of the Kansas City, MO–KS MSA;
(16) Los Angeles-Riverside-Orange County, CA—consisting of the Los Angeles-Riverside-Orange County, CA CMSA, plus Santa Barbara County, CA, and that portion of Edwards Air Force Base, CA, not located within the Los Angeles-Riverside-Orange County, CA CMSA;
(17) Miami-Fort Lauderdale, FL—consisting of the Miami-Fort Lauderdale, FL CMSA;
(18) Milwaukee-Racine, WI—consisting of the Milwaukee-Racine, WI CMSA;
(19) Minneapolis-St. Paul, MN–WI—consisting of the Minneapolis-St. Paul, MN–WI MSA;
(20) New York-Northern New Jersey-Long Island, NY–NJ–CT–PA—consisting of the New York-Northern New Jersey-Long Island, NY–NJ–CT–PA CMSA;
(21) Orlando, FL—consisting of the Orlando, FL MSA;
(22) Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD—consisting of the Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD CMSA;
(23) Pittsburgh, PA—consisting of the Pittsburgh, PA MSA;
(24) Portland-Salem, OR–WA—consisting of the Portland-Salem, OR–WA CMSA;
(25) Richmond-Petersburg, VA—consisting of the Richmond-Petersburg, VA MSA;
(26) Sacramento-Yolo, CA—consisting of the Sacramento-Yolo, CA CMSA;
(27) St. Louis, MO–IL—consisting of the St. Louis, MO–IL MSA;
(28) San Diego, CA—consisting of the San Diego, CA MSA;
(29) San Francisco-Oakland-San Jose, CA—consisting of the San Francisco-Oakland-San Jose, CA CMSA;
(30) Seattle-Tacoma-Bremerton, WA—consisting of the Seattle-Tacoma-Bremerton, WA CMSA;
(31) Washington-Baltimore, DC–MD–VA–WV—consisting of the Washington-Baltimore, DC–MD–VA–WV CMSA, plus St. Mary's County, MD; and
(32) Rest of U.S.—consisting of those portions of the 48 contiguous States not located in another locality pay area.

[FR Doc. 97–32580 Filed 12–11–97; 8:45 am]
BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401 and 457

RIN 0563–AB03

General Crop Insurance Regulations; Hybrid Sorghum Seed Endorsement and Common Crop Insurance Regulations; Hybrid Sorghum Seed Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of hybrid sorghum seed. The provisions will be used in conjunction with the Common Crop Insurance Policy, Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current hybrid sorghum seed endorsement under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current hybrid sorghum seed endorsement to the 1997 and prior crop years.

DATES: Effective December 12, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Nesheim, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866 and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The effect of this regulation on small entities will be no greater than on larger entities. Under the current regulations, a producer is required to complete an application and an acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements.

The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This final rule has been reviewed in accordance with Executive Order No. 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Monday, December 30, 1996, FCIC published a proposed rule in the **Federal Register** at 61 FR 68674 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.112 (Hybrid Sorghum Seed Crop Insurance Provisions). These provisions will replace and supersede the current provisions for insuring hybrid sorghum seed found at 7 CFR section 401.109 and will be effective for the 1998 and succeeding crop years. This rule also amends section 401.109 to restrict its effect to the 1997 and prior crop years.

Following publication of the proposed rule, the public was afforded 60 days to submit written comments. A total of 36 comments were received from reinsured companies and an insurance service organization. The comments received, and FCIC's responses, follow:

Comment: A reinsured company and an insurance service organization believed that the calculation sequence in the definition of ''amount of insurance per acre'' formula should be revised to match the order shown in the Special Provisions. The commenter stated that in the Special Provisions, multiplication by the price election is not in the proper sequence. Amount of insurance per acre is the county yield, multiplied by the factor for the coverage level selected, multiplied by the price election selected by the producer less any minimum guaranteed payment.

Response: FCIC has revised and clarified the definition to show the proper calculation. Since the calculation is in the Crop Provisions, it will be removed from the Special Provisions.

Comment: An insurance service organization suggested that the definition of ''female parent plant'' may have to be changed because some companies have started experimenting with female sterile plants from which the stamen may not have to be removed.

Response: FCIC has revised the definition to accommodate those instances where the parent plants are rendered male sterile by means other than stamen removal.

Comment: A reinsured company and an insurance service organization suggested that the definition of ''interplanting'' be revised to match its use in the Special Provisions. Interplanting is listed as a separate type with a different county yield than standard planting.

Response: The Special Provisions uses the term ''interplanting'' and the Crop Provisions uses the term ''interplanted,'' and the terms have different meanings. To avoid any confusion between these terms, FCIC will change the reference from ''interplanting'' to ''non-standard planting'' in the Special Provisions.

Comment: A reinsured company suggested that in the definition of ''irrigated practice,'' the words ''and quality'' be added after the words ''* * * providing the quantity.''

Response: Water quality is important. However, there are no clear criteria regarding the quality of water necessary to produce a crop. The highly variable factors involved would make such criteria difficult to develop and administer. The provisions regarding good farming practices can be applied in situations in which the insured failed to exercise due care and diligence in the application of irrigation water. No change has been made.

Comment: An insurance service organization suggested adding, in the definition of ''non-seed amount,'' the phrase ''rejected for seed purposes'' or something similar after the first reference to ''non-seed production'' for clarification.

Response: FCIC has revised the definition and section 12 to clarify that non-seed production is production that does not qualify as seed production because of inadequate germination.

Comment: A reinsured company and an insurance service organization suggested that the definition of ''planted acreage'' be amended to require that the male and female parent plants be planted in accordance with the production management practices of the seed company.

Response: The definition of ''planted acreage'' is broad enough to permit planting in accordance with practices of the seed company. The requirement that parent plants be planted in accordance with the production management practices of the seed company is more appropriate in sections 7 and 10 regarding insured crop and causes of loss, and those provisions have been revised accordingly.

Comment: A reinsured company and an insurance service organization suggested that a conflict exists between the definition of ''sample'' and ''inadequate germination'' because the germination rate is determined by using a certified seed test on clean seed, not field run seed.

Response: There is no conflict between the terms. The sample must be at least 3 pounds of field run seed. The germination rate is based on the amount of clean seed obtained from that sample. No change has been made.

Comment: An insurance service organization asked why a seed company must now be a corporation (previously defined as a ''business enterprise''), and if there are any legitimate seed companies that are not corporations.

Response: A seed company need only be a corporation if the seed company is also the producer. To cover all other situations, FCIC has changed ''a corporation'' to ''a business enterprise'' in the definition of seed company.

Comment: An insurance service organization suggested that section 2(a) be changed to read ''. . . a basic unit, as defined in section 1 of the Basic Provisions, may be divided . . .'' instead of ''(basic unit)'' at the end of the earlier phrase.

Response: All definitions and most provisions common to most crops with respect to units have been deleted and moved to the Basic Provisions.

Comment: A reinsured company and an insurance service organization stated that the provisions contained in section 2(e)(1), which require the insured to keep records by optional unit for optional units to apply, conflict with

section 3(b) which correctly indicates that production reporting requirements do not apply to this crop. In most instances the sorghum seed is harvested and hauled directly to the seed companies' processing facilities. The seed company maintains records of planted acreage and harvested production and provides all of the yield records used by the FCIC Regional Service Office (RSO) to establish the approved yields. All references to the insured maintaining records by optional unit should not be a requirement since this is maintained at the seed company level. The historical yield of the producer's sorghum seed is not used to establish the amount of insurance as stated in section 2(e)(1). The amount of insurance is based on the county yield, coverage level and price elected and any minimum guaranteed payment.

Response: The insured must have verifiable records of planted acreage and production for each optional unit for at least the ''. . . last crop year used to determine the amount of insurance.'' This requirement should not be removed simply because the seed company maintains those records. In order to protect the integrity of the program, FCIC must be able to verify the accuracy of the guarantee for each unit. If the producer cannot provide the records for each optional unit, they will be combined in basic units. The insured can obtain the necessary records from the seed company. These provisions have been moved to the Basic Provisions and deleted from these Crop Provisions.

Comment: An insurance service organization suggested that the opening phrase of section 2(e)(4) ''Each optional unit must meet one or more of the following criteria, as applicable:'' Is not necessary, and may actually cause confusion, since this crop has only one method for optional unit division (by section or other legal description). Perhaps section (e)(4) should start with ''Each optional unit is located in a separate legally identified section. . . .''

Response: All relevant changes have been made to the Basic Provisions and those provisions deleted in these Crop Provisions.

Comment: A reinsured company was concerned about the requirement that the producer must meet all the requirements in section 6. They stated that these requirements should not be mandatory for every acreage report.

Response: The information required in the acreage report is necessary to establish liability, premium, and insurability of the acreage. No change has been made.

Comment: A reinsured company and an insurance service organization mentioned that in section 6(a), each individual producer is the named insured under this program and may not know the type or variety of hybrid. The seed companies provide the seed and the producer grows it. Seed companies do not want this information going any further than necessary while still meeting the requirements of the MPCI program. This information is needed only in the event of a claim and can be obtained from the seed company as needed at that time. The commenter believes collection of this information should be an option since the insurance provider may want to capture it in certain instances but not for all insureds. Therefore, this should be an option, not mandatory as it would be with the word ''must'' in the proposed language.

Response: The reporting requirement by type or variety must be maintained for rating purposes and to determine liability and premium for the unit. Such information cannot be obtained only at the time of loss. It is the responsibility of the producer to provide the information, which should be contained in the hybrid sorghum seed processor contract. No change has been made.

Comment: A reinsured company and an insurance service organization mentioned that section 6(b) requires that acreage occupied by the male parent plants be reported. They realize it is common for other crops to obtain all insurable and uninsurable acreage of the crop. However, this stipulation to capture the total acreage occupied by the male parent plants is an unnecessary and burdensome requirement for hybrid sorghum seed. The commenter suggested that this should only be determined in the event of a claim. A number of seed companies require that the male acres be destroyed after pollination.

Response: The requirement to report any acreage occupied by male parent plants is necessary to determine the correct amount of insurance for a unit since acres with male plants are not insurable. The amount of insurance is determined on the Summary of Coverage so the insurance provider cannot wait until the loss to determine insurable acreage. The burden of determining the amount of acreage occupied by the male plant can be minimized by mathematical calculation based on the planting pattern of the crop. No change has been made.

Comment: A reinsured company and an insurance service organization questioned section 6(c), which requires the insured to certify that there is a hybrid sorghum seed processor contract and the amount of any minimum guaranteed payment. The commenter questioned what constitutes certification. It is their feeling that if the insured goes through the FCIC RSO to obtain an approved yield, and upon receiving copies of this information, this would be adequate certification that the insured has a contract. The presumption is that the FCIC RSO would not go through this process between the producer and the seed company if there was not some type of contractual agreement in place. If they obtain some of this information directly from the seed company it would also constitute certification as the seed company would not provide this information if a contract was not in place. If this does not constitute certification for the purposes of having a contract then they have some concerns as to what additional requirements must be met.

Response: The certification requirement is satisfied by a written statement on the acreage report, signed by the producer, that such a contract exists. In many cases, the RSO provides an approved yield for a variety, not specifically for individual producers. Since the processor contract is a condition of insurance, the insurance provider must have some assurance that a contract exists. Receipt of an approved yield from the RSO is not evidence of a contract between the processor and the producer. No change has been made.

Comment: An insurance service organization asked if all the exceptions in section 7(a)(4)(I)–(iv) should be required by written agreement. For example, the commenter questioned why acreage with female and male parent plants in the same row would ever be insurable. Perhaps the phrase ''unless allowed'' should be removed from item (4) and inserted at the specific items where it is actually possible.

Response: Current planting practices do not allow male and female plants in the same row. However, acceptable planting practices may change and the provision must allow a certain amount of flexibility to cover such changes. No change has been made.

Comment: Reinsured companies and an insurance service organization questioned why section 7(c) requires the seed company to be a corporation. The commenters also questioned whether there could be other acceptable legal entities that could conduct business as a seed company, and if the requirement in section 7(c)(1) is necessary, since ''seed company'' is a defined term.

Response: In most cases, a seed company need not be a corporation and FCIC has changed the requirement for a

seed company from a ''corporation'' to a ''business enterprise'' in the definition. However, to protect the integrity of the program, the seed company must be a corporation if the seed company is also the producer. FCIC has added a provision in the definition to require seed companies that are also the insured to be a corporation.

Comment: A reinsured company and an insurance service organization noted that section 7(c)(3) states that if sales records are not available from a seed company who is also the insured, the crop could be insured under the coarse grains policy, not the hybrid sorghum seed policy. Yield potential for sorghum seed is lower than that for commercial sorghum, so this would be a questionable move.

Response: FCIC agrees that hybrid sorghum seed is best suited for insurance under the hybrid sorghum seed policy, but records must be provided to assure that the person seeking insurance is a bona-fide producer of hybrid sorghum seed. If the crop is insured under the Coarse Grains Crop Provisions, the approved yield would be derived from grain sorghum production records of the processor for the particular type or variety. The last sentence of section 7(c)(3) has been revised to allow such insurance by written agreement.

Comment: An insurance service organization asked if it is necessary that the phrase ''Of the insured crop'' be specified in section 8(c) but not for sections 8(a) or 8(b).

Response: FCIC has clarified the provision. Further, since damage to the male plant could also necessitate replanting, FCIC has modified section 8(c) to include both male and female parent plants.

Comment: An insurance service organization stated that the phrase ''insurance attaches after'' in section 9(a) creates an ambiguity with respect to when insurance attaches. The commenter suggested that the term ''after'' could be changed to ''once'' (or ''upon completion of planting:'') and then delete ''is completely planted'' from items (1) and (2).

Response: Section 9(a) has been clarified.

Comment: A reinsured company and an insurance service organization stated that the provisions in section 11(a) stipulate that any representative samples must consist of one complete planting pattern the entire length of the field if the acreage will not be harvested. The commenters prefer that each representative sample be one complete pattern which is long enough to provide a 1/100 acre sample, and that these be at various representative areas of the field rather than the entire length of the field. This would be consistent with the appraisal methods specified in the loss adjustment procedures.

Response: More than one representative sample may be required by the insurance provider, and such samples may be in different parts of the field. However, by having a strip the entire length of the field, the loss adjuster can choose the areas to be sampled and is not restricted to the crop the insured chose to leave for this purpose. This permits a more accurate appraisal. Further, it would be difficult for the person harvesting the crop to know what constitutes 1/100 of an acre. No change has been made.

Comment: An insurance service organization suggested that since the Basic Provisions state that the term ''representative sample'' will be further defined in the Crop Provisions, it should be included in section 1 with the other definitions (as in the 1988–CHIAA 797) so the term would be more easily located.

Response: The requirement for representative samples is substantive and, therefore, should not be in the definition section. The Basic Provisions are revised to amend the definition to state ''as specified in the Crop Provisions.''

Comment: A reinsured company and an insurance service organization suggested the requirement in section 11(b)(2) that the insured provide a completed copy of the seed processor contract in the event of a loss should be optional, not mandatory. If an insurance company insures all of a seed company's producers, the company knows each producer has a seed contract, and should not have to obtain a copy from each one. The insurance company will have a copy of the base contract for each seed company and nothing is gained by having to obtain the exact contract in effect for each producer. If some producers insured with an insurance company grow hybrid sorghum seed for various seed companies (not all of their producers are insured with them) there may be some benefit in obtaining a copy of their contract.

Response: Since not all producers may receive the same contract terms, the insurance company must verify contract terms, unless it has been determined that the contract provided by the seed company is used for all its producers without any waivers or amendments. Section 11(b)(2) has been revised accordingly.

Comment: An insurance service organization suggested that the provisions in section 12(e)(1)(v) (redesignated section 12(d)(1)(v)) should not allow the insured to defer settlement and wait for a later, generally lower, appraisal, especially on crops that have a short ''shelf life.''

Response: A later appraisal will only be necessary if the insurance provider and the insured do not agree on the appraisal or the insurance provider believes the crop needs to be carried further. The producer must continue to care for the crop. If the producer does not care for the crop, the original appraisal will be used. No change will be made.

Comment: An insurance service organization stated that section 12(e)(2) (redesignated 12(d)(2)), counts harvested production *delivered to* the seed company, whereas section 6(c)(1)(a) of the 1998–CHIAA 797 counts harvested production delivered to and *accepted by* the seed company. The commenter questioned whether this is a change, or should this provision be interpreted to mean that production is not considered delivered until it is accepted.

Response: This is a change. Section 12(d)(2) provides that seed production to be counted includes mature harvested production that is delivered as commercial hybrid sorghum seed to the seed company stated in the hybrid sorghum seed processor contract, regardless of quality, unless the production has inadequate germination.

Comment: A reinsured company and an insurance service organization stated that section 12(g)(2) (redesignated section 12(f)(2)) requires a company to work the claim in the same manner as the records of the seed company provided for establishing the approved yield. Since the approved yield is calculated by the RSO, the insurance provider must be notified when a seed company has its own method for converting the production.

Response: In order to ensure the accuracy of any claim, the same moisture and weight per bushel must be used to calculate the amount of insurance and the production to count. The FCIC procedure will specify that the seed company will provide its conversion chart with the production records. FCIC will provide the conversion chart to the insurance provider when the moisture or weight used to determine a bushel differs from the definition stated in the policy.

Comment: A reinsured company and an insurance service organization suggested that the substitute crop provisions under Prevented Planting

coverage should be eliminated, as indicated in other comments being submitted and as being discussed separately.

Response: The prevented planting provisions have been moved to the Basic Provisions and FCIC has revised these provisions to remove the substitute crop provisions.

Comment: A reinsured company understands that FCIC plans to revise prevented planting for 1998 and assumes that these new provisions will be incorporated into this policy.

Response: The prevented planting provisions have been moved to the Basic Provisions and will be applicable to this policy.

Comment: An insurance service organization suggested that section 13(d)(2) may be confusing because a sentence that states ''The unit consists of 185 acres * * *'' is followed immediately by a sentence that states ''The unit consists of 150 acres * * *''. The example would be clearer if it stated ''The unit consists of 150 acres of female parent plants of the same type and variety (an additional 35 acres are occupied by the male parent plants, which are not insurable). Of the 150 acres, 50 acres were planted * * *'' or some similar statement. At the least, the latter should read ''The unit consists of 150 insurable acres * * *''.

Response: The late and prevented planting provisions common to most crops have been moved to the Basic Provisions.

Comment: An insurance service organization suggested that instead of specifying years in section 13(d)(4)(ii), it could be written with references to ''this year'' and ''the following year'' so it wouldn't look outdated in subsequent years. Also, consider changing ''for the purpose of the preceding sentence'' to ''for this purpose''.

Response: The late and prevented planting provisions common to most crops are deleted and moved to the Basic Provisions.

Comment: A reinsured company and an insurance service organization suggested that section 13(d)(5)(ii) should be changed since hybrid sorghum seed is a crop grown under contract with a seed company, which dictates the number of acres to be planted. The maximum eligible acreage for prevented planting coverage should be contracted acres, regardless of how many acres may have been planted in previous years.

Response: FCIC has clarified the provisions in the Basic Provisions.

Comment: An insurance service organization suggested that in section 13(d)(5)(iv)(E), the sentence should begin with ''On which * * *'' (Or at least the first word should be capitalized to match the other items).

Response: FCIC has revised the provision appropriately in the Basic Provisions.

Comment: An insurance service organization questioned whether is it necessary to keep repeating ''guarantee, or amount of insurance'' as alternatives to a ''prevented planting indemnity'' in section 13(d)(5)(iv)(F).

Response: The prevented planting guarantee; amount of insurance; and indemnity refer to different amounts, and all terms are necessary. No change has been made in the Basic Provisions.

Comment: Reinsured companies and an insurance service organization recommended deleting section 14(d). Written agreements should not be limited to one year. Rather, such agreements should be valid for the period stated in the agreement. In most cases, written agreements should be continuous, as is the case with the policy.

Response: Written agreements are, by design, temporary and intended to address unusual circumstances. If the conditions that require a written agreement exists for multiple crop years, the policy or Special Provisions should be amended to accommodate the conditions. The written agreement provisions have been deleted and moved to the Basic Provisions.

Comment: An insurance service organization suggested that the provisions contained in section 14(e) be combined with the provisions in section 14(a).

Response: Section 14(e) is intended to be a limited exception, not the rule, affecting only those cases in which conditions discovered after the sales closing date make a written agreement necessary. Therefore, these provisions should be kept separate. No change has been made in the Basic Provisions.

Comment: A reinsured company was concerned about many of the mandatory requirements added to these provisions. In its view, most of these requirements are unnecessary. The issues of reduced expense reimbursement and simplification should be considered prior to finalizing these provisions. This policy proposes to increase the expense of writing hybrid sorghum seed along with the added complexity involved from the additional collection requirements.

Response: FCIC understands the concerns of this commenter. These Crop Provisions were revised to reduce program vulnerabilities and make the insuring language more precise. FCIC has attempted to minimize the additional requirements imposed upon the policyholder, the reinsured company, and the seed company. All mandatory information is required to fairly and properly administer the policy.

In addition to the changes described above, FCIC has made minor editorial changes and has amended the following provisions:

1. The paragraph preceding section 1 has been revised to refer to the Catastrophic Risk Protection Endorsement for the purpose of clarification.

2. The definitions of ''days,'' ''FSA,'' ''final planting date,'' ''interplanted,'' ''irrigated practice,'' ''late planted,'' ''late planting period,'' and ''timely planted'' have been deleted and moved to the Basic Provisions. Also, deleted the definition of ''seed amount.''

3. The definitions of ''adjusted yield,'' ''approved yield,'' ''county yield,'' ''dollar value of insurance,'' ''hybrid sorghum seed processor contract,'' and ''insurable interest'' have been revised for clarification.

4. A definition of ''coverage level factor'' has been added for clarification.

5. The definitions of ''good farming practices,'' ''planted acreage,'' and ''prevented planting'' have been revised to delete the provisions moved to the Basic Provisions.

6. The definition of ''practical to replant'' has been revised to clarify that it will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the hybrid sorghum seed processor contract, or the seed company agrees to accept such production.

7. Section 2 has been revised to delete those provisions that have been moved to the Basic Provisions, and to clarify the unit structure for hybrid sorghum seed when the hybrid sorghum seed processor contract specifies an amount of production to be delivered. Also, for processor contracts that stipulate a number of acres to be planted, the provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

8. Section 7(d) has been added to allow the insured crop that is under contract with different seed companies to be insured under separate policies with different insurance providers provided all acreage of the insured crop in the county is insured.

9. Section 8(c) has been revised for clarification.

10. In section 10(b)(4), the requirement that the crop be inspected and the loss appraised before harvest is

completed has been deleted to be consistent with section 11(b)(1).

11. Section 12(c) has been revised for clarification. Also, an example of an indemnity calculation has been added for illustration. Section 12(d) is deleted since it was redundant with section 12(e) and the following section redesignated accordingly.

12. In section 12(e)(1)(I), as redesignated, adjusted yield has been changed to amount of insurance per acre.

13. In section 12(f)(2), as redesignated, the last sentence has been revised to clarify that records of the seed company will only be used to determine the amount of production to count if the production is calculated on the same basis as that used to determine the approved yield.

14. Add provision specifying the prevented planting coverage available.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the hybrid sorghum seed insurance coverage and brings it under the Common Crop Insurance Policy, Basic Provisions for consistency among policies. The earliest contract change date that can be met for the 1998 crop year is December 31, 1997. It is, therefore, imperative that these provisions be made final before that date so that reinsured companies and insureds may have sufficient time to implement these changes. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

List of Subjects in 7 CFR Parts 401 and 457

Hybrid sorghum seed endorsement, Crop insurance, Hybrid sorghum seed.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401 and 457 as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 THROUGH 1997 CROP YEARS

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. The introductory text of § 401.109 is revised to read as follows:

§ 401.109 Hybrid sorghum seed endorsement.

The provisions of the Hybrid Sorghum Seed Endorsement for the 1988 through the 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

3. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

4. Section 457.112 is added to read as follows:

§ 457.112 Hybrid sorghum seed crop insurance provisions

The Hybrid Sorghum Seed Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Hybrid Sorghum Seed Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, (§ 457.8) with (1) controlling (2), etc.

1. Definitions.

Adjusted yield. An amount determined by multiplying the county yield by the coverage level factor.

Amount of insurance per acre. A dollar amount determined by multiplying the adjusted yield by the price election you select and subtracting any minimum guaranteed payment, not to exceed the total compensation specified in the hybrid sorghum seed processor contract. If your hybrid sorghum seed processor contract contains a minimum guaranteed payment that is stated in bushels, we will convert that value to dollars by multiplying it by the price election you selected.

Approved yield. In lieu of the definition contained in the Basic Provisions, an amount FCIC determines to be representative of the yield that the female parent plants are expected to produce when grown under a specific production practice. FCIC will establish the approved yield based upon records provided by the seed company and other information it deems appropriate.

Bushel. Fifty-six pounds avoirdupois of the insured crop.

Certified seed test. A warm germination test performed on clean seed according to specifications of the ''Rules for Testing Seeds'' of the Association of Official Seed Analysts.

Commercial hybrid sorghum seed. The offspring produced by crossing a male and female parent plant, each having a different genetic character. This offspring is the product intended for use by an agricultural producer to produce a commercial field sorghum crop for grain or forage.

County yield. An amount contained in the actuarial documents that is established by FCIC to represent the yield that a producer of hybrid sorghum seed would be expected to produce if the acreage had been planted to commercial field sorghum.

Coverage level factor. A factor contained in the Special Provisions to adjust the county yield for commercial field sorghum to reflect the higher value of hybrid sorghum seed.

Dollar value per bushel. An amount that determines the value of any seed production to count. It is determined by dividing the amount of insurance per acre by the result of multiplying the approved yield by the coverage level percentage, expressed as a decimal.

Female parent plants. Sorghum plants that are grown for the purpose of producing commercial hybrid sorghum seed and are male sterile.

Field run. Commercial hybrid sorghum seed production before it has been processed or screened.

Good farming practices. In addition to the definition contained in the Basic Provisions, good farming practices include those practices required by the hybrid sorghum seed processor contract.

Harvest. Combining, threshing or picking of the female parent plants to obtain commercial hybrid sorghum seed.

Hybrid sorghum seed processor contract. An agreement executed in writing between the hybrid sorghum seed crop producer and a seed company containing, at a minimum:

(a) The producer's promise to plant and grow male and female parent plants, and to deliver all commercial hybrid sorghum seed produced from such plants to the seed company;

(b) The seed company's promise to purchase the commercial hybrid sorghum seed produced by the producer; and

(c) Either a fixed price per unit of measure (bushels, hundredweight, etc.) of the commercial hybrid sorghum seed or a formula to determine the value of such seed. Any formula for establishing the value must be based on data provided by a public third party that establishes or provides pricing information to the general public, based on prices paid in the open market (*e.g.*, commodity futures exchanges), to be acceptable for the purpose of this policy.

Inadequate germination. Germination of less than 80 percent of the commercial hybrid sorghum seed as determined by using a certified seed test.

Insurable interest. Your share of the financial loss that occurs in the event seed production is damaged by a cause of loss specified in section 10.

Local market price. The cash price offered by buyers for any production from the female parent plants that is not considered commercial hybrid sorghum seed under the terms of this policy.

Male parent plants. Sorghum plants grown for the purpose of pollinating female parent plants.

Minimum guaranteed payment. A minimum amount (usually stated in dollars or bushels) specified in your hybrid sorghum

seed processor contract that will be paid or credited to you by the seed company regardless of the quantity of seed produced.

Non-seed production. Production that does not qualify as seed production because of inadequate germination.

Planted acreage. In addition to the definition contained in the Basic Provisions, the insured crop must be planted in rows wide enough to permit mechanical cultivation, unless provided by the Special Provisions or by written agreement.

Planting pattern. The arrangement of the rows of the male and female parent plants in a field. An example of a planting pattern is four consecutive rows of female parent plants followed by two consecutive rows of male parent plants.

Practical to replant. In addition to the definition contained in the Basic Provisions, practical to replant applies to either the female or male parent plant. It will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the hybrid sorghum seed processor contract, or the seed company agrees that it will accept the production from the replanted acreage.

Prevented planting. In addition to the definition contained in the Basic Provisions, prevented planting applies to the female and male parent plants. The male parent plants must be planted in accordance with the requirements of the hybrid sorghum seed processor contract to be considered planted.

Sample. For the purpose of the certified seed test, at least 3 pounds of randomly selected field run sorghum seed for each type or variety of commercial hybrid sorghum seed grown on the unit.

Seed company. A business enterprise that possesses all licenses for marketing commercial hybrid sorghum seed required by the state in which it is domiciled or operates, and which possesses facilities with enough storage and drying capacity to accept and process the insured crop within a reasonable amount of time after harvest. If the seed company is the insured, it must also be a corporation.

Seed production. All seed produced by female parent plants with a germination rate of at least 80 percent as determined by a certified seed test.

Type. Grain sorghum, forage sorghum, or sorghum sudan parent plants.

Variety. The name, number or code assigned to a specific genetic cross by the seed company or the Special Provisions for the insured crop in the county.

2. Unit Division.

(a) For any processor contract that stipulates the amount of production to be delivered:

(1) In lieu of the definition of ''basic unit'' contained in the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill a hybrid sorghum seed processor contract;

(2) There will be no more than one basic unit for all production contracted with each processor contract;

(3) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(4) Optional units will not be established.

(b) For any processor contract that stipulates a number of acres to be planted, the provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the hybrid sorghum seed in the county insured under this policy unless the Special Provisions provide different price elections by type or variety, in which case you may elect one price election for each hybrid sorghum seed type or variety designated in the Special Provisions. The price election you choose for each type or variety must have the same percentage relationship to the maximum price offered by us for each type or variety. For example, if you choose 100 percent of the maximum price election for one specific type or variety, you must also choose 100 percent of the maximum price election for all other types or varieties.

(b) The production reporting requirements contained in section 3 of the Basic Provisions are not applicable to this contract.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage.

In addition to the requirements of section 6 of the Basic Provisions, you must:

(a) Report by type and variety, the location and insurable acreage of the insured crop;

(b) Report any acreage that is uninsured, including that portion of the total acreage occupied by male parent plants; and

(c) Certify that you have a hybrid sorghum seed processor contract and report the amount, if any, of any minimum guaranteed payment.

7. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the female parent plants in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are grown under a hybrid sorghum seed processor contract executed before the acreage reporting date;

(3) That are planted for harvest as commercial hybrid sorghum seed in accordance with the requirements of the hybrid sorghum seed processor contract and the production management practices of the seed company; and

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Planted with a mixture of female and male parent seed in the same row;

(ii) Planted for any purpose other than for commercial hybrid sorghum seed;

(iii) Interplanted with another crop; or

(iv) Planted into an established grass or legume.

(b) An instrument in the form of a ''lease'' under which you retain control of the acreage on which the insured crop is grown and that provides for delivery of the crop under substantially the same terms as a hybrid sorghum seed processor contract will be treated as a contract under which you have an insurable interest in the crop.

(c) A commercial hybrid sorghum seed producer who is also a commercial hybrid sorghum seed company may be able to insure the hybrid sorghum seed crop if the following requirements are met:

(1) The seed company has an insurable interest in the hybrid sorghum seed crop;

(2) Prior to the sales closing date, the Board of Directors of the seed company has executed and adopted a corporate resolution containing the same terms as an acceptable hybrid sorghum seed processor contract. This corporate resolution will be considered a contract under the terms of this policy;

(3) Sales records for at least the previous years' seed production must be provided to confirm that the seed company has produced and sold seed. If such records are not available, the crop may be insured under the Coarse Grains Crop Provisions with a written agreement; and

(4) Our inspection reveals that the storage and drying facilities satisfy the definition of a seed company.

(d) Any of the insured crop that is under contract with different seed companies may be insured under separate policies with different insurance providers provided all acreage of the insured crop in the county is insured. If you elect to insure the insured crop with different insurance providers, you agree to pay separate administrative fees for each insurance policy.

8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage of the insured crop:

(a) Planted and occupied exclusively by male parent plants;

(b) Not in compliance with the rotation requirements contained in the Special Provisions or, if applicable, required by the hybrid sorghum seed processor contract; or

(c) If either the female or male parent plants are damaged before the final planting date and we determine that insured crop is practical to replant but it is not replanted.

9. Insurance Period.

(a) In addition to the provisions of section 11 of the Basic Provisions, insurance attaches upon completion of planting of:

(1) The female parent plant seed on or before the final planting date designated in the Special Provisions, except as allowed in section 16 of the Basic Provisions; and

(2) The male parent plant seed.

(b) In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the November 30 immediately following planting.

10. Causes of Loss.

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects, but not damage due to insufficient or improper application of pest control measures;
(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply, if due to a cause of loss contained in section 10(a) (1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we will not insure against any loss of production due to:

(1) The use of unadapted, incompatible, or genetically deficient male or female parent plant seed;

(2) Frost or freeze after the date set by the Special Provisions;

(3) Failure to follow the requirements stated in the hybrid sorghum seed processor contract and production management practices of the seed company;

(4) Inadequate germination, even if resulting from an insured cause of loss, unless you have provided adequate notice as required by section 11(b)(1); or

(5) Failure to plant the male parent plant seed at a time or in a manner sufficient to assure adequate pollination of the female parent plants, unless you are prevented from planting the male parent plant seed by an insured cause of loss.

11. Duties In The Event of Damage or Loss.

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples of at least one complete planting pattern of the male and female parent plant rows that extend the entire length of each field in the unit. If you are going to destroy any acreage of the insured crop that will not be harvested, the samples must not be destroyed until after our inspection.

(b) In addition to the requirements of section 14 of the Basic Provisions:

(1) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate inadequate germination on any unit; and

(2) You must provide a completed copy of your hybrid sorghum seed processor contract unless we have determined it has already been provided by the seed company, and the seed company certifies that such contract is used for all its producers without any waivers or amendments.

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) You will not receive an indemnity payment on a unit if the seed company refuses to provide us with records we require to determine the dollar value per bushel of production for each variety.

(c) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by its respective amount of insurance per acre, by type and variety if applicable;

(2) Totaling the results of section 12(c)(1) if there are more than one type or variety;

(3) Multiplying the total seed production to count (see section 12(d)) for each type and variety of commercial hybrid sorghum seed by the applicable dollar value per bushel for that type or variety;

(4) Multiplying the total non-seed production to count (see section 12(e)) for each type and variety by the applicable local market price determined on the earlier of the date the non-seed production is sold or the date of final inspection;

(5) Totaling the results of sections 12(c)(3) and 12(c)(4) by type and variety;

(6) Subtracting the result of section 12(c)(5) from the result of section 12(c)(1) if there is only one type or variety, or subtracting the result of 12(c)(5) from the result of section 12(c)(2) if there are more than one type or variety; and

(7) Multiplying the result of section 12(c)(6) by your share.

For example:

You have a 100 percent share in 50 acres insured for the development of type ''A'' hybrid sorghum seed in the unit, with an amount of insurance per acre guarantee of $361 (county yield of 170 bushels times a coverage level factor of .867 for the 65 percent coverage level, times a price election of $2.45 per bushel, minus the minimum guaranteed payment of zero). Your seed production was 1,400 bushels and the dollar value per bushel was $3.47. Your non-seed production was 100 bushels with a local market value of $2.00 per bushel. Your indemnity would be calculated as follows:

(1) 50 acres×$361=$18,050 amount of insurance guarantee;

(3) 1,400 bushels×$3.47=$4,858 value of seed production;

(4) 100 bushels of non-seed×$2.00=$200 of non-seed production;

(5) $4,858+$200=$5,058;

(6) $18,050 − $5,058=$12,992; and

(7) $12,992×100 percent share=$12,992 indemnity payment.

You also have a 100 percent share in 50 acres insured for the development of type ''B'' hybrid sorghum seed in the unit, with an amount of insurance per acre guarantee of $340 (county yield of 160 bushels times a coverage level factor of .867 for the 65 percent coverage level, times a price election of $2.45 per bushel, minus the minimum guaranteed payment of zero). You harvested 1,200 bushels and the dollar value per bushel for the harvested amount was $4.63. You also harvested 200 bushels of non-seed with a market value of $2.00 per bushel. Your indemnity would be calculated as follows:

(1) 50 acres×$361=$18,050 amount of insurance guarantee for type ''A'' and 50 acres×$340=$17,000 amount of insurance guarantee for type ''B'';

(2) $18,050+$17,000=$35,050 amount of insurance guarantee;

(3) 1,400 bushels×$3.47=$4,858 value of seed production for type ''A'' and 1,200 bushels×$4.63=$5,556 value of seed production for type ''B'';

(4) 100 bushels of non-seed×$2.00=$200 of non-seed production for type ''A'' and 200 bushels of non-seed×$2.00=$400 of non-seed production for type ''B''

(5) $4,858+$200+$5,556+$400=$11,014 value of production to count;

(6) $35,050 − $11,014=$24,036; and

(7) $24,036×100 percent share=$24,036 indemnity payment.

(d) Production to be counted as seed production will include:

(1) All appraised production as follows:

(i) Not less than the amount of insurance per acre for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Mature unharvested production with a germination rate of at least 80 percent of the commercial hybrid sorghum seed as determined by a certified seed test. Any such production may be adjusted in accordance with section 12(f);

(iv) Immature appraised production;

(v) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) Harvested production that you deliver as commercial hybrid sorghum seed to the seed company stated in your hybrid sorghum seed processor contract, regardless of quality, unless the production has inadequate germination.

(e) Production to be counted as non-seed production will include all harvested or mature appraised production that does not qualify as seed production to count as specified in section 12(d). Any such production may be adjusted in accordance with section 12(f).

(f) For the purpose of determining the quantity of mature production:

(1) Commercial hybrid sorghum seed production will be:

(i) Increased 0.12 percent for each 0.1 percentage point of moisture below 13.0 percent; or

(ii) Decreased 0.12 percent for each 0.1 percentage point of moisture in excess of 13.0 percent.

(2) When records of commercial hybrid sorghum seed production provided by the seed company have been adjusted to a basis of 13.0 percent moisture and 56 pound avoirdupois bushels, section 12(f)(1) above will not apply to harvested production. In such cases, records of the seed company will be used to determine the amount of production to count, provided that the moisture and weight of such production are calculated on the same basis as that used to determine the approved yield.

13. Prevented Planting.

Your prevented planting coverage will be 60 percent of your amount of insurance for timely planted acreage. If you have limited or additional levels of coverage as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Signed in Washington, D.C, on December 5, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–32497 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 422 and 457

Potato Crop Insurance Regulations; and Common Crop Insurance Regulations, Northern Potato Crop Insurance Provisions, Central and Southern Potato Crop Insurance Provisions, Northern Potato Quality Endorsement Crop Insurance Provisions, Northern Processing Potato Quality Endorsement Crop Insurance Provisions, Certified Seed Potato Endorsement Crop Insurance Provisions, and Northern Potato Storage Endorsement Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes crop provisions for the insurance of potatoes. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current potato crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current potato crop insurance regulations to the 1997 and prior crop years in counties in which the Northern Potato Crop Provisions will be used and to the 1998 and prior crop years in all other states.

EFFECTIVE DATE: December 12, 1997.

FOR FURTHER INFORMATION CONTACT: Rob Coultis, Insurance Management Specialist, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The amount of work required of insurance companies will not increase because the information used to determine eligibility is already maintained at their office and the other information required is already being gathered as a result of the present policy. No additional actions are required as a result of this action on the part of either the producer or the reinsured company. Additionally, the regulation does not require any action on the part of the small entities than is required on the part of the large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This final rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Wednesday April 23, 1997, FCIC published a proposed rule in the Federal Register at 62 FR 19691–19701 to add to the Common Crop Insurance Regulations (7 CFR part 457), new sections: 7 CFR 457.142, Northern Potato Crop Insurance Provisions; 7 CFR 457.143, Northern Potato Quality Endorsement Crop Insurance Provisions; 7 CFR 457.144, Northern Processing Potato Quality Endorsement Crop Insurance Provisions; 7 CFR 457.145, Certified Seed Potato Endorsement Crop Insurance Provisions; 7 CFR 457.146, Northern Potato Storage Endorsement Crop Insurance Provisions; and 7 CFR 457.147, Central and Southern Potato Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years in counties in which the Northern Potato Crop Provisions will be used and for the 1999 crop year in all other counties. These provisions will replace and supersede the current provisions for insuring potatoes found at 7 CFR part 422 (Potato Crop Insurance Regulations). FCIC also has amended 7 CFR part 422 to limit its effect to the 1997 and prior crop years in counties in which the Northern Potato Crop Provisions will be used and to the 1998 crop year in all other counties.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. A total of 71 comments were received from producer groups, reinsured companies and an insurance service organization. The comments received, and FCIC's responses, are as follows:

Comment: An insurance service organization indicated it had heard the revised Potato Crop Provisions would not be effective in all states for the 1998 crop year, presumably because the Final Rule would not be published by the June 30 contract change date for counties in south Florida. The commentor questioned if it is the intent to defer the Central and Southern Potato Crop Policy in all states, or just those counties with a contract change date before the final rule is published. The commentor also stated it had received comments (for crops in general) that a contract change date of 60 or 90 days before the sales closing/cancellation date does not provide enough time to identify changes, prepare training materials, provide training to staff and agents, notify policyholders and solicit new sales.

Response: FCIC will not implement the Central and Southern Potato Crop Provisions until the 1999 crop year in all applicable counties. The Northern Potato Crop Provisions and applicable endorsements will be implemented in all applicable counties for the 1998 crop year. The 60 to 90 days before sales closing allows FCIC the opportunity to balance the need of the reinsured company to train and inform the insured, and the needs of FCIC and insured, to have the most recent data to enable FCIC to set rates, price, and other terms of the contract. Therefore, no change will be made.

Comment: A reinsured company recommended delivery of the 1998 loss adjustment manual 90 days prior to the close of sales in order to adequately and correctly advise agents and insureds regarding purchase decisions.

Response: FCIC will make all reasonable efforts to deliver supporting procedural manuals as soon as practicable after the contract change date. However, the loss adjustment manual cannot be finalized until the terms of the policy have been finalized.

Comment: A reinsured company recommended changing either the definition of ''certified seed'' or section 7 (Insured Crop) to allow insurance to attach to acreage planted with seed that does not meet state certification requirements. The comment cited Idaho Seed Potato Regulations which state that ''Idaho growers will only be allowed to plant uncertified potatoes grown by them provided that they are no more than one generation from their own certified parent seed potatoes.'' Under the definition by the State of Idaho it appears that one generation past the initial certified seed is considered proper. The comment further stated that as long as State rules are followed, it should not matter if the seed is certified by the state or by a private organization.

Response: Redesignated section 6 of the Northern Potato Crop Provision and section 7 of the Central and Southern Potato Crop Provisions allows insurance for acreage that is not planted with certified seed if authorized by the Special Provisions. FCIC's Regional Service Offices (RSO) will fully analyze individual areas to determine whether or not this practice should be allowed and, then, include the authority in the Special Provisions. Although certain private organizations may be able to duplicate State procedures, FCIC believes the most logical way to maintain consistent requirements among producers is to rely on authorized State agencies for the certification process. Therefore, no changes have been made in the provisions.

Comment: A reinsured company and an insurance service organization indicated that cultural practices may exist that are not recognized (or possibly known) by the Cooperative State Research, Education and Extension Service. The comments indicated that the definition of ''Good farming practices'' is too restrictive since it limits acceptable farming practices to those recognized by the Cooperative State Research, Education, and Extension Service. The comments also suggested changing the last word of the definition from ''county'' to ''area.''

Response: FCIC believes that the Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing potatoes. If a producer is following practices currently not recognized as acceptable by the CSREES, there is no reason why such recognition from CSREES cannot be sought by interested parties. The term ''area'' is more ambiguous than the term ''county'' and would allow more subjective determination, and less consistent application of the provision. No substantial change has been made in the definition. However, the definition has been moved to the Basic Provisions since it is applicable to most crops.

Comment: An insurance service organization suggested the definition of ''harvest'' in the Northern and Central and Southern Crop Provisions be clarified to indicate if it means removing potatoes from the field or lifting them to the soil surface.

Response: The definition has been clarified to indicate that acreage will be considered to be harvested when potatoes are lifted to the soil surface.

Comment: A reinsured company suggested adding the words ''and quality'' after the words ''providing the quantity'' in the definition of ''Irrigated practice'' in the Northern and Central and Southern Potato Crop Insurance Provisions.

Response: FCIC agrees that water quality is an important issue. However, since no standards or procedures have been developed to measure water quality for insurance purposes, quality cannot be included in the definition. No substantial change has been made in the definition. However, the definition has been moved to the Basic Provisions since it is applicable to most crops.

Comment: An insurance service organization recommended the term ''late blight'' be defined.

Response: Late blight is a term commonly used in the potato industry and referenced in the U.S. Standards for Grades of Potatoes which are

incorporated herein by reference. Therefore, it is not necessary to define the term in the Crop Provisions.

Comment: An insurance service organization indicated that the definition of ''marketable lot'' contained in the Central and Southern Crop Provisions describes a ''lot'' and recommended the definition be changed to distinguish it as a ''marketable lot.'' For the definition to be useful, it should specify that the production is saleable or grades U.S. No. 2 or better so the grade standard would be understood in all the references to ''marketable lots'' in section 12(e).

Response: The requirements of marketability are clearly stated in section 12(e) of the Central and Southern Crop Provisions. However, FCIC agrees that the definition contained in the proposed rule describes a ''lot'' rather than a ''marketable lot'' and has revised the section to define the term ''lot.''

Comment: An insurance service organization suggested clarifying the definition of ''Practical to replant'' in the Northern and Central and Southern Crop Insurance Provisions by changing the punctuation.

Response: FCIC has clarified the definition by changing some of the punctuation. The definition has also been moved to the Basic Provisions since it is applicable to most crops.

Comment: A reinsured company suggested revising the definition of ''replanting'' in the Northern and Central and Southern Crop Provisions by replacing the wording ''. . . replace the potato seed and then replacing the potato seed . . .'' with ''. . . planting the potato seed and then replanting the potato seed . . .''

Response: The first reference to ''replace the potato seed'' refers to preparation of the land, not planting. No substantial change has been made in the definition. However, the definition has been moved to the Basic Provisions since it is applicable to most crops.

Comment: An insurance service organization recommended clarifying the definition of ''replanting'' by specifying the crop name as follows: ''. . . with the expectation of growing a successful potato crop.''

Response: FCIC has revised the definition of ''replanting'' to clarify a ''successful crop'' to mean at least the approved yield for the unit. The definition also has been moved to the Basic Provisions since it is applicable to most crops.

Comment: A reinsured company and a producer organization opposed the provisions in sections 3 (b) and (c) of the Northern and Central and Southern Crop Provisions that reduce the price election for unharvested acreage. In addition, an insurance service organization had two comments from its members favoring, and two opposing, these provisions. The opposing comments indicated that the unharvested reduction provision was removed from the peanut policy and is being considered for removal from the tobacco policy. Adding it to potatoes would appear to discriminate against potato producers who are unable to harvest due to insured causes. The opposing comments also indicated that the reduced coverage would: (1) Be hard to ''sell'' and explain to insureds; (2) make settlement of claims more difficult; (3) be inappropriate when damage occurs just prior to harvest because the insured has incurred most normal input costs; (4) encourage insureds to harvest damaged potatoes that have no value just to collect 100 percent of the price election; and (5) be unfair to producers with multi-unit policies because, when freeze damage occurs near the end of the harvest season, several fields have already been harvested and the costs have already been incurred for the entire crop. Producers with multi-unit policies pay a 10 percent surcharge for the added protection. Therefore, 100 percent coverage is only fair. Because of the objections received from its members, the insurance service organization recommended further study or a more detailed explanation be provided.

Response: Prior to this rule, FCIC's price elections have not included harvesting costs. This means that producers have paid less premium than otherwise would have been owed. However, any loss from harvested acres has been indemnified at that lower expected market price. The Federal Crop Insurance Act authorizes FCIC to reduce the payment to producers for acreage that is not harvested or for other costs that are not incurred if the crop is lost prior to harvest. FCIC has exercised its authority to build harvesting costs into the price election but only reduce the price for those producers who do not incur harvesting costs. The price election reduction is limited to those costs associated with harvest. If the producer has already begun harvest before the cause of loss occurred that caused the discontinuance of harvest, and the producer can prove that harvesting costs have already been incurred, no reduction will occur. The change means that producers who harvest their potatoes will receive a higher price election. However, this higher price election will result in higher premiums than in the past. Section 3 has been redesignated as section 2 in the Northern Potato Crop Provisions.

Comment: A reinsured company requested that section 3(c) of the Northern and Central and Southern Crop Provisions be clarified.

Response: FCIC has clarified the provisions in redesignated section 2(c) of the Northern Potato Crop Provisions and section 3(c) of the Central and Southern Crop Provisions.

Comment: A reinsured company asked two questions regarding the following provision contained in section 3(c) of the Northern and Central and Southern Crop Provisions.

(a) If the potatoes freeze before the end of the insurance period, is the claim settled by: (1) Using an appraisal at the 80 percent price election or (2) allowing the frozen potatoes to be taken to harvest, use the production to count, and then apply the 80 percent price election?

(b) If the potatoes have 12 percent wet breakdown, a 100 percent loss would be paid if production is discarded within seven days of harvest. Will the indemnity be based on the 80 percent unharvested price if the neighbors would have destroyed similar production but did not do so because they didn't have that problem?

The comment also recommended that the 80 percent price apply only when none of the acreage in a unit could be harvested because, once harvest on a unit has begun, the producer will have incurred costs regardless of the amount of acreage harvested.

Response: This provision is intended to recognize reduced input costs when potatoes are not harvested. Therefore, in the event that freeze damage is severe, and a majority of producers would not further care for the crop, the insurance provider should determine the amount of production to count in accordance with applicable procedures, and settle the claim using 80 percent of the elected price. If similarly situated producers in the area would continue to care for the crop, and the producer elects to continue to care for and harvests the crop, the insurance provider should determine the amount of production to count and settle the claim using 100 percent of the elected price. FCIC will only allow the 100 percent price to be used if the producer has adequate proof that he has already incurred and paid the harvesting costs. A provision has been added to allow the apportionment of acreage within a unit as harvested and unharvested and only unharvested acreage will have the price election reduced. Section 3 has been

redesignated as section 2 in the Northern Potato Crop Provisions.

Comment: A reinsured company suggested clarifying section 8(b) of the Northern and Southern and Central Potato Crop Provisions.

Response: FCIC has clarified the provision in redesignated section 7(b) of the Northern Potato Crop Provisions and section 8(b) of the Central and Southern Crop Provisions.

Comment: A producer group recommended changing the date after which frost/freeze would no longer be covered in Minnesota and North Dakota from September 30 to October 15. This is referenced in section 10(b)(2) of the Northern Potato Crop Provisions, but the actual date is contained in the Special Provisions.

Response: The Crop Provisions have been written to permit these dates to vary based on weather patterns and growing conditions. Data collected thus far by FCIC supports the current date of September 30. However, FCIC will review any additional information that can be provided. No changes can be made until such data are received and analyzed. Section 10 has been redesignated as section 9 in the Northern Potato Crop Provisions.

Comment: An insurance service organization indicated that the calculation sequence in section 12(b)(1)–(7) of the Northern Potato and Central and Southern Potato Crop Provisions is difficult to follow because it is so wordy. It seems unnecessary to refer to the previous item by number as if it were on another page.

Response: Since some of the calculations involved are not performed in sequential order, it is necessary to refer to specific section numbers. Removal of the section references would make the provisions less clear. However, an example has been added for clarity to redesignated section 11 of the Northern Potato Crop Provisions.

Comment: A reinsured company stated that new quality adjustment provisions contained in section 12 of the Northern Potato Crop Provisions would increase the amount of work required of insurance providers and greatly increase loss adjustment expense. The comment indicated that the policy is complex, contrary to simplification efforts, and that previous regulations and procedures did not require grading or adjustment to the amount of production to count when less than 5 percent of the insured production had soft rot, wet breakdown or freeze damage.

Response: The previous potato policy (without the Frost/Freeze Option) and related procedures also provided for reductions in the amount of production to count when production had any amount of soft rot, wet breakdown, or freeze damage. Previous provisions and procedures also required grading of the production to determine appropriate reductions in the amount of production to count. The only changes in these provisions are in the adjustment factors which do not change the requirement to grade damaged production or to adjust to the amount of production to count. Therefore, FCIC does not agree that additional work or expense will be incurred as a result of the changes, and no change will be made. Section 12 has been redesignated as section 11 in the Northern Potato Crop Provisions.

Comment: An insurance service organization recommended clarification of ''marketable lot'' as used in section 12(e) of the Central and Southern Potato Crop Provisions. As written, it seems somewhat unclear whether all marketable lots must grade U.S. No. 2 or better, or only in certain cases, such as unsold harvested or appraised production in 12(e)(1)(iv).

Response: FCIC agrees that the provisions can be clarified and has revised section 12(e) to clearly indicate that any lot of potatoes that is stored, sold for seed, sold for human consumption, etc. will be considered to be a marketable lot.

Comment: An insurance service organization received one comment asking why, if quality adjustment has been incorporated in section 12(e) through (g) of the Northern Potato Crop Provisions, the options remain separate at the end of the proposed rule. As written, there is a lot of unnecessary duplication. The commenter would prefer to see the quality adjustment information included in the Crop Provisions and eliminate the need for endorsements and the resulting complications.

Response: Quality adjustment for tuber rot and freeze damage has been incorporated into the base coverage in redesignated section 11 of the Northern Crop Provisions. However, coverage for other types of quality losses (e.g. internal and external defects) are not included in the Crop Provisions because many producers do not wish to pay the premium amounts associated with these types of quality losses. Although some redundancy and complication results, FCIC believes that the endorsements are the best way to provide coverage for certain quality deficiencies. Without the endorsements, coverage of internal and external defects would not be available, or, if made a part of the base coverage, would require substantial premium increases for all insureds. Therefore, no change will be made.

Comment: An insurance service organization recommended using the defined term ''discarded'' instead of ''disposed of'' in section 12(d)(1)(i)(D) of the Northern Potato and Central and Southern Potato Crop Provisions.

Response: ''Discarded'' is defined in the policy as disposing of production by the insured, or a person acting for the insured, without received any value for it. The term ''disposed of'' in redesignated section 11(d)(1)(i)(D) of the Northern Potato Crop Provisions and section 12(d)(1)(i)(D) of the Central and Southern Crop Provisions refers to any disposition, including selling the production and a definition for it has been added. Therefore, the term ''discarded'' cannot be used as recommended.

Comment: A reinsured company and an insurance service organization commented that subsection 12(d)(1)(iii) of the Northern and Central and Southern Crop Provisions, which requires an increase in the amount of production to count when harvest takes place prior to full maturity, will be difficult to administer. Insurance providers would be required to track harvested acreage on a daily basis in order to apply proper percentages. This would increase in complexity if multiple units, with multiple planting dates, were being harvested simultaneously. This adjustment is extremely subjective, which opens the insurance provider's decisions to questioning and does serious harm to the policy. Also, new tracking requirements will increase loss adjustment expense. Another reinsured company concurred with the additional production to count for potatoes harvested prior to full maturity, but recommended that a date for full maturity be established by area and variety. Fifty days prior to the calendar date for the end of the insurance period was recommended for most areas. The insurance service organization asked how and when will the ''normal number of days to full maturity'' be determined, and by whom and whether this will vary each year depending on favorable or adverse weather conditions. The comment indicated that, if the date is not allowed to vary from year to year, the adjustment could apply even though all the production in a given area matures earlier than normal.

Response: This provision, redesignated section 11(d)(1)(iii) of the Northern Potato Crop provisions and section 12(d)(1)(iii) of the Central and Southern Crop Provisions, is intended to take into account reduced production

that is a result of harvest for the ''new'' or ''B'' potato market, for which small potatoes are required. FCIC agrees that this provision adds some complexity to the loss adjustment process. However, previous provisions did not provide any consistent method of adjustment when potatoes were harvested prior to full maturity. To lessen the administrative complications associated with this adjustment, FCIC has changed the provision to specify that full maturity will be presumed to have been reached 45 days prior to the calendar date for the end of the insurance period unless specified otherwise in the Special Provisions.

Comment: An insurance service organization is concerned that section 12(d)(1)(v) of the Northern Potato and Central and Southern Potato Crop Provisions allows insureds to defer the settlement of a claim. The policy should not allow the insured to defer settlement and wait for a later, generally lower, appraisal, especially on crops that have a short ''shelf life.''

Response: This provision allows deferment of a claim only if the insurance provider agrees that representative samples can be left or if the insured elects to continue to care for the entire crop. In either case, if the insured does not provide sufficient care for the remaining crop samples, the original appraisal will be used. Therefore, no changes have been made. Section 12 has been redesignated as section 11 in the Northern Potato Crop Provisions.

Comment: An insurance service organization stated section 12(d)(1)(v)(A) of the Northern and Central and Southern Potato Crop Provisions should not refer to ''stage guarantee'' since there are no stages in this policy, only a price reduction for unharvested acreage.

Response: FCIC agrees and has corrected the provisions in redesignated section 11(d)(1)(v)(A) of the Northern Potato Crop Provisions and section 12(d)(1)(v)(A) of the Central and Southern Crop Provisions.

Comment: An insurance service organization asked if premium will be increased to compensate for the additional risk of adding quality adjustment for freeze damage to the Northern Crop Provisions.

Response: All changes in coverage, including the addition of new freeze damage adjustment provisions, will be considered when premium rates are established.

Comment: An insurance service organization recommended combining sections 12(e)(1) and (2) since they are so similar. Combining the provisions will avoid having to list the types of covered damage twice and reduce the chance of misinterpretation.

Response: FCIC agrees with the comment and has combined the provisions in redesignated section 11(e) of the Northern Potato Crop Provisions and section 12(e) of the Central and Southern Crop Provisions.

Comment: A reinsured company, an insurance service organization, and a producer group indicated that, in many situations, it will not be possible to determine percentages of damage or to complete grade inspections by the end of the insurance period as section 12(e)(3) of the Northern Potato Crop Provisions and the definition of ''grade inspection'' in the Northern and Central and Southern Potato Crop Provisions require. Producers may harvest potatoes near the end of the insurance period and, depending on the amount of potatoes in an area that require grading, it may be two to three weeks before grading of samples can be completed.

Response: FCIC agrees that the actual percentage of damage may not be obtainable prior to the end of the insurance period in all situations. Therefore, the definition of ''grade inspection'' in the Northern and Central and Southern Crop Provisions has been changed to require that samples of production be obtained prior to the sale, storage, or disposal of the potatoes, and to allow the actual grading of the samples to take place at a later time. Redesignated section 11(c) of the Northern Potato Crop Provisions and section 12(c) of the Central and Southern Potato Crop Provisions has also been changed to indicate that the extent of any loss, including quality adjustments, must be determined based on samples obtained no later than the time the potatoes are placed in storage, if the production is stored prior to sale, or the date it is delivered to a buyer, wholesaler, packer, broker, or other handler if it is not stored. Section 12(e)(3) of the Northern Potato Crop Provisions has been deleted.

Comment: An insurance service organization suggested changing the language in section 12(f), 12(g)(1) and 12(g)(2)(ii)(B)(1) of Northern Crop provisions from ''will be adjusted 0.1 percent for each 0.1 percent of damage through 5 percent'' to ''will be adjusted by the same percentage'' so the reader doesn't have to puzzle through the calculation to figure out that 4.5 percent damage means a 4.5 percent adjustment. Also, the existing frost/freeze potato option reduces production to count in 5 percent increments for damage from 6 percent to 20 percent. Changing this to increments of a tenth of a percent for each tenth of a percent damage is more complicated, and indicates an unrealistic degree of precision.

Response: The use of the language ''0.1 percent for each 0.1 percent of damage'' is necessary to avoid any ambiguity. Further, the use of 0.1 percent increments is intended to make these determinations more accurate and should not substantially complicate the calculations. Therefore, no changes have been made.

Comment: An insurance service organization indicated that the language in section 12(g)(2) (i), (ii) & (iii) of the Northern Potato Crop Provisions is very complicated and difficult to follow and suggested that a chart might be developed to assist in understanding.

Response: Section 12(g)(2)(i) (redesignated 11(g)(2)(i)) indicates that the price received for damaged production is divided by a price election to obtain an adjustment factor. Including this information in a chart will not improve clarity. Redesignated sections 11(g)(2) (ii) and (iii) indicate that 0.1 percent damage results in a 0.1 percent reduction in the amount of production to count, that 0.2 percent damage results in a 0.2 percent reduction, etc. A chart indicating all damage amounts in 0.1 percent increments would be extremely repetitive, result in additional policy pages, and not improve understanding. Therefore, no change has been made.

Comment: An insurance service organization and a reinsured company are concerned with moral hazards, because in section 12(g)(2) of the Northern Crop Provisions, there is a different method of adjustment for production that is sold or discarded within 7 days and production that remains in storage 8 days or more. The comments indicated that a producer's production could have 11 percent damage which would result in zero production to count if it is kept more than 7 days, but, if it is sold immediately, a salvage value would count against the guarantee. The commenters also asked whether there is a way to recover some salvage value instead of showing zero production to count if production with more than 11 percent damage is sold and processed and whether the loss adjustment procedure provides a way to restrict any indemnity to the damaged acreage for a unit which includes four separate fields, and only one was damaged enough to result in significant damage for the whole unit.

Response: FCIC agrees that a salvage value should be counted when an insured elects to keep and use the damaged crop for feed, starch, etc. and

has changed redesignated section 11(g)(2)(ii)(B) so that a minimum of 15 percent of the production will be production to count in such instances. This amount is consistent with the value that is normally received for potatoes that are sold for cattle feed, starch, or other salvage uses. When only one field of a unit is damaged, the production from that field will be adjusted in accordance with the policy provisions, just as it would be for other insured crops. If that amount of damage reduces the production to count below the guarantee for the unit, an indemnity will be paid.

Comment: A reinsured company recommended retaining current procedures that allow a 60 day period to determine the disposition of potatoes with 5 percent or more tuber rot. If the producer can sell the potatoes within 60 days of harvest, the salvage value should be used to determine the loss. Also, physiological disorders such as hollow heart, leaf roll, etc., should be covered in the same manner as pathological diseases (tuber rot, soft rot, late blight, etc.)

Response: FCIC agrees that 60 days is an appropriate time period to allow for disposition of potatoes with tuber rot. However, many producers do not wish to pay the additional premium associated with the storage endorsement 60 day period. Also, many producers have indicated that they do not want to pay the additional premium associated with coverage for hollow heart and other defects. FCIC has elected to provide coverage for both of these circumstances via optional endorsements. Therefore, no changes have been made.

Comment: A reinsured company stated that section 12(g) of the Northern Crop Provisions does not indicate how to determine the amount of production to count when production has a combination of freeze and soft rot. The comment suggested determining freeze damage and tuber rot separately and using the one that yields the least production to count.

Response: FCIC agrees that a provision is needed to specify how a combination of freeze and tuber rot damage will be adjusted. However, considering only the type of damage that results in the least amount of production to count could result in the insurance provider ignoring what may be a significant amount of either freeze or tuber rot damage. Redesignated section 11(h) has been added to specify how production with more than one type of damage will be adjusted.

Comment: A reinsured company suggested that the language in section 12(g)(2)(i) of the Northern Potato Crop Provisions, 4(a)(1) of the Northern Potato Quality Endorsement, 6(a)(1)(i) of the Northern Potato Processing Quality Endorsement and 6(a) of the Northern Potato Storage Endorsement be strengthened to further define ''sold'' as the ''date of sale'' without regard to subsequent delivery or storage.

Response: Since only referring to the amount of sold production; subsequent delivery or storage is not relevant. The provisions have been clarified accordingly.

Comment: A reinsured company indicated that the 7 day time period provided in section 12(g)(2)(i) of the Northern Potato Crop Provisions, section 4(a)(1) of the Northern Potato Quality Endorsement, and section 6(a)(1)(i) of the Northern Potato Processing Quality Endorsement to sell damaged production is not long enough. The grading process often takes two or three weeks to complete and the percent damage cannot be determined until the production is graded.

Response: FCIC agrees that a longer time period is necessary and has changed the relevant provisions to reflect a time period of 21 days.

Comment: A reinsured company recommended changing section 12(g)(2)(i) of the Northern Potato Crop Provisions, and section 4(a)(1) of the Northern Potato Quality Endorsement, so that the value of damaged production is compared to the producer's price election rather than the highest price election available.

Response: This provision is intended to compare the relative value of the damaged production to the value of undamaged production. If the elected prices were used, insureds with different price election percentages could have different amounts of production to count even though they had the same amount of production and crop value. Therefore, no change has been made.

Comment: A reinsured company recommended that the salvage value provision (section 12(g)(2)(i)) applicable to production with soft rot, wet breakdown or other tuber rot condition also be applicable to product damaged by freeze.

Response: It would not be appropriate to allow potatoes with low levels of freeze damage (e.g., 5.1 percent) to be adjusted based on value, especially in years when the market value is low. Freeze damaged production, if handled correctly, can often be stored for long periods of time, sorted, and sold at full market value. In contrast, production with soft rot levels above 5 percent is much more difficult to store, sort and sell and often must be sold soon after harvest at a much reduced price. Therefore, the suggested change has not been made. However, FCIC has determined that some salvage value should be counted when an insured elects to keep damaged production and has changed redesignated section 11(g)(1) so that a minimum of 15 percent of production is counted in such instances.

Comment: A reinsured company suggested the word ''with'' be inserted between ''accordance'' and ''section'' in section 12(g)(2)(iii) of the Northern Potato Crop Insurance Provisions.

Response: The provision in redesignated section 11(g)(2)(iii) has been revised accordingly.

Comment: A reinsured company suggested that ''human consumption'' be spelled out in the Northern Potato Crop Provisions. The commenter stated human consumption defines that potatoes are grown for consumption by human beings and any potato crop not qualifying for human consumption is a total loss; and there should be no production to count if such potatoes are harvested. Counting production may encourage a producer to leave potatoes in the soil and this is simply a poor farming practice.

Response: Potato production may be adjusted for quality deficiencies regardless of whether or not it is harvested. Production will be considered as production to count if it could have been fit for human consumption, not only if it was used or sold for human consumption. Therefore, no changes have been made.

Comment: A reinsured company asked whether the Late Planting Agreement Option is no longer available and why late and prevented planting provisions were not included as they have been in other crops.

Response: Late and prevented planting provisions will be included in the Basic Provisions and will apply to potatoes. Section 12 of the Northern Potato Crop Provisions and section 13 of the Central and Southern Crop Provisions indicate the available prevented planting coverage level percentages.

Comment: An insurance service organization and a reinsured company suggested changing section 13(d) of the Northern and Central and Southern Crop Provisions to allow written agreements to be valid for more than one year. Some written unit agreements are continuous unless there are significant changes in the farming operation and some other written agreements should also be continuous.

Response: Written agreements are intended to permit insurance coverage to be available in unusual or previously unknown situations. If the situation exists from year to year, it should be incorporated into the crop provisions or Special Provisions. It is important to minimize exceptions to the policy to ensure that the insured is well aware of the specific terms of the policy. The written agreement provisions have been moved to the Basic Provisions since they apply to most crops.

Comment: An insurance service organization asked, with respect to the proposed endorsements to the Northern Crop Provisions, whether the provisions will be printed continuously so that the endorsements are after the written agreement provisions, or whether separate pages will be printed to be inserted with the Crop Provisions when chosen. The latter is preferable to ensure policy holders don't think the endorsements automatically apply. The commenter also asked whether FCIC would authorize the insurance service organization to add a statement before the endorsements clarifying they only apply if elected by the insured.

Response: Each endorsement is a separate document and should be included in an insured's policy package only when elected. Provisions in each endorsement clearly state that additional premium is necessary and that the additional coverage must be elected on or before the sales closing date. An additional clarifying statement is not necessary. Therefore, no change will be made.

Comment: An insurance service organization asked if the Northern Potato Quality Endorsement rates would be impacted since frost/freeze coverage is now a part of the basic potato policy.

Response: Freeze damage was previously covered under the Quality Option. Removal of this coverage will be considered when establishing premium rates for the new Northern Quality Endorsement.

Comment: Two reinsured companies, an insurance service organization, and a producer group disagreed with the removal of provisions in the Northern Quality Endorsement that allow adjustment based on U.S. No. 1 quality standards and that allow insureds to base their own proven historical percentage of U.S. No. 1's or 2's. The commenter stated that a producer who can prove better quality percentages than the county average should be able to do so. The commenter further indicated that adjustment based on U.S. No. 1 standards should be provided by the policy, not just if allowed by the actuarial documents or Special Provisions, and that if adjustment based on U.S. No. 1 standards is not allowed, or if there is no quality endorsement for seed producers, the new proposal may be abused.

Response: Quality adjustment based U.S. No. 1 standards will remain available, as will the ability of producers to certify historical quality percentages. Provisions previously used to indicate that this method of establishing a percentage factor have been added (see section 9 of the Northern Quality Endorsement). FCIC does not agree that potatoes grown for seed should be eligible for coverage under the Quality Endorsement. Seed producers often utilize production practices designed to produce small tubers. Therefore, in many instances, U.S. size standards are intentionally not achieved. FCIC also does not agree that quality adjustment based on the U.S. No. 1 grade should be available in all instances. Such coverage should not be made available universally without first determining that adequate rating information is available for all counties in which potato insurance is offered.

Comment: A reinsured company asked with respect to coverage under the Northern Quality Endorsement, whether there will be only one ''default'' percentage factor per county; whether a producer with good history will be able to ''prove up'' an average quality factor; and whether a quality data base will be maintained and, if so, will there be cups and caps.

Response: More than one percentage factor will apply in counties where coverage based on either U.S. No. 1 or 2 is available, or where separate percentage factors are specified by potato type. Producers will be able to certify, subject to verification, past records of percentages of potatoes meeting applicable standards to establish the factor.

Comment: Comments were received regarding section 4(a) of the Northern Potato Crop Insurance Quality Endorsement. A reinsured company indicated that the section requires insurance providers to decide whether or not potatoes with internal defects can be separated from undamaged production using methods normally used by potato packers or processors. As new separation methods are developed, determination of ''methods normally used'' becomes more and more subjective. A producer group disagreed with the provisions because equipment used to sort internal defects is not normally available to potato producers during harvest and such defects should be graded according to the United States Standards for Grades of Potatoes (either U.S. 1 or 2 as applicable).

Response: Although producers generally do not have the equipment needed to sort internal defects, it is quite common for packers and processors to have the equipment needed to sort such defects. It would be inappropriate for the insurance provider to pay a total or near total loss for production that is later sorted and sold at full value. Therefore, no changes have been made. FCIC agrees that the use of new technology varies among packers and processors, and that it would be difficult to administer a provision that requires the reinsured company to be familiar with all methods. The provision has been changed to indicate that the potatoes with internal defects must not be separable from undamaged production by methods used by the potato packers or processors to which the insured person normally delivers production.

Comment: A reinsured company asked for clarification regarding language in section 4(a) of the Northern Potato Crop Insurance Quality Endorsement that indicates internal defects must exceed the tolerance allowed for a certain U.S. grade. The U.S. grade standards contain a 6 percent tolerance. However, in another section (''Application of Tolerances''), the standards indicate that individual samples cannot have more than double the specified tolerance amount.

Response: The individual samples referred to in the Application of Tolerances are individual samples of a lot that has been prepared for shipping (bagged, boxed, etc.). The average of all samples from the lot cannot exceed the overall limits, but any of the samples may contain defects exceeding the limit. Section 4(a) specifies that tolerances are on a lot basis, not an individual sample basis.

Comment: An insurance service organization suggested editorial changes in section 4 of the Northern Quality Endorsement and section 6 of the Northern Processing Quality Endorsement. The comment indicated that, as proposed, the phase ''. . . and contains potatoes that grade less than U.S. No. 2 due to'' and subsequent items (a)-(b)(3) could be read as applying only to item (3) ''that is marketed after a grade inspection,'' and not to items (1) or (2). If this is not the intent, it would help to insert a semicolon before this phrase and change ''and'' to ''that'' to separate it from (3).

Response: FCIC agrees and has made the recommended changes.

Comment: An insurance service organization suggested defining ''lot'' in

section 4(a) of the Northern Potato Quality Endorsement since reference is made to ''lot basis'' and it is not defined in the Northern Potato Crop Provisions.

Response: FCIC has revised the defined term ''marketable lot'' to ''lot.''

Comment: An insurance service organization asked for clarification regarding language in section 4(b)(1)-(3) and (6)(b)(1)-(3) of the Northern Quality and Processing Quality Endorsements respectively. The comment suggested the following language for clarity:

(1) ''Remove production damaged by freeze or a cause that results in soft rot or wet breakdown from representative samples;

(2) ''Divide the remaining weight of potatoes that grade U.S. No. 2 or better by the total remaining weight;

(3) ''Divide the resulting percentage by the applicable percentage factor contained in the Special Provisions.''

The comment also indicated that sections (2) and (3) could be combined unless the preference is to keep separate for each step.

Response: After further study, FCIC has determined that the method of determining the percentage of damage contained in the proposed rule was inaccurate. That method removed production damaged by freeze or tuber rot before determining applicable percentages, thus reducing the sample size. The percentage of potatoes that grade U.S. No. 2 should be based on the total sample weight, and, since freeze damage and tuber rot are adjusted under the Northern Crop Provisions, potatoes with such damage should be considered sound (No. 1 or 2, as applicable) production for the purposes of the Northern Quality and Processing Quality Endorsements. Section 4(b) of the Northern Quality Endorsement and Section 6(b) of the Northern Processing Quality Endorsement have been revised accordingly.

Comment: A reinsured company asked if section 4(b)(1) of the Northern Quality Endorsement and section 6(b)(1) of the Northern Processing Quality Endorsement (Production damaged by freeze or a cause that results in soft rot or wet breakdown will be removed from representative samples of the production) would require the graders to grade the sample twice, once for freeze and tuber rot and once for all other quality considerations after they have removed the frost and tuber rot potatoes from the sample. If so, more time for grading will be required and the process will be more complex.

Response: FCIC has revised these provisions so that two separate grading procedures will not be required.

Comment: A reinsured company recommended discontinuing coverage under the Northern Quality Endorsement based on the U.S. No. 2 grade and redefining U.S. No. 1 standards to coincide with the new potato commodities future market.

Response: The potato industry still utilizes No. 2 grade standards in many circumstances and this level of quality protection provides adequate insurance coverage for many insureds. Therefore, no changes have been made.

Comment: A reinsured company commented that the Northern Processing Quality Endorsement needs to be expanded to all counties in Idaho that produce potatoes for processing.

Response: FCIC agrees that expansion of the coverage provided by the Northern Processing Quality Endorsement should be studied. Several Regional Service Offices, including the office that would recommend new counties in Idaho, are now considering such expansion. If analysis proves that adequate information is available, and the coverage can be offered in an actuarially sound manner, the coverage provided by the endorsement will be expanded to additional counties.

Comment: A reinsured company recommended that, if the potato producer does not sign a potato contract by the acreage reporting date as mandated by the Northern Potato Crop Insurance Processing Quality Endorsement, acreage automatically be covered under the Northern Potato Crop Insurance Quality Endorsement based on the U.S. No. 1 grade. This method would automatically protect the producer against quality losses even though a contract was not signed.

Response: FCIC agrees that a producer who wants insurance against quality deficiencies should have such coverage when a processor contract is not completed. The Northern Quality Endorsement was designed so that the coverage under it is automatically applicable when a processor contract is not completed by the acreage reporting date. However, the grade upon which coverage is based will be that selected by the insured (U.S. No. 1 (if available in the county) or U.S. No. 2).

Comment: An insurance service organization suggested replacing the reference to ''specific gravity'' in section 6(a) of the Northern Processing Quality Endorsement with ''percent solids.'' The term ''specific gravity'' may not appear on settlement sheets.

Response: Most settlement sheets still refer to ''specific gravity.'' For those that do not, a conversion chart commonly used in the potato industry will be referenced in procedural handbooks.

Comment: An insurance provider recommended that production covered under the Northern Processing Quality Endorsement be eligible for adjustment if the specific gravity is less than 1.074. Most processor contracts require a specific gravity of 1.074 or higher.

Response: FCIC agrees and has modified section 6(a)(1) (redesignated 6(a)) to indicate that production will be eligible for adjustment if it has a specific gravity that is less than the lower of 1.074 or the minimum acceptable value under the terms of the processor contract.

Comment: An insurance service organization suggested a change in the formatting of sections 6 (a) & (b) of the Northern Processing Quality Endorsement. Currently, there is no (a)(2) following (a)(1).

Response: Section 6(a)(1) has been redesignated as 6(a) and the following sections have been redesignated accordingly.

Comment: A reinsured company indicated that the Northern Quality Endorsement no longer provided quality protection for production grown for seed. This leaves the seed producer without adequate protection against losses in quality. The comment suggested developing a new certified seed endorsement based on the U.S. Certified Seed Standards in order to provide adequate protection for the seed grower.

Response: FCIC agrees that seed producers may need protection in addition to that currently provided and will work with any party interested in developing such coverage.

Comment: A producer group recommended revising the language in section 4 of the Certified Seed Endorsement from ''The certified seed acreage you insure in the current crop year cannot be greater than 125 percent of the average number of acres grown for seed in the three previous years unless we agree otherwise in writing'' to ''The certified seed acreage you insure in the current crop year cannot be greater than 125 percent of the average number of acres entered into and passing certification in the potato certified seed program for the state in which the seed was grown in the three previous years unless we agree otherwise in writing.'' The group further suggested that the language in section 4(a) be changed from ''Multiply the average number of acres grown for certified seed the three previous years by 1.25 and divide this result by the number of acres grown for certified seed in the current crop year; and * * *'' to ''Multiply the average number of acres entered into and passing certification in the potato

certified seed program for the state in which the seed was grown the three previous years by 1.25 and divide this result by the number of acres grown for certified seed in the current crop year; and * * *'' This change should adequately address previous program abuse and limit indemnified acreage to only that which is actually being produced for seed. A reinsured company and an insurance service organization also recommended clarifying whether ''3 previous years'' means ''calendar'' or ''data base'' years.

Response: FCIC has made the recommended changes and clarified the provisions to indicate the three previous calendar years.

Comment: An insurance service organization indicated section 4 of the Potato Crop Insurance Certified Seed Endorsement which limits the increase to 125 percent in certified seed acreage compared to the average of the previous three years is a good idea. The comment indicated that the overall reduction in guarantee if excess acreage is reported may be the simplest way to handle this possibility, but asked if consideration was given to allowing the insured to designate which acres within the limit would be insured as certified seed.

Response: Consideration was given to allowing insureds to designate insurable and uninsurable acreage. However, it was not considered the best alternative since identification of the source of production would be difficult, especially if insured and uninsured acreage were in the same field. Therefore, no change will be made.

Comment: A reinsured company indicated that coverage for Certified Seed should be made available in areas from which the coverage was withdrawn. The endorsement was put on hold for review and has been under review for several years. The endorsement should be consistent with certification requirements used by the states of Montana and Idaho.

Response: Coverage for certified seed was withdrawn in certain locations at the request of grower groups and potato industry representatives. FCIC will not reinstate this coverage until these groups and representatives agree that it should again be made available. FCIC believes that the endorsement is consistent with certification requirements used in Montana and Idaho. Provisions in the endorsement specify that potatoes must be produced and managed in accordance with standards, practices, and procedures required for certification by the state's certifying agency and applicable regulations. The endorsement cannot contain the specific requirements of the certifying agencies in Montana and Idaho because the endorsement is also used in other states. No changes have been made.

Comment: An insurance service organization questioned the language in section 7 of the Potato Crop Insurance Certified Seed Endorsement. The comment stated the existing Certified Seed Potato Option Amendment specifies a payment of one dollar per hundredweight (multiplied by the guarantee and share) while the proposed language refers to ''the dollar amount per hundredweight shown in the Special Provisions.'' The commenter asks whether this dollar amount varies by state or country, and if so, by how much. The commenter also asks whether the rates reflect any increase or decrease.

Response: Depending upon available price information for certified seed, the dollar amount of coverage per hundredweight could vary by state or county. The amount of variation would depend upon actual and expected prices for see. Premium rate percentages should not be impacted by variation in this dollar amount since the risk of not receiving certification due to an insured cause should remain constant regardless of the dollar amount of coverage per hundredweight. However, the amount of premium may increase if the price is higher.

Comment: An insurance provider recommended that the Northern Storage Endorsement give producers time to make decisions based on a grade that was determined from sampling prior to storage and if the grading showed internal defects, then the producer should be allowed the same choices available under the Northern Quality Endorsement (section 4(a)). The comment further stated that the Northern Storage Endorsement covers quality problems that are communicable (the problem will spread throughout the storage facility, such as late blight or a tuber rot condition). Internal defects are not communicable and will not spread to other potatoes. In all cases, marketability and salvage will control the losses. Regardless of the type of problem in storage, salvage should always apply unless the crop is destroyed.

Response: FCIC agrees that when the producer elects the Northern Quality Endorsement, the coverage provided will be extended to provide the same coverage under the Northern Storage Endorsement if the requirements of such Endorsement are met. Salvage provisions have been added.

Comment: A producer group stated that the Northern Storage Coverage Endorsement attaches to the basic policy, but should also extend the coverage provided under the Northern Potato Quality Endorsement if that endorsement is elected by the producer.

Response: FCIC agrees that coverage under the Northern Quality Endorsement should be extended when the producer also elects a Northern Storage Coverage Endorsement and has modified the Northern Storage Endorsement accordingly.

Comment: An insurance service organization asked for clarification regarding language in section 3 of the Northern Potato Storage Coverage Endorsement that indicates ''all other potato production insured under the Northern Potato Crop Provisions must be insured under this endorsement unless the Special Provisions allow you to exclude certain potato varieties, types or groups from insurance under this endorsement, and you elect to exercise this option.'' The commenter understands this to mean that all potatoes insured under the Northern Potato Crop Provisions have to be insured under the Northern Storage Endorsement, unless a processor contract requires delivery within three days of harvest or if the producer elects to exclude other production when specifically allowed by the Special Provisions. The comment recommended starting the sentence with ''If you elect this endorsement'' for clarity.

Response: The provision has been clarified.

Comment: An insurance service organization questioned why coverage exclusions are required to be identified annually as stated in section 3 of the Northern Potato Storage Coverage Endorsement. It would be more consistent for such exclusions to remain in effect until otherwise notified in writing by either the insured producer or the insurance provider.

Response: Since the acreage to which exclusions apply is not likely to be identical from year to year, FCIC believes excluded varieties, types, or groups should be identified on the annual acreage report. Therefore, no change will be made.

Comment: An insurance service organization indicated that the word ''prorata'' in section 4 of the Northern Storage Endorsement should be two words. The comment also recommended changing the language in the example to account for the missing amount. Recommended changing to: ''the production to count is 1,000 hundredweight because 500 hundredweight went bad.''

Response: The editorial correction has been made. However, the

recommendation regarding the ''missing amount of production'' has not been incorporated. The provision is clearly stated without the recommended change.

Comment: An insurance service organization questioned how the insurance provider will be able to verify if notification was within 72 hours of discovery of damage as indicated in section 5(b) of the Northern Storage Endorsement.

Response: As with any insured loss, it is important that the insurance provider receive timely notification of damage. FCIC agrees that in many instances it is difficult to determine the exact time the insured person becomes aware of damage and therefore, some flexibility is required when administering this provision. However, if it can be clearly shown that an insured did not give timely notice, any claim could be denied.

Comment: An insurance service organization suggested that section 5(a) and 5(c) be combined in the Northern Potato Storage Coverage Endorsement since both refer to damage by an insured cause other than freeze.

Response: FCIC agrees and has combined the provisions in 5(c) with section 5(a).

Comment: An insurance service organization recommended that the insured be required to have the Quality Endorsement in order to take the Northern Potato Storage Coverage Endorsement.

Response: Since damage that may later cause tuber rot is covered under the Northern Crop Provisions, the Northern Storage Endorsement should be available to producers who elect coverage under the Northern Crop Provisions only. Therefore, no changes have been made.

In addition to the changes indicated above, FCIC has made the following changes:

1. The term ''tuber rot'' is defined in the Northern Crop Provisions to avoid duplicating provisions in the Northern Crop Provisions, Quality Endorsement, Processing Quality Endorsement, and Storage Endorsement. Added a definition for ''disposed'' to the Northern and Central and Southern Crop Provisions for clarification. Added definitions for the terms ''buyer'' and ''reduction percentage'' to the Northern Crop Provisions for clarification. Also removed definitions for ''days'' ''FSA'', ''final planting date,'' ''interplanted,'' ''irrigated practice,'' ''planted acreage,'' and ''production guarantee (per acre),'' since definitions for these terms are now contained in the Basic Provisions.

2. Section 2 of the Northern Crop Provisions is removed and section 2 of the Southern Crop Provisions is modified because provisions previously contained in section 2 regarding unit division requirements and unit structure by section, section equivalent, FSA farm serial number, and irrigated and non-irrigated practices, have been moved to the Basic Provisions.

3. Revised redesignated section 11(b)(2) of the Northern Crop Provisions and section 12(b)(2) of the Central and Southern Crop Provisions to clearly indicate that the price use to determine the amount of an indemnity may be limited.

4. The initial paragraph of the Central and Southern Crop Provisions has been revised to add Arizona and Georgia as states in which these provisions apply. These states are also added in section 5 (Cancellation and Termination Dates) and section 9 (Insurance Period) of the Central and Southern Crop Provisions.

5. Sections 4 and 5 of the Central and Southern Crop Provisions have been revised to change the contract change and cancellation/termination dates for Pinellas, Hillsborough, Polk, Oseola, and Brevard Counties, Florida, and all counties lying south thereof to June 30 and September 30 respectively. These dates were previously effective only in Manatee, Hardee, Highlands, Okeechobee, and St. Lucie Counties, and all counties lying south thereof.

6. Section 4(a)(1) of the Northern Quality Endorsement and section 6(a)(1) of the Northern Processing Quality Endorsement are revised to clarify that a ''price comparison'' method of adjustment will not be applicable if it has already been performed under the terms of redesignated section 11(g)(2)(i) of the Northern Potato Crop Insurance Provisions.

7. Removed provisions regarding written agreements that are now contained in the Basic Provisions.

8. Section 5 of the Northern Processing Quality Endorsement is clarified to indicate that the number of acres insured under the endorsement will not exceed the actual number of acres planted to the potato types under contract.

9. Section 6(a)(1) of the Northern Processing Quality Endorsement is revised by changing the price against which the value of damaged production is compared from the ''base contract price'' to the ''highest available price election.'' This change was made because of variation in methods used to establish base contract prices. Base prices tend to be set low when substantial incentives for good quality are contained in the contract, and tend to be set high when substantial discounts for low quality are included. Use of the price election will provide a consistent means of quality adjustment for all insureds.

10. Section 8 of the Northern Quality Endorsement and section 9 of the Northern Processing Quality Endorsement are revised to indicate that an insured may elect quality adjustment based on U.S. No. 1 or 2 by type or group, if both U.S. No. 1 and 2 are provided in the actuarial documents and if separate types or groups are specified in the Special Provisions.

11. Section 4 of the Northern Storage Endorsement is revised to clarify that pro rata allocation of stored production to units will be allowed only if verifiable records of production placed in storage are available by unit.

12. Section 6 of the Northern Storage Endorsement is removed. The proposed provisions duplicated those contained in redesignated section 11 of the Northern Crop Provisions.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the potato insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The earliest contract change date that can be met for the 1998 crop year is December 31, 1997. It is therefore imperative that these provisions be made final before that date so that the reinsured companies and insured may have sufficient time to implement these changes. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

List of Subjects in 7 CFR Parts 422 and 457

Crop insurance, Potato crop insurance regulations, Potatoes.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 422 and 457 as follows:

PART 422—POTATO CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 422 is amended to read as follows:

Authority. 7 U.S.C. 1506(1), 1506(p).

2. The heading preceding § 422.1 is revised to read as follows: Subpart—Regulations for the 1986 (1987 in certain California counties and Florida) through 1997 Crop Years (1998 in Alabama; Arizona; certain California counties; Delaware; Florida; Maryland; Missouri; New Jersey; New Mexico; North

Carolina; Oklahoma; Texas; and Virginia).

3. Section 422.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 422.7 The application and policy.

* * * * *

(d) The application for the 1986 and succeeding crop year is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Potato Crop Insurance Policy for the 1986 (1987 in certain California counties and Florida) through 1997 Crop Years (1998 in Alabama; Arizona; certain California counties; Delaware; Florida; Maryland; Missouri; New Jersey; New Mexico; North Carolina; Oklahoma; Texas; and Virginia) are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

4. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

5. Section 457.142 is added to read as follows:

§ 457.142 Northern Potato Crop Insurance Provisions.

The Northern Potato Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Northern Potato Crop Provisions

These provisions will be applicable in: Alaska; Humboldt, Modoc, and Siskiyou Counties, California; Colorado; Connecticut; Idaho; Indiana; Iowa; Maine; Massachusetts; Michigan; Minnesota; Montana; Nebraska; Nevada; New York; North Dakota; Ohio; Oregon; Pennsylvania; Rhode Island; South Dakota; Utah; Washington; Wisconsin; and Wyoming.

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

1. Definitions.

Buyer. A business entity in the business of buying or processing potatoes, that possesses all the licenses and permits required by the state in which it operates, and has the facilities to accept the potatoes purchased.

Certified seed. Potatoes for planting a potato crop in a subsequent crop year that have been found to meet the standards of the public agency that is responsible for the seed certification process within the state in which they were grown.

Discard. Disposal of production by you, or a person acting for you, without receiving any value for it.

Disposed. Any disposition of the crop including but not limited to sale or discard.

Grade inspection. An inspection in which samples of production are obtained by us, or a party approved by us, prior to the sale, storage, or disposal of any lot of potatoes, or any portion of a lot and the potatoes are evaluated and quality (grade) determinations are made by us, a laboratory approved by us, or a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, in accordance with the United States Standards for Grades of Potatoes.

Harvest. Lifting potatoes from within the soil to the soil surface.

Hundredweight. One hundred (100) pounds avoirdupois.

Local market. The area in which the insured potatoes are normally sold.

Lot. A quantity of production that can be separated from other quantities of production by grade characteristics, load, location or other distinctive features.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow potatoes, and to deliver the potato production to the processor;

(b) The processor's commitment to purchase the production stated in the contract; and

(c) A price that will be paid to the producer for the production stated in the contract.

Reduction percentage. A factor determined based on the weight of only freeze damaged production in a sample of potatoes in relationship to the total weight of the sample, and the provisions in section 11(g)(1) of these crop provisions; and that is used to determine a quantity of potatoes that will not be included as production to count.

Tuber rot. Any soft, mushy, or leaky condition of potato tissue (soft rot or wet breakdown as defined in the United States Standards for Grades of Potatoes), including, but not limited to, breakdown caused by Southern Bacterial Wilt, Ring Rot, or Late Blight.

2. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the potatoes in the county insured under this policy unless the Special Provisions provide different price elections by type. If the Special Provisions provide for different price elections by type, you may select one price election for each potato type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price election offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) If the production from any acreage of the insured crop is not harvested, the price used to determine your indemnity will be 80 percent of your price election.

(c) Any acreage of potatoes damaged to the extent that similarly situated producers in the area would not normally further care for the potatoes will be deemed to have been destroyed even though you may continue to care for the potatoes. The price election for unharvested acreage will apply to such acreage.

3. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

4. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

5. Annual Premium.

In lieu of the premium computation method contained in section 7 of the Basic Provisions, the annual premium amount (y) is computed by multiplying (a) the production guarantee by (b) the price election for harvested acreage, by (c) the premium rate, by (d) the insured acreage, by (e) your share at the time of planting, and by (f) any applicable premium adjustment factors contained in the actuarial documents ($a \times b \times c \times d \times e \times f = y$).

6. Insured Crop.

In accordance with section 8 of the Basic Provisions, the crop insured will be all the potatoes in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) Planted with certified seed (unless otherwise permitted by the Special Provisions);

(c) Planted for harvest as certified seed stock, or for human consumption, (unless specified otherwise in the Special Provisions);

(d) That are not (unless allowed by the Special Provision or by written agreement):

(1) Interplanted with another crop; or

(2) Planted into an established grass or legume.

7. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage that:

(a) Does not meet the rotation requirements contained in the Special Provisions for the crop; or

(b) Is damaged before the final planting date to the extent that similarly situated producers in the area would normally not further care for the crop, unless it is replanted or we agree that it is not practical to replant.

8. Insurance Period.

In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting as follows (exceptions, if any, for specific counties, varieties or types are contained in the Special Provisions):

(a) October 1, in Alaska;

(b) October 10 in Nebraska and Wyoming;

(c) October 15 in Colorado; Indiana; Iowa; Michigan; Minnesota; Montana; Nevada;

North Dakota; South Dakota; Utah; and Wisconsin;

(d) October 20 in Maine; and

(e) October 31 in Humboldt, Modoc, and Siskiyou Counties, California; Connecticut; Idaho; Massachusetts; New York; Ohio; Oregon; Pennsylvania; Rhode Island; and Washington.

9. Causes of Loss.

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects, but only if sufficient and proper pest control measures are used;

(4) Plant disease, but only if sufficient and proper disease control measures are used;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period (see section 9(a)(1) through (7)).

(b) In addition to the causes of loss not insured against as contained in section 12 of the Basic Provisions, we will not insure against any loss of production due to:

(1) Damage that occurs or becomes evident after the end of the insurance period, including, but not limited to, damage that occurs or becomes evident in storage; or

(2) Causes, such as freeze after certain dates, as limited by the Special Provisions.

10. Duties in the Event of Damage or Loss.

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples at least 10 feet wide and extending the entire length of each field in the unit if you are going to destroy any acreage of the insured crop that will not be harvested.

(b) We must be given the opportunity to perform a grade inspection on the production from any unit for which you have given notice of damage.

11. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which acceptable production records were not provided; and

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee (If there is unharvested acreage in the unit, the harvested and unharvested acreage will be determined separately);

(2) Multiplying each result in section 11(b)(1) by the respective price election (The price election may be limited as specified in section 3.);

(3) Totaling the results of section 11(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable (see section 11(d)), by the respective price election;

(5) Totaling the results of section 11(b)(4);

(6) Subtracting the results of section 11(b)(5) from the result in section 11(b)(3); and

(7) Multiplying the result of section 11(b)(6) by your share.

For example:

You have a 100 percent share in 100 harvested acres of potatoes in the unit, with a guarantee of 150 hundredweight per acre and a price election of $4.00 per hundredweight. You are only able to harvest 10,000 hundredweight. Your indemnity would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee;

(2) 15,000 hundredweight × $4.00 price election = $60,000.00 value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count;

(6) $60,000.00 − $40,000.00 = $20,000.00 loss; and

(7) $20,000.00 × 100 percent = $20,000.00 indemnity payment.

You also have a 100 percent share in 100 unharvested acres of potatoes in the same unit, with a guarantee of 150 hundredweight per acre and a price election of $3.20 per hundredweight. The price election for unharvested acreage is 80.0 percent of your elected price election ($4.00 × 0.80 = $3.20.) This unharvested acreage was appraised at 35 hundredweight per acre for a total of 3500 hundredweight as production to count. Your total indemnity for the harvested and unharvested acreage would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the harvested acreage, and 100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the unharvested acreage;

(2) 15,000 hundredweight guarantee × $4.00 price election = $60,000.00 value of guarantee for the unharvested acreage, and 15,000 hundredweight guarantee × $3.20 price election = $48,000.00 value of guarantee for the unharvested acreage;

(3) $60,000.00 + $48,000.00 = $108,000.00 total value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count for the harvested acreage, and 3500 hundredweight × $3.20 = $11,200.00 value of production to count for the unharvested acreage;

(5) $40,000.00 + $11,200.00 = $51,200.00 total value of production to count;

(6) $108,000.00 − $51,200.00 = $56,800.00 loss; and

(7) $56,800.00 loss × 100 percent = $56,800.00 indemnity payment.

(c) The extent of any quality loss must be determined based on samples obtained no later than the time the potatoes are placed in storage, if the production is stored prior to sale, or the date they are delivered to a buyer, wholesaler, packer, broker, or other handler if production is not stored.

(d) The total production to count (in hundredweight) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes;

(D) From which any production is disposed of without a grade inspection; or

(E) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Production lost due to harvest prior to full maturity. Production to count from such acreage will be determined by increasing the amount of harvested production by 2 percent per day for each day the potatoes were harvested prior to the date the potatoes would have reached full maturity. The date the potatoes would have reached full maturity will be considered to be 45 days prior to the calendar date for the end of the insurance period, unless otherwise specified in the Special Provisions. This adjustment will not be made if the potatoes are damaged by an insurable cause of loss, and leaving the crop in the field would either reduce production or decrease quality;

(iv) Unharvested production (the value of unharvested production will be calculated using the reduced price election determined in section 2(b) and unharvested production may be adjusted in accordance with sections 11(e), (f), (g), and (h)); and

(v) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The price used to determine the amount of any indemnity will be limited as specified in section 2 even if the representative samples are harvested. The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage (the amount of production prior to the sorting or discarding of any production).

(e) Potato production is eligible for quality adjustment if:

(1) The potatoes have freeze damage or tuber rot that is evident at, or prior to, the end of the insurance period; and

(2) A grade inspection is performed.

(f) Potato production that is eligible for quality adjustment, as specified in section 11(e), with 5 percent damage or less (by weight) will be adjusted 0.1 percent for each 0.1 percent of damage through 5.0 percent.

(g) Potato production that is eligible for quality adjustment, as specified in section 11(e), with 5.1 percent damage or more (by weight) will be adjusted as follows:

(1) For potatoes damaged by freeze, production will be reduced 0.1 percent for each 0.1 percent of damage through 5.0 percent, 0.5 percent for each 0.1 percent of damage from 5.1 through 15.0 percent, and by 1.0 percent for each 0.1 percent of damage from 15.1 through 19.5 percent. However, if you do not discard any harvested production within 21 days of the end of the insurance period that has freeze damage in excess of 17.9 percent, we will include 15 percent of such production when determining the amount of production to count.

(2) For potatoes that have tuber rot due to an insurable cause other than freeze, production to count will be determined as follows:

(i) For potatoes for which a price is agreed upon between you and a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) if the end of the insurance period, or that are delivered to a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period, by dividing the price received or that will be received per hundredweight by the highest price election designated in the Special Provisions for the insured potato type, and multiplying the result (not to exceed 1.0) by the number of hundredweight of sold production. If production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market;

(ii) For harvested potatoes discarded within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period and appraised unharvested production that could:

(A) Not have been sold, the production to count will be zero; or

(B) Have been sold, the production will be reduced as follows (all percentage points of damage will be rounded to the nearest 0.1 percent):

(*1*) 0.1 percent for each 0.1 percent of damage through 5.0 percent;

(*2*) 05. percent for each 0.1 percent of damage from 5.1 percent through 6.0 percent;

(*3*) 1.0 percent for each 0.1 percent of damage from 6.1 through 8.0 percent;

(*4*) 2.0 percent for each 0.1 percent of damage from 8.1 through 9.0 percent; and

(*5*) 2.5 percent for each 0.1 percent of damage from 9.1 through 10.4 percent.

(iii) For potatoes for which a price is not agreed upon between you and a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period and that remain in storage 22 or more days (61 or more days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) after the end of the insurance period, adjustment will be made in accordance with section 11(g)(2)(ii)(B).

(h) When a combination of freeze damage or a tuber rot condition is 5.1 percent (by weight) or greater, the amount of production to count for production affected by tuber rot will first be determined in accordance with section 11(g)(2). If production is not sold within the time frame specified in section 11(g)(2), this amount will be further adjusted as follows:

(1) The percentage of potatoes with freeze damage will be determined by dividing the weight of potatoes with only freeze damage in representatives samples of the production by the total weight of the samples;

(2) The reduction percentage will be determined based on the result of section 11(h)(1) and section 11(g)(1); and

(3) The reduction percentage determined in section 11(h)(2) will be multiplied by the amount of production determined in accordance with section 11(g)(2).

12. Prevented Planting.

Your prevented planting coverage will be 25 percent of your production guarantee for timely planted acreage. If you have limited or additional coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

6. Section 457.147 is added to read as follows:

§ 457.147 Central and Southern Potato Crop Insurance Provisions.

The Central and Southern Potato Crop Insurance Provisions for the 1999 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Central and Southern Potato Crop Provisions

These provisions will be applicable in: Alabama; Arizona; all California counties except Humboldt, Modoc and Siskiyou; Delaware; Florida; Georgia; Maryland; Missouri; New Jersey; New Mexico; North Carolina; Oklahoma; Texas; and Virginia.

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

1. Definitions.

Certified seed. Potatoes for planting a potato crop in a subsequent crop year that have been found to meet the standards of the public agency that is responsible for the seed certification process within the state in which they were grown.

Discard. Disposal of production by you, or a person acting for you, without receiving any value for it.

Disposed. Any disposition of the crop including but not limited to sale or discard.

Grade inspection. An inspection in which samples of production are obtained by us, or a party approved by us, prior to the sale, storage or disposal of any lot of potatoes, or any portion of a lot and the potatoes are evaluated and quality (grade) determinations are made by us, a laboratory approved by us, or a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, in accordance with the United States Standards for Grades of Potatoes.

Harvest. Lifting potatoes from within the soil to the soil surface.

Hundredweight. One hundred (100) pounds avoirdupois.

Lot. A quantity of production that can be separated from other quantities of production by grade characteristics, load, location or other distinctive features.

Planting period. The period of time between the calendar dates designated in the Special Provisions for the planting of spring-planted, summer-planted, fall-planted, or winter-planted potatoes.

Practical to replant. In lieu of the definition of ''Practical to replant'' contained in section one of the Basic Provisions, practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors including, but not limited to, moisture availability, condition of the field, marketing windows, and time to crop maturity, that replanting to the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period, or the end of the planting period in which initial planting took place in counties for which the Special Provisions designates separate planting periods, unless replanting is generally occurring in the area.

2. Unit Division.

A basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units by planting period.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

(a) In addition to the requirements of section 2 of the Basic Provisions, you may select only one price election for all the potatoes in the county insured under this policy unless the Special Provisions provide different price elections by type. If the Special Provisions provide for different price elections by type, you may select one price election for each potato type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price election offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) If the production from any acreage of the insured crop is not harvested, the price used to determine your indemnity will be 80 percent of your price election.

(c) Any acreage of potatoes damaged to the extent that similarly situated producers in the area would not normally further care for the potatoes will be deemed to have been destroyed even though you may continue to

care for the potatoes. The price election for unharvested acreage will apply to such acreage.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is:

(a) June 30 preceding the cancellation date for counties with a September 30 cancellation date;

(b) September 30 preceding the cancellation date for counties with a November 30 or December 31 cancellation date; and

(c) November 30 preceding the cancellation date for counties with a February 28 or March 15 cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Dates
Pinellas, Hillsborough, Polk, Oseola, and Brevard Counties, Florida, and all Florida counties lying south thereof	Sep. 30.
Arizona; all California counties; and all Texas counties except Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Haskell, Knox, Lamb, Parmer, Swisher, and Yoakum.	Nov. 30.
Alabama; Delaware; Georgia; Maryland; Missouri; New Jersey; North Carolina; Virginia; and all Florida counties except Pinellas, Hillsborough, Polk, Oseola, and Brevard Counties, Florida, and all Florida counties to the south thereof.	Dec. 31.
Oklahoma; and Haskell and Knox Counties, Texas	Feb. 28.
Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Lamb, Parmer, Swisher, and Yoakum Counties, Texas; and New Mexico.	Mar. 15.

6. Annual Premium.

In lieu of the premium computation method contained in section 7 of the Basic Provisions, the annual premium amount (y) is computed by multiplying (a) the production guarantee by (b) the price election for harvested acreage, by (c) the premium rate, by (d) the insured acreage, by (e) your share at the time of planting, and by (f) any applicable premium adjustment factors contained in the actuarial documents (a x b x c x d x e x f = y).

7. Insured Crop.

In accordance with section 8 of the Basic Provisions, the crop insured will be all the potatoes in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) Planted with certified seed (unless otherwise permitted by the Special Provisions);

(c) Planted for harvest as certified seed stock, or for human consumption, (unless specified otherwise in the Special Provisions);

(d) That are not (unless allowed by the Special Provisions or by written agreement):

(1) Interplanted with another crop; or

(2) Planted into an established grass or legume.

8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage that:

(a) Does not meet the rotation requirements contained in the Special Provisions for the crop; or

(b) Is damaged before the final planting date or before the end of the applicable planting period in counties for which the Special Provisions designate separate planting periods, to the extent that similarly situated producers in the area would normally not further care for the crop, unless it is replanted or we agree that it is not practical to replant.

9. Insurance Period.

In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the date immediately following planting as follows (exceptions, if any, for specific counties, varieties or types are contained in the Special Provisions):

(a) July 15 in Missouri; North Carolina; and all Texas counties except Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Haskell, Hartley, Knox, Lamb, Parmer, Swisher, and Yoakum.

(b) July 25 in Arizona; and Virginia.

(c) August 15 in Oklahoma; and Haskell and Knox Counties, Texas.

(d) In Alabama; California; Florida; and Georgia; the dates established by the Special Provisions for each planting period; and

(e) October 15 in Bailey, Castro, Dallam, Deaf Smith, Floyd, Gains, Hale, Hartley, Lamb, Parmer, Swisher, and Yoakum Counties, Texas; Delaware; Maryland; New Jersey; and New Mexico.

10. Causes of Loss.

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss which occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects, but only if sufficient and proper pest control measures are used;

(4) Plant disease, but only if sufficient and proper disease control measures are used;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period (see section 10(a)(1) through (7)).

(b) In addition to the causes of loss not insured against as contained in section 12 of the Basic Provisions, we will not insure against any loss of production due to:

(1) Damage that occurs or becomes evident after the end of the insurance period, including, but not limited to, damage that occurs after potatoes have been placed in storage; or

(2) Causes, such as freeze after certain dates, as limited by the Special Provisions.

11. Duties in the Event of Damage or Loss.

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples at least 10 feet wide and extending the entire length of each field in the unit if you are going to destroy any acreage of the insured crop that will not be harvested.

(b) We must be given the opportunity to perform a grade inspection on the production from any unit for which you have given notice of damage.

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which acceptable production records were not provided; and

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee (if there is unharvested acreage in the unit, the harvested and unharvested acreage will be determined separately);

(2) Multiplying each result in section 12(b)(1) by the respective price election (the price election may be limited as specified in section 3.);

(3) Totaling the results of section 12(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 12(d)) by the respective price election;

(5) Totaling the results of section 12(b)(4);

(6) Subtracting the results of section 12(b)(5) from the result in section 12(b)(3); and

(7) Multiplying the result of section 12(b)(6) by your share.

For example:

You have a 100 percent share in 100 harvested acres of potatoes in the unit, with a guarantee of 150 hundredweight per acre and a price election of $4.00 per hundredweight. You are only able to harvest 10,000 hundredweight. Your indemnity would be calculated as follows:

(1) 100 acres × 150 hundredweight=15,000 hundredweight guarantee;

(2) 15,000 hundredweight × $4.00 price election=$60,000.00 value of guarantee;

(4) 10,000 hundredweight × $4.00 price election=$40,000.00 value of production to count;

(6) $60,000.00 − $40,000.00=$20,000.00 loss; and

(7) $20,000.00×100 percent=$20,000.00 indemnity payment.

You also have a 100 percent share in 100 unharvested acres of potatoes in the same unit, with a guarantee of 150 hundredweight per acre and a price election of $3.20 per

hundredweight. (The price election for unharvested acreage is 80.0 percent of your elected price election ($4.00×0.80=$3.20.) This unharvested acreage was appraised at 35 hundredweight per acre for a total of 3,500 hundredweight as production to count. Your total indemnity for the harvested and unharvested acreage would be calculated as follows:

(1) 100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the harvested acreage, and

100 acres × 150 hundredweight = 15,000 hundredweight guarantee for the unharvested acreage;

(2) 15,000 hundredweight guarantee × $4.00 price election = $60,000.00 value of guarantee for the harvested acreage, and

15,000 hundredweight guarantee × $3.20 price election = $48,000.00 value of guarantee for the unharvested acreage;

(3) $60,000.00 + $48,000.00 = $108,000.00 total value of guarantee;

(4) 10,000 hundredweight × $4.00 price election = $40,000.00 value of production to count for the harvested acreage, and

3500 hundredweight × $3.20 = $11,200.00 value of production to count for the unharvested acreage;

(5) $40,000.00 + $11,200.00 = $51,200.00 total value of production to count;

(6) $108,000.00 − $51,200 = $56,800.00 loss; and

(7) $56,800.00 loss × 100 percent = $56,800.00 indemnity payment.

(c) The extent of any quality loss must be determined based on samples obtained no later than the time potatoes are placed in storage, if the production is stored prior to sale, or the date they are delivered to a buyer, wholesaler, packer, broker, or other handler if production is not stored.

(d) The total production to count (in hundredweight) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes;

(D) From which any production is disposed of without a grade inspection; or

(E) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Production lost due to harvest prior to full maturity. Production to count from such acreage will be determined by increasing the amount of harvested production by 2 percent per day for each day the potatoes were harvested prior to the date the potatoes would have reached full maturity. The date the potatoes would have reached full maturity will be considered to be 45 days prior to the calendar date for the end of the insurance period, unless otherwise specified in the Special Provisions. This adjustment will not be made if the potatoes are damaged by an insurable cause of loss, and leaving the crop in the field would either reduce production or decrease quality.

(iv) Unharvested production (the value of unharvested production will be calculated using the reduced price election determined in section 3(b) and unharvested production may be adjusted in accordance with section 12(e)); and

(v) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The price used to determine the amount of any indemnity will be limited as specified in section 3 even if the representative samples are harvested. The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage determined in accordance with section 12(e).

(e) With the exception of production with external defects, only marketable lots of mature potatoes will be production to count for loss adjustment purposes. Production not meeting the standards for grading U.S. No. 2 due to external defects will be determined on an individual potato basis for all unharvested potatoes and for any harvested potatoes if we determine it is practical to separate the damaged production. All determinations must be based upon a grade inspection.

(1) Marketable lots of potatoes will include any lot of potatoes that is:

(i) Stored;

(ii) Sold as seed;

(iii) Sold for human consumption; or

(iv) Harvested and not sold or that is appraised if such lot meets the standards for grading U.S. No. 2 or better on a sample basis.

(2) Marketable lots will also include any potatoes that we determine:

(i) Could have been sold for seed or human consumption in the general marketing area;

(ii) Were not sold as a result of uninsured causes including, but not limited to, failure to meet chipper or processor standards for fry color or specific gravity; or

(iii) Were disposed of without our prior written consent and such disposition prevented our determination of marketability.

(3) Unless included in section 12(e) (1) or (2), a potato lot will not be considered marketable if, due to insurable causes of damage, it:

(i) Is partially damaged, and is salvageable only for starch, alcohol, or livestock feed;

(ii) Is left unharvested and does not meet the standards for grading U.S. No. 2 or better due to internal defects; or

(iii) does not meet the standards for grading U.S. No. 2 or better due to external defects, is harvested, and it is not practical to separate the damaged production.

13. Prevented Planting.

Your prevented planting coverage will be 25 percent of your production guarantee for timely planted acreage. If you have limited or additional coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

7. Section 457.143 is added to read as follows:

§ 457.143 Northern Potato Crop Insurance—Quality Endorsement.

The Northern Potato Crop Insurance Quality Endorsement provisions for the 1998 and succeeding years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Northern Potato Crop Insurance Quality Endorsement

1. In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made part of your Northern Potato Crop Provisions subject to the terms and conditions described herein. In the event of a conflict between the Northern Potato Crop Provisions and this endorsement, this endorsement will control.

2. You must elect this endorsement on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this endorsement. This endorsement will continue in effect until canceled. It may be canceled by either you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date.

3. All acreage of potatoes insured under the Northern Potato Crop Provisions will be insured under this endorsement except:

(a) Any acreage specifically excluded by the actuarial documents; and

(b) Any acreage grown for seed.

4. We will adjust production to count (determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions) from (1) unharvested acreage; (2) harvested acreage that is stored after a grade inspection; or (3) that is marketed after a grade inspection; and that contains potatoes that grade less than U.S. No. 2 due to:

(a) Internal defects (the number of potatoes with such defects must be in excess of the tolerance allowed for U.S. No. 2 grade potatoes on a lot basis and must not be separable from undamaged production using

methods used by the potato packers or processors to whom you normally deliver your potato production), will be adjusted as follows:

(1) For potatoes for which a price is agreed upon in writing between you and a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period, or that are delivered to a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period, by multiplying the production to count by the factor (not to exceed 1.0) that results from dividing the price received or that will be received per hundredweight of the damaged production by the highest available price election. This method of adjustment will not be performed if it has already been performed under the terms of section 11(g)(2)(i) of the Northern Potato Crop Insurance Provisions. If production is sold for a price lower than the value appropriate to and representative of the local market, we will determine the value of the production based on the price you could have received in the local market.

(2) For harvested potatoes discarded within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period and appraised unharvested production that could:

(i) Not have been sold, the production to count will be zero; or

(ii) Have been sold, the production to count will be determined in accordance with section 4(a)(1). The price used for the damaged production will be the price you could have received in the local market.

(3) For potatoes for which a price is not agreed upon between you and a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period and that remain in storage 22 or more days (61 or more days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) after the end of the insurance period, production to count will be determined in accordance with section 4(b).

(b) Factors other than those specified in section 4(a), by multiplying by a factor (not to exceed 1.0) that is determined as follows:

(1) The combined weight of sampled potatoes that grade U.S. No. 2 or better and that are damaged by freeze or tuber rot will be divided by the total sample weight; and

(2) The percentage determined in section 4(b)(1) above will be divided by the applicable percentage factor determined in accordance with section 9.

5. Potatoes harvested or appraised prior to full maturity that do not grade U.S. No. 2 due solely to size will be considered to have met U.S. No. 2 standards unless the potatoes are damaged by an insurable cause of loss and leaving the crop in the field would either reduce production or decrease quality.

6. Production to count for potatoes destroyed, stored or marketed without a grade inspection will be 100 percent of the gross weight of such potatoes.

7. All determinations must be based upon a grade inspection.

8. The actuarial documents may provide ''U.S. No. 1'' in place of ''U.S. No. 2'' as used in this endorsement. If both U.S. No. 1 and 2 are available in the actuarial documents, you may elect U.S. No. 1 or 2 by potato type or group, if separate types or groups are specified in the Special Provisions.

9. *Percentage factor* means the historical average percentage of potatoes grading U.S. No. 2 or better, by type, determined from your records. If at least 4 continuous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than four years of records are available, the percentage factor will be determined based on a combination of your records and the percentage factor contained in the Special Provisions.

8. Section 457.144 is added to read as follows:

§ 457.144 Northern Potato Crop Insurance—Processing Quality Endorsement

The Northern Potato Crop Insurance Processing Quality Endorsement provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Northern Potato Crop Insurance Processing Quality Endorsement

1. In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made part of your Northern Potato Crop Provisions and Quality Endorsement subject to the terms and conditions described herein. In the event of a conflict between the Northern Potato Crop Provisions or Quality Endorsement and this endorsement, this endorsement will control.

2. You must have a Northern Potato Quality Endorsement in place and elect this endorsement on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this endorsement. This endorsement may be canceled by either you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date.

3. All terms of the Northern Potato Quality Endorsement not modified by this endorsement will be applicable to acreage covered under this endorsement.

4. A processor contract must be executed with a potato processor for the potato types insured under this endorsement and a copy submitted to us on or before the acreage reporting date for potatoes. If you elect this endorsement, all insurable acreage of production under contract with the processor must be insured under this endorsement.

5. When the processor contract requires the processor to purchase a stated amount of production, rather than all of the production from a stated number of acres, the insurable acreage will be determined by dividing the stated amount of production by the approved yield for the acreage. The number of acres insured under this endorsement will not exceed the actual number of acres planted to the potato types and which are needed to fulfill the contract.

6. In lieu of the provisions contained in section 4 of the Northern Potato Quality Endorsement, production that is rejected by the processor will be adjusted as follows: Production to count (determined in accordance with section 15 of the Basic Provisions and section 11 of the Northern Potato Crop Provisions) from (1) unharvested acreage; (2) harvested acreage that is stored after a grade inspection; or (3) that is marketed after a grade inspection; and that contains potatoes that:

(a) Grade less than U.S. No. 2 due to internal defects, a specific gravity lower than the lesser of 1.074 or the minimum acceptable amount specified in the processor contract, or a fry color of No. 3 or darker due to either sugar exceeding 10 percent or sugar ends exceeding 19 percent (the number of potatoes with such defects must be in excess of the tolerance allowed for U.S. No. 2 grade potatoes on a lot basis and must not be separable from undamaged production using methods used by the processors to which you normally deliver your potato production), will be adjusted as follows:

(1) For potatoes for which a price is agreed upon in writing between you and a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period, or that are delivered to a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period, by multiplying the production to count by the factor (not to exceed 1.0) that results from dividing the price received or that will be received per hundredweight of the damaged production by the highest available price election. This method of adjustment will not be performed if it has already been performed under the terms of section 11(g)(2)(i) of the Northern Potato Crop Insurance Provisions. If production is sold for a price lower than the value appropriate and representative of the local market, we will determine the value of the production based on the price you could have received in the local market.

(2) For harvested potatoes discarded within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period and appraised unharvested production that could:

(i) Not have been sold, the production to count will be zero; or

(ii) Have been sold, the production to count will be determined in accordance with section 6(a)(1). The price used for the damaged production will be the price you could have received in the local market.

(3) For potatoes for which a price is not agreed upon in writing between you and a buyer within 21 days (60 days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) of the end of the insurance period and that remain in storage

22 or more days (61 or more days if the Northern Potato Crop Insurance Storage Coverage Endorsement is applicable) after the end of the insurance period, production to count will be determined in accordance with section 6(b).

(b) Grade less than U.S. No. 2 due to factors other than those specified in section 6(a) will be multiplied by a factor (not to exceed 1.0) that is determined as follows:

(1) The combined weight of sampled potatoes that grade U.S. No. 2 or better and that are damaged by freeze or tuber rot will be divided by the total sample weight; and

(2) The percentage determined in section 6(b)(1) above will be divided by the applicable percentage factor determined in accordance with section 10.

7. All grade determinations for the purposes of this endorsement will be made using the United States Standards for Grades of Potatoes for Processing or Chipping.

8. All determinations must be based upon a grade inspection.

9. The actuarial documents may provide ''U.S. No. 1'' in place of ''U.S. No. 2'' as used in this endorsement. If both U.S. No. 1 and 2 are available in the actuarial documents, you may elect U.S. No. 1 or 2 by potato type or group, if separate types or groups are specified in the Special Provisions.

10. *Percentage factor* means the historical average percentage of potatoes grading U.S. No. 2 or better, by type, determined from your records. If at least 4 continuous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than four years of records are available, the percentage factor will be determined based on a combination of your records and the percentage factor contained in the Special Provisions.

9. Section 457.145 is added to read as follows:

§ 457.145 Potato Crop Insurance—Certified Seed Endorsement.

The Potato Crop Insurance Certified Seed Endorsement provisions for the 1998 and succeeding years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Potato Crop Insurance Certified Seed Endorsement

1. In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made part of your Northern Potato Crop Provisions subject to the terms and conditions described herein. In the event of a conflict between the Northern Potato Provisions and this endorsement, this endorsement will control.

2. For the purpose of this endorsement, the term ''potato certified seed program'' means the state program administered by the public agency responsible for the seed certification process within the state in which the seed is produced.

3. You must elect this endorsement on or before the sales closing date for the initial crop year you wish to insure your potatoes under this endorsement. This endorsement will continue in effect until canceled. It may be canceled by either you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date.

4. All potatoes grown on insurable acreage and that are entered into the potato seed certification program administered by the state in which the seed is grown must be insured unless limited by section 5 below.

5. The certified seed acreage you insure in the current crop year cannot be greater than 125 percent of your average number of acres entered into and passing certification in the potato certified seed program in the three previous calendar years unless a written agreement provides otherwise. If you enter more than this number of acres into the certification program, your certified seed production guarantee for the current crop year will be reduced as follows:

(a) Multiply the average number of your acres entered into and passing certification in the potato certified seed program the 3 previous calendar years by 1.25 and divide this result by the number of acres grown by you for certified seed in the current crop year; and

(b) Multiply the result of section 5(a) (not to exceed 1.0) by the production guarantee for certified seed for the current crop year.

6. You must provide acceptable records of your certified seed potato acreage and production for the previous three years. These records must clearly indicate the number of your acres entered into the potato seed certification program administered by the state in which the seed is grown.

7. All potatoes insured for certified seed production must be produced and managed in accordance with standards, practices, and procedures required for certification by the state's certifying agency and applicable regulations.

8. If, due to insurable causes occurring within the insurance period, potato production does not qualify as certified seed on any insured certified seed potato acreage within a unit, we will pay you the dollar amount per hundredweight contained in the Special Provisions for that purpose, multiplied by your production guarantee for such acreage, multiplied by your share. Any production that does not qualify as certified seed because of varietal mixing or your failure to follow the standard practices and procedures required for certification will be considered as lost due to uninsured causes.

9. You must notify us of any loss under this endorsement not later than 14 days after you receive notice from the state certification agency that any acreage has failed certification.

10. Section 457.146 is added to read as follows:

§ 457.146 Northern Potato Crop Insurance—Storage Coverage Endorsement.

The Northern Potato Crop Insurance Storage Coverage Endorsement provisions for the 1998 and succeeding years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Northern Potato Crop Insurance Storage Coverage Endorsement

1. In return for payment of the required additional premium as contained in the actuarial documents, this endorsement is attached to and made part of your Northern Potato Crop Provisions subject to the terms and conditions described herein. In the event of a conflict between the Northern Potato Crop Provisions and this endorsement, this endorsement will control.

2. You must elect this endorsement on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this endorsement. This endorsement will continue in effect until canceled. It may be canceled by either you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date.

3. Potato production grown under a contract that requires the production to be delivered to a buyer within three days of harvest will not be insured under this endorsement. When such contract requires delivery of a stated amount of production, rather than all of the production from a stated amount of acres, the number of acres not insured under this endorsement will be determined by dividing the stated amount of production by the approved yield for the acreage. All other potato production insured under the Northern Potato Crop Provisions must be insured under this endorsement unless the Special Provisions allow you to exclude certain potato varieties, types, or groups from this endorsement, and you elect to exercise this option. If you elect this endorsement, such exclusions must be shown annually on your acreage report and will be applicable to all acreage of the excluded varieties, types, or groups for the crop year.

4. When production from separate insurance units, basic or optional, is commingled in storage, the production to count for each unit will be allocated pro rata based on the production placed in storage from each unit. Such allocation will be allowed only if verifiable records of production placed in storage are available by unit. If you do not have verifiable records, all units without verifiable records will be combined in accordance with section 11 of the Northern Potato Crop Provisions. For example, if 500 hundredweight from one unit are commingled with 1,500 hundredweight from another unit and the production to count from the stored production is 1,000 hundredweight, 250 hundredweight of

production to count will be allocated to the unit contributing 500 hundredweight and 750 hundredweight to the unit contributing 1500 hundredweight to the stored production. This provision does not eliminate or change any other requirement contained in this policy to provide or maintain separate records of acreage or production by unit.

5. The extended coverage provided by this endorsement will be applicable only if:

(a) Insured potatoes are damaged within the insurance period by an insured cause other than freeze that later results in:

(1) Tuber rot as defined in the Northern Potato Crop Provisions, to the extent that 5.1 percent (by weight) or more of the insured production is affected;

(2) Internal defects to the extent that such defects are in excess of the amount allowed for the U.S. grade standard you elected for purposes of coverage under the Northern Potato Crop Insurance Quality Endorsement. Such defects must not be separable from undamaged production using methods used by the packers or processors to which you normally deliver your potato production. This coverage is applicable only to production covered under the Northern Potato Crop Insurance Quality Endorsement; or

(3) A specific gravity lower than the lesser of 1.074 or the minimum acceptable amount specified in the processor contract, or a fry color of No. 3 or darker due to either sugar exceeding 10 percent or sugar ends exceeding 19 percent. This coverage is applicable only to production covered under the Northern Potato Crop Insurance Processing Quality Endorsement.

(b) You notify us within 72 hours of your initial discovery of any damage that has or that may later result in the quality deficiencies specified in section 5(a);

(c) The percentage of production that has any of the quality deficiencies specified in section 5(a) is determined no later than 60 days after the end of the insurance period; and

(d) The potatoes are evaluated and quality (grade) determinations are made by us, a laboratory approved by us, or a potato grader licensed or certified by the applicable State or the United States Department of Agriculture, in accordance with the United States Standards for Grades of Potatoes. Samples of damaged production must be obtained by us or party approved by us prior to the sale or disposal of any lot of potatoes. Or, if production is not sold or disposed of within 60 days of the end of the insurance period, samples must be obtained within 60 days of the end of the insurance period.

Signed in Washington, D.C., on December 5, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–32491 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 437 and 457

Sweet Corn Insurance Regulations; and Common Crop Insurance Regulations, Processing Sweet Corn Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of processing sweet corn. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current sweet corn crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current sweet corn crop insurance regulations to the 1997 and prior crop years.

DATES: Effective December 12, 1997.

FOR FURTHER INFORMATION CONTACT: Stephen Hoy, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No.12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The amount of work required of insurance companies will not increase because the information used to determine eligibility is already maintained at their office and the other information required is already being gathered as a result of the present policy. No additional actions are required as a result of this action on the part of either the producer or the reinsured company. Additionally, the regulation does not require any action on the part of the small entities than is required on the part of the large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This final rule has been reviewed in accordance with Executive Order No. 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be

exhausted before action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Thursday, May 1, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 23690–23695 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.154, Processing Sweet Corn Crop Insurance Provisions. The new provisions will be effective for the 1998 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring sweet corn found at 7 CFR part 437 (Sweet Corn Crop Insurance Regulations). FCIC also amends 7 CFR part 437 to limit its effect to the 1997 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments, data, and opinions. A total of 30 comments were received from an insurance service organization, a reinsured company, and a crop insurance agent. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization recommended that several definitions common to most crops be put into the Basic Provisions.

Response: The Basic Provisions include definitions of commonly used terms, and we have revised this rule to remove the definitions of ''approved yield,'' ''days,'' ''FSA,'' ''final planting date,'' ''interplanted,'' ''irrigated practice,'' ''production guarantee (per acre),'' ''replanting,'' ''timely planted,'' and ''written agreement.'' The definition of ''planted acreage'' is amended to remove language that is contained in the Basic Provisions.

Comment: An insurance service organization recommended that the sentence in the definition of ''bypassed acreage'' that states ''Bypassed acreage on which an indemnity is payable will be considered to have a zero yield for Actual Production History (APH) purposes'' be deleted since it is addressed elsewhere and does not belong in the definition.

Response: FCIC has deleted, as unnecessary, the second sentence of the definition of bypassed acreage. A provision addressing when acreage will be considered to have a zero yield for APH purposes is included in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities).

Comment: An insurance service organization and a reinsured company expressed concern with the definition of ''good farming practices'' which makes reference to ''cultural practices generally in use in the county * * * recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.'' The commenters questioned whether cultural practices that are not explicitly recognized (or possibly known) by the Cooperative State Research, Education, and Extension Service might exist. The commenters indicated that the term ''county'' in the definition of ''good farming practice'' should be changed to ''area.'' The insurance service organization also recommended adding the word ''generally'' before ''recognized by the Cooperative State Research, Education, and Extension Service * * *''

Response: The Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing sweet corn. If a producer is following practices currently not recognized as acceptable by CSREES, such recognition can be sought by interested parties. Use of the term ''generally'' will only create an ambiguity and make the definition more difficult to administer. Although the cultural practices recognized by CSREES may only pertain to specific areas within a county, the actuarial documents are on a county basis. Therefore, no change has been made.

Comment: An insurance service organization recommended that the definition of ''replanting'' be clarified by inserting ''sweet corn'' between the last two words (''successful'' and ''crop'') of the sentence.

Response: This definition is contained in the Basic Provisions, and is, therefore, removed from these crop provisions.

Comment: An insurance service organization recommended that section 2(b) of the proposed rule clarify whether optional units are available if the processor contract stipulates the number of contracted acres, or only if the contract does not specify an amount of production.

Response: FCIC agrees and has amended section 2 to specify that for processor contracts that stipulate a specific amount of production to be delivered, the basic unit will consist of all the acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor, and optional units will not be established for production based processor contracts. The language in section 2 has also been revised and reformatted to clearly state the requirements for both the acreage-based and production-based processor contracts. In addition, language in this section that is common with other crop provisions has been removed since it is contained in the Basic Provisions.

Comment: An insurance service organization questioned whether verification of production from an optional unit using ''measurement of stored production,'' as specified in section 2(e)(3) of the proposed rule applies to processing sweet corn.

Response: Sweet corn is not put into storage before processing. Therefore, FCIC has removed this provision.

Comment: An insurance service organization recommended removal of the opening phrase in section 2(e)(4)(ii) of the proposed rule that states ''In addition to, or instead of, establishing optional units by section, section equivalent, or FSA Farm Serial Number, * * *'' since section 2(e)(4) of the proposed rule specifies that ''Each optional unit must meet one or more of the following criteria, * * *''

Response: The unit division provisions for any processor contract that stipulates the number of acres to be planted have been removed from these provisions, since the provisions are contained in the Basic Provisions.

Comment: An insurance service organization stated that the language in section 3(a), which provides guidelines for selection of price elections, should be moved to the Basic Provisions.

Response: The requirement that the price election (for each type, varietal group, etc.) have the same percentage relationship to the maximum price does not apply to all crop policies. Therefore, section 3 should not be part of the Basic Provisions.

Comment: An insurance service organization questioned whether the sentence ''Any other measured production will be converted to an unhusked ear weight equivalent'' is needed in section 3(b) since it is stated in section 12(c)(2).

Response: Section 3(b) addresses the insurance guarantee while section

12(c)(2) addresses production to count. The provisions clarify that both are expressed as unhusked ear weight, and any other measured production will be converted to unhusked ear weight. Therefore, no change has been made.

Comment: An insurance service organization stated that requiring the producer to provide a copy of the processor contract no later than the acreage reporting date could provide a loophole by allowing producers to wait until acreage reporting time to decide if they want coverage.

Response: There is no evidence that allowing the producer to provide a copy of the processor contract as late as the acreage reporting date has resulted in producers waiting to decide until the acreage reporting date if they want coverage. Sweet corn producers usually have a processor contract in-force by the final planting date. The requirement to provide a copy of the processor contract with the acreage report is convenient for the producer. Therefore, no change has been made.

Comment: An insurance service organization questioned whether any processor contract would allow interplanted sweet corn or sweet corn planted into an established grass or legume. The commenter further indicated that consideration should be given to inserting the language in section 7(a)(4) of the proposed rule into the Basic Provisions.

Response: FCIC agrees that processing sweet corn has seldom, if ever, been interplanted with another crop or planted into an established grass or legume. However, production practices are constantly evolving. FCIC chooses to retain the provisions of section 7(a)(3) of the final rule to accommodate such developments if they should occur. In addition, the interplanted language is not consistent among the crop policies and, therefore, will be retained in the crop provisions.

Comment: An insurance service organization indicated that language in section 7(b) that states ''You will be considered to have a share in the insured crop if, under the processor contract, you retain possession of the acreage on which the sweet corn is grown * * *'' suggests that only a landlord would have a share in the insured crop. The commenter questioned whether the provision in section 7(b) is already covered in sections 7(a)(1) and (3) of the proposed rule.

Response: The language in section 7(b) was intended to cover producers who have a crop share agreement, rent, or own acreage. The word ''possession'' has been changed to ''control'' for clarification. Section 7(a) specifies requirements for insurance coverage on the crop, while section 7(b) specifies requirements for an insurable share in the crop. Therefore, both provisions are necessary.

Comment: An insurance service organization and a reinsured company questioned whether the provision in section 9(b), which states that the insurance period ceases on the date sufficient production is harvested to fulfill the producer's processor contract, conflicts with the provision in section 12(a) that states ''We will determine your loss on a unit basis.'' The commenters questioned whether production to count from an appraisal prior to harvest would be included when determining fulfillment of the processor contract. The insurance service organization questioned whether the insured would know when enough production is harvested to fulfill the processor contract. This commenter asked if production exceeding the contracted amount is considered production to count for APH or loss adjustment or whether the processor settlement sheet is the only acceptable record. The insurance service organization suggested that the provisions in section 9(b) state ''* * * the insurance period ends when the production delivered to the processor equals the amount of production stated in the sweet corn contract.'' However, the commenter also questioned whether ''delivered to'' is the same as ''accepted by'' the processor.

Response: Section 9(b) does not conflict with section 12(a). For processor contracts based on a stated amount of production, FCIC is only insuring the contract amount, and the producer can only obtain a basic unit by processor contract. Therefore, once the contract is fulfilled, insurance ceases on the unit and there is no payable loss. If the contract is not fulfilled and there is still unharvested production, any insurable cause of loss is covered. With respect to the issue of production from appraised acreage, such production will not count toward fulfillment of the processor contract, although it will be used to determine production to count for the unit or the producer's approved yield if the acreage is not bypassed due to an insurable cause of loss that renders such production unacceptable to the processor. With respect to whether the producer will know when the processor contract is fulfilled, records are kept as production is delivered to the processor. Therefore, the producer can determine when the contract is fulfilled. All production from the unit, including any excess of the amount stated in the contract, will be considered as production to count when determining the producer's approved yield. For the purposes of loss adjustment, the amount shown on the settlement sheet, plus any appraised production that was not bypassed due to an insurable cause that rendered the production unacceptable to the processor, will be included as production to count. FCIC has revised section 9(b) to clarify that insurance ceases when the contract is fulfilled if the processor contract stipulates a specific amount of production.

Comment: An insurance service organization questioned the provision in section 10(a)(4), which states that insurance is provided against ''Plant disease on acreage not planted to sweet corn the previous crop year * * *.'' The commenter assumed this would apply even if a rotation requirement was not specified in the Special Provisions.

Response: FCIC agrees that if a rotation requirement is not specified in the Special Provisions, insurance coverage should be provided against plant disease if sweet corn was planted the previous crop year. Section 10(a)(4) has been revised accordingly.

Comment: An insurance service organization suggested changing the wording in section 10(a)(8) to eliminate the reference to 10(a)(1) through (7) and state ''Failure of the irrigation water supply, if due to an insured cause of loss.''

Response: Referencing 10(a)(1) through (7) makes it clear that failure of the irrigation water supply must be due to these specific causes of loss. Therefore, no change has been made.

Comment: An insurance service organization questioned how the provision in section 10(b)(1)(ii), which states that insurance coverage is not provided if acreage is bypassed based on the availability of a crop insurance payment, is to be enforced.

Response: The adjuster should be able to make this determination based on various factors such as if a harvest pattern exists that clearly indicates the processor is bypassing producers with crop insurance coverage in favor of producers without crop insurance even though the quality of the crop is similar. Language has been added to state that an indemnity will be denied or have to be repaid if it is determined that bypassed acreage was due to the availability of a crop insurance payment.

Comment: An insurance service organization questioned a discrepancy between section 9(b) of the proposed rule, which states that insurance ceases on ''The date you harvest sufficient production to fulfill your processor

contract,'' and section 10(b)(5) of the proposed rule, which states that loss of production will not be insured if ''Due to damage that occurs to unharvested production after you deliver the production required by the processor contract.'' The commenter indicated that this provision is not necessary since any damage occurring after delivery would be outside the insurance period as indicated in section 9(b).

Response: FCIC agrees and has deleted section 10(b)(5).

Comment: An insurance service organization stated that the language in section 11(c) does not address timely notice if damage is discovered less than 15 days prior to harvest.

Response: FCIC agrees and has revised section 11(c) to clarify that an immediate notice of loss is required if damage is discovered within 15 days prior to harvest or during harvest.

Comment: An insurance service organization stated that section 12(b), which explains how a claim is settled, is too wordy and difficult to follow.

Response: This section has been revised to clarify the settlement of claims calculation, including the addition of an example.

Comment: An insurance service organization indicated that payments by the processor for bypassed acreage should be considered to have value to count as is done with salvaged grains.

Response: There is nothing in this policy which precludes a producer from obtaining any other form of insurance against losses as long as such insurance is not under the Federal Crop Insurance Act. Since the producer contributes to the unharvested acreage pool, such payment will not be considered when determining production to count.

Comment: An insurance service organization stated that section 12(c)(1)(iii) of the proposed rule should not allow the insured to defer settlement and wait for a later, generally lower, appraisal, especially on crops that have a short ''shelf life.''

Response: A later appraisal will only be necessary if the company and the insured do not agree on the appraisal or if the company believes that the crop needs to be carried further. The producer must continue to care for the crop in accordance with recognized good farming practices for the crop. If the producer does not continue to care for the crop, the original appraisal will be used. Therefore, no change has been made.

Comment: An insurance service organization commented on section 12(c)(2) of the proposed rule which includes the statement ''* * * production will be determined by dividing the dollar amount as required by the contract for the quality and quantity of sweet corn delivered to the processor by the base contract price per ton.'' The commenter did not oppose this method but requested to know why it was used to determine production to count.

Response: FCIC has revised section 12(c)(2) to specify that production to count of harvested sweet corn should be determined from the usable tons specified on the processor settlement sheet. In addition, FCIC has amended the language in section 12(c) to clarify that, in the absence of a processor settlement sheet, production to count is determined by dividing the dollar amount paid, payable, or which should have been paid under the terms of the processor contract for the quantity of sweet corn delivered to the processor by the base contract price per ton. Since premiums or discounts for quality are not normally included in processor contracts for sweet corn, the term ''quality'' was removed from this provision.

Comment: A crop insurance agent stated that late planting provisions should be available for processing sweet corn since some sweet corn is planted late in most years. The insurance agent stated that late planting provisions will not affect the processor's ability to timely harvest and process the sweet corn. A reinsured company asked if provisions will be available for late and prevented planting. An insurance service organization expressed support for eliminating the late planting option and asked if prevented planting would be available.

Response: FCIC agrees that a late planting period for processing sweet corn may be appropriate for some growing areas. Therefore, section 13 is revised to provide a late planting period if allowed by the Special Provisions and if the producer provides written approval from the processor by the acreage reporting date that it will accept the production from the late planted acreage. Section 14 provides a prevented planting coverage of 40 percent of the producers production guarantee for timely planted acreage. If the producer has limited or additional coverage and pays an additional premium, the prevented planting coverage may be increased to the levels specified in the actuarial documents.

Comment: An insurance service organization and a reinsured company recommended removal of the requirement that written agreements be renewed each year if there are no significant changes to the farming operation. The insurance service organization stated that section 14(d) should perhaps refer to the date specified in the agreement instead of limiting the agreement for one year. An insurance service organization recommended that section 14 be put into the Basic Provisions.

Response: Written agreements are intended to supplement policy terms or permit insurance in unusual situations that require modification of the otherwise standard insurance provisions. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to minimize written agreement exceptions to assure that the insured is well aware of the specific terms of the policy. Therefore, no change will be made to the requirement that written agreements be renewed each year. The written agreement provisions are contained in the Basic Provisions and, therefore, have been removed from these crop provisions.

In addition to the changes described above, FCIC has made minor editorial changes and has amended the following Processing Sweet Corn Provisions:

1. Amended and clarified the paragraph preceding section 1 to include the Catastrophic Risk Protection Endorsement.

2. Section 1—Amended the definitions of ''base contract price,'' ''bypassed acreage,'' and ''processor'' for clarity. The definition of ''practical to replant'' is amended to clarify that it will not be considered practical to replant unless the acreage can produce at least 75 percent of the approved yield and the processor agrees in writing that it will accept the production from the replanted acreage. The definition of *processor contract* is amended to clarify that multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract. This provision guards against the situation where a loss is claimed under one contract, but a surplus is grown under the other contract for the same crop. The definition of ''usable tons'' is amended to clarify that the amount includes the quantity of sweet corn for which the producer is compensated or should have been compensated by the processor.

3. Section 3(b)—Clarified that the insurance guarantee per acre is expressed as tons of unhusked ear weight.

4. Section 3(c)—Added a provision to clarify that appraised production on bypassed acreage that is not bypassed due to an insurable cause of loss will be

considered when determining the producer's approved yield.

5. Section 7—Removed section 7(a)(2) in the proposed rule. This provision is not necessary since section 7(a)(3) of the proposed rule stated that the sweet corn must be grown under, and in accordance with, the requirements of a processor contract. If grown under a processor contract, the sweet corn will be canned or frozen. Section 7(c) is amended for clarity.

6. Section 10—Amended section 10(a) for clarity. Section 10(b) is reformatted and amended for clarity. Also, removed section 10(b)(3) of the proposed rule. Assuming the acreage is not intentionally bypassed, FCIC believes that processors make sound harvesting decisions based on the condition and economic value of the crop as a whole. Therefore, FCIC believes that section 10(b)(3) is unnecessary and adds no value to these provisions.

7. Section 11(b)—Clarified that the insured must give a notice of loss within 3 days after the date harvest should have started if the acreage will not be harvested unless the acreage was previously released. The insured must also provide documentation stating why the acreage was bypassed.

8. Section 12—Deleted section 12(c)(1)(i)(E) of the proposed rule, and inserted amended language as a new section 12(c)(1)(iii) of the final rule to clarify when appraised production will include production on bypassed acreage. A new section 12(c)(3) of the final rule is added to clarify that appraised production will include all harvested production from any other insurable units that have been used to fill the processor contract for a unit. Section 12(d) of the proposed rule is deleted because of duplication with section 12(c)(2).

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the processing sweet corn insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The contract change date for the 1998 crop year is December 31, 1997. It is, therefore, imperative that these provisions be made final before that date so that the reinsured companies and insureds may have sufficient time to implement the new provisions. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

List of Subjects in 7 CFR Parts 437 and 457

Crop insurance, Processing sweet corn, Sweet corn crop insurance regulations.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 437 and 457, as follows:

PART 437—SWEET CORN CROP INSURANCE REGULATIONS FOR THE 1985 THROUGH 1997 CROP YEARS

1. The authority citation for 7 CFR part 437 is revised to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. The part heading is revised to read as set forth above.

3. The subpart heading ''Subpart-Regulations for the 1985 and Succeeding Crop Years'' is removed.

4. Section 437.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 437.7 The application and policy.

* * * * *

(d) The application is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Sweet Corn Insurance Policy for the 1985 through 1997 crop years are as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

5. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

6. Section 457.154 is added to read as follows:

§ 457.154 Processing sweet corn crop insurance provisions.

The Processing Sweet Corn Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Processing Sweet Corn Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions.

Base contract price. The price stipulated on the processor contract without regard to discounts or incentives that may apply.

Bypassed acreage. Land on which production is ready for harvest but the processor elects not to accept such production so it is not harvested.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those required by the sweet corn processor contract with the processing company, and recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. The removal of the ears from the stalks for the purpose of delivery to the processor.

Planted acreage. In addition to the definition contained in the Basic Provisions, sweet corn must initially be placed in rows far enough apart to permit mechanical cultivation. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Practical to replant. In lieu of the definition of Practical to replant contained in section 1 of the Basic Provisions, practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors including, but not limited to, moisture availability, condition of the field, time to crop maturity, and marketing window, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant unless the replanted acreage can produce at least 75 percent of the approved yield, and the processor agrees in writing that it will accept the production from the replanted acreage.

Processor. Any business enterprise regularly engaged in canning or freezing processing sweet corn for human consumption, that possesses all licenses and permits for processing sweet corn required by the state in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process contracted processing sweet corn within a reasonable amount of time after harvest.

Processor contract. A written agreement between the producer and a processor, containing at a minimum:

(a) The producer's commitment to plant and grow sweet corn, and to deliver the sweet corn production to the processor;

(b) The processor's commitment to purchase all the production stated in the processor contract; and

(c) A base contract price.

Multiple contracts with the same processor that specify amounts of production will be considered as a single processor contract.

Ton. Two thousand (2,000) pounds avoirdupois.

Unhusked ear weight. Weight of the seed-bearing spike of sweet corn including the membranous or green outer envelope.

Usable tons. The quantity of sweet corn for which the producer is compensated or should have been compensated by the processor.

2. Unit Division.

(a) For processor contracts that stipulate the amount of production to be delivered:

(1) In lieu of the definition contained in the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill contracts with each processor;

(i) There will be no more than one basic unit for all production contracted with each processor contract;

(ii) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(2) Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable.

(b) For any processor contract that stipulates the number of acres to be planted, the provisions contained in section 34 of the Basic Provisions will apply.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election for all the processing sweet corn in the county insured under this policy unless the Special Provisions provide different price elections by type. The percentage of the maximum price elections you choose for one type will be applicable to all other types insured under this policy.

(b) The insurance guarantee per acre is expressed as tons of unhusked ear weight. Any other measured production will be converted to an unhusked ear weight equivalent.

(c) The appraised production from bypassed acreage that could have been accepted by the processor will be included when determining your approved yield.

(d) Acreage that is bypassed because it was damaged by an insurable cause of loss will be considered to have a zero yield when determining your approved yield.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage.

In addition to the provisions of section 6 of the Basic Provisions, you must provide a copy of all processor contracts to us on or before the acreage reporting date.

7. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the processing sweet corn in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That is grown under, and in accordance with, the requirements of a processor contract executed on or before the acreage reporting date and not excluded from the processor contract at any time during the crop year; and

(3) That is not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume.

(b) You will be considered to have a share in the insured crop if, under the processor contract, you retain control of the acreage on which the sweet corn is grown, you are at risk of loss, and the processor contract provides for delivery of sweet corn under specified conditions and at a stipulated base contract price.

(c) A commercial sweet corn producer who is also a processor may establish an insurable interest if the following requirements are met:

(1) The producer must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the processor must execute and adopt a resolution that contains the same terms as an acceptable processor contract. Such resolution will be considered a processor contract under this policy; and

(3) Our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions:

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that the majority of producers in the area would normally not further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure any acreage that does not meet the rotation requirements, if applicable, contained in the Special Provisions.

9. Insurance Period.

In lieu of the provisions contained in section 11 of the Basic Provisions, regarding the end of the insurance period, insurance ceases at the earlier of:

(a) The date the sweet corn:

(1) Was destroyed;

(2) Should have been harvested but was not harvested;

(3) Was abandoned; or

(4) Was harvested;

(b) The date you harvest sufficient production to fulfill your processor contract if the processor contract stipulates a specific amount of production to be delivered;

(c) Final adjustment of a loss; or

(d) Unless otherwise agreed to in writing, the calendar date for the end of the insurance period in which the sweet corn would normally be harvested as follows:

(1) September 30 in Malheur County, Oregon, all Idaho counties, and all Iowa counties;

(2) October 20 in all other Oregon counties, and in all Washington counties; or

(3) September 20 in all other states.

10. Causes of Loss.

In accordance with the provisions of section 12 of the Basic Provisions:

(a) Insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions, including:

(i) Excessive moisture that prevents harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and

(ii) Abnormally hot or cold temperatures that cause an unexpected number of acres over a large producing area to be ready for harvest at the same time, affecting the timely harvest of a large number of such acres or the processing of such production is beyond the capacity of the processor, either of which causes the acreage to be bypassed.

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures or as otherwise limited by the Special Provisions;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss listed in section 10(a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure any loss of production due to:

(1) Bypassed acreage because of:

(i) The breakdown or non-operation of equipment or facilities; or

(ii) The availability of a crop insurance payment. We may deny any indemnity immediately in such circumstance or, if an indemnity has been paid, require you to repay it to us with interest at any time acreage was bypassed due to the availability of a crop insurance payment; or

(2) Your failure to follow the requirements contained in the processor contract.

11. Duties In The Event of Damage or Loss.

In addition to the requirements of section 14 of the Basic Provisions, you must give us notice:

(a) Not later than 48 hours after:

(1) Total destruction of the sweet corn on the unit; or

(2) Discontinuance of harvest on a unit on which unharvested production remains.

(b) Within 3 days after the date harvest should have started on any acreage that will not be harvested unless we have previously released the acreage. You must also provide acceptable documentation of the reason the acreage was bypassed. Failure to provide such documentation will result in our determination that the acreage was bypassed due to an uninsured cause of loss. If the crop will not be harvested and you wish to destroy the crop, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in each unit. The samples must not be destroyed until the earlier of our inspection or 15 days after notice is given to us; and

(c) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, or immediately if damage is discovered during the 15 day period or during harvest, so that we may inspect any damaged production. If you fail to notify us and such failure results in our inability to inspect the damaged production, we will consider all such production to be undamaged and include it as production to count. You are not required to delay harvest.

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate, acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee, by type if applicable;

(2) Multiplying each result of section 12(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results of section 12(b)(2) if there are more than one type;

(4) Multiplying the total production to count (see section 12(c)), for each type if applicable, by its respective price election;

(5) Totaling the results of section 12(b)(4) if there are more than one type;

(6) Subtracting the results of section 12(b)(4) from the results of section 12(b)(2) if there is only one type or subtracting the results of section 12(b)(5) from the result of section 12(b)(3) if there are more than one type; and

(7) Multiplying the result of section 12(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of type A processing sweet corn in the unit, with a guarantee of 3.0 tons per acre and a price election of $50.00 per ton. You are only able to harvest 200 tons. Your indemnity would be calculated as follows:

(1) 100 acres×3.0 tons=300 tons guarantee;
(2) 300 tons×$50.00 price election=$15,000.00 value of guarantee;
(4) 200 tons×$50.00 price election=$10,000.00 value of production to count;
(6) $15,000.00 − $10,000.00=$5,000.00 loss;
(7) $5,000.00×100 percent=$5,000.00 indemnity payment.

You also have a 100 percent share in 100 acres of type B processing sweet corn in the same unit, with a guarantee of 4.0 tons per acre and a price election of $45.00 per ton. You are only able to harvest 350 tons. Your total indemnity for both types A and B would be calculated as follows:

(1) 100 acres×3.0 tons=300 tons guarantee for type A, and
100 acres×4.0 tons=400 tons guarantee for type B;
(2) 300 tons×$50.00 price election=$15,000.00 value of guarantee for type A, and
400 tons×$45.00 price election=$18,000.00 value of guarantee for type B;
(3) $15,000.00 + $18,000.00=$33,000.00 total value of guarantee;
(4) 200 tons×$50.00 price election=$10,000.00 value of production to count for type A, and
350 tons×$45.00 price election=$15,750.00 value of production to count for type B;
(5) $10,000.00+$15,750.00=$25,750.00 total value of production to count;
(6) $33,000.00 − $25,750.00=$7,250.00 loss;
(7) $7,250.00 loss×100 percent=$7,250.00 indemnity payment.

(c) The total production to count, specified in tons of unhusked ear weight, from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us.

(ii) Production lost due to uninsured causes.

(iii) Production on acreage that is bypassed unless the acreage was bypassed due to an insured cause of loss which resulted in production which would not be acceptable under the terms of the processor contract.

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested.

(2) All harvested processing sweet corn production from the insurable acreage. The amount of such production will be:

(i) The usable tons of processing sweet corn shown on the processor settlement sheet, if available; or

(ii) Determined by dividing the dollar amount paid, payable, or which should have been paid under the terms of the processor contract for the quantity of the sweet corn delivered to the processor by the base contract price per ton; and

(3) All harvested processing sweet corn production from any other insurable units that have been used to fulfill your processor contract for this unit.

The total production to count will be expressed as an unhusked ear weight. Any other measure of production will be converted to an unhusked ear weight equivalent.

13. Late Planting.

A late planting period is not applicable to processing sweet corn unless allowed by the Special Provisions and you provide written approval from the processor by the acreage reporting date that it will accept the production from the late planted acres when it is expected to be ready for harvest.

14. Prevented Planting.

Your prevented planting coverage will be 40 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to the levels specified in the actuarial documents.

Signed in Washington, D.C., on December 5, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–32493 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 443 and 457

RIN 0563–AA78

Hybrid Seed Crop Insurance Regulations; and Common Crop Insurance Regulations, Hybrid Seed Corn Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of hybrid seed corn. The provisions will be used in conjunction with the Common Crop Insurance Policy, Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current hybrid seed crop insurance regulations under the Common Crop

Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current hybrid seed crop insurance regulations to the 1997 and prior crop years.

DATES: Effective December 12, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Nesheim, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866 and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The effect of this regulation on small entities will be no greater than on larger entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements.

The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order No. 12372

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order No. 12988

This final rule has been reviewed in accordance with Executive Order No. 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

On Thursday, January 2, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 48 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.152 (Hybrid Seed Corn Crop Insurance Provisions). These provisions will replace and supersede the current provisions for insuring hybrid seed corn found at 7 CFR part 443 and will be effective for the 1998 and succeeding crop years. This rule also amends 7 CFR part 443 to restrict its effect to the 1997 and prior crop years.

Following publication of the proposed rule, the public was afforded 60 days to submit written comments. A total of 37 comments were received from reinsured companies and an insurance service organization. The comments received, and FCIC's responses, follow:

Comment: A reinsured company and an insurance service organization stated that the current hybrid seed policy limits the amount of other insurance which can be carried on hybrid seed corn to one and a half times the maximum amount of insurance available. Since no such restriction appears in this 1998 proposal, the commenter assumes that this is no longer applicable and supports not having this restriction in the policy.

Response: The policy provision that limited the amount of other insurance to one and a half times the highest price election has been deleted. This deletion will be identified in the Summary of Changes when the new policy is issued.

Comment: A reinsured company and an insurance service organization suggested that the name of the Crop Provisions be changed to ''hybrid seed corn'' rather than ''hybrid corn seed''. Everyone in the seed corn industry refers to it as hybrid seed corn.

Response: FCIC has made the change accordingly.

Comment: A reinsured company and an insurance service organization suggested that the definition of ''Amount of insurance per acre'' be revised to match how this coverage is shown and defined in the Special Provisions, although the commenter stated that the Special Provisions definition should be multiplied by the price election before subtracting the minimum guaranteed payment. The county yield is multiplied by the factor for the coverage level selected, which is multiplied by the price election selected by the producer less any minimum guaranteed payment.

Response: FCIC has revised and clarified the definition to show the proper calculation. Since the calculation is in the Crop Provisions, it will be removed from the Special Provisions.

Comment: A reinsured company and an insurance service organization were concerned about the definition of ''bushel'' and the provisions in section 12(g)(3) (redesignated section 12(f)(3))

that requires the insurance provider to work the claim in the same manner as the records provided by the seed company to establish the approved yield. Since the yields from the seed company are submitted to the FCIC Regional Service Office (RSO) for determination of the approved yield, the FCIC RSO needs to inform the insurance providers when a seed company is using its own conversion charts and what this chart is so that, at claim time, the production to count can be converted in the same manner as the approved yield was determined.

Response: In order to ensure the accuracy of any claim, the same moisture and weight per bushel must be used to calculate the amount of insurance and the production to count. The FCIC procedure will specify that the seed company will provide its conversion chart with the production records. FCIC will provide the conversion chart to the insurance provider when the moisture or weight used to determine a bushel differs from the definition stated in the policy.

Comment: A reinsured company and an insurance service organization were concerned with the definition of ''female parent plants,'' where there is reference to the stamens (tassles) being removed. The commenters indicated that some seed companies are experimenting with male sterile plants from which the stamens may not have to be removed.

Response: FCIC has revised the definition to accommodate those instances wherein parent plants are rendered male sterile by means other than detassling.

Comment: A reinsured company and an insurance service organization suggested that the definition of ''interplanting'' be revised to match its use in the Special Provisions. Interplanting is listed as a separate type with a different county yield than standard planting. The male parent plants are planted between every female parent plant row rather than in a planting pattern as defined in the Crop Provisions.

Response: The Special Provisions uses the term ''interplanting'' and the Crop Provisions uses the term ''interplanted'', and both terms have different meanings. To avoid any confusion between these terms, FCIC will change the reference to ''interplanting'' to ''non-standard planting'' in the Special Provisions.

Comment: A reinsured company suggested that in the definition of ''irrigated practice,'' the words ''and quality'' be added after the words ''* * * providing the quantity.''

Response: FCIC agrees that water quality is important. However, there are no clear criteria regarding the quality of water necessary to produce a crop. The highly variable factors involved would make such criteria difficult to develop and administer. The provisions regarding good farming practices can be applied in situations in which the insured failed to exercise due care and diligence in the application of irrigation water. Therefore, no change has been made.

Comment: An insurance service organization suggested adding, in the definition of ''non-seed amount,'' the phrase ''(rejected for seed purposes)'' or something similar after the first reference to ''non-seed production'' for clarification.

Response: FCIC has revised the definitions and section 12 to clarify that non-seed production is production that does not qualify as seed production because of inadequate germination.

Comment: A reinsured company and an insurance service organization suggested that the definition of ''planted acreage'' be amended to require that the male and female parent plants be planted in accordance with the production management practices of the seed company.

Response: The definition of ''planted acreage'' is broad enough to permit planting in accordance with practices of the seed company. The requirement that parent plants be planted in accordance with the production management practices of the seed company is more appropriate in sections 7 and 10 regarding insured crop and causes of loss and those provisions have been revised accordingly.

Comment: An insurance service organization suggested that a conflict exists between the definition of ''sample'' and ''inadequate germination'' because the germination rate is determined by using a certified seed test on clean seed, not field run seed.

Response: There is no conflict between the terms. The sample must be at least 3 pounds of field run seed. The germination rate is based on the amount of clean seed obtained from that sample. No change has been made.

Comment: An insurance service organization asked why a ''seed company'' must now be a corporation (previously defined as a ''business enterprise''), and if there are any legitimate seed companies that are not corporations.

Response: A seed company need only be a corporation if the seed company is also the producer. To cover all other situations, FCIC has changed ''a corporation'' to ''a business enterprise'' in the definition of ''seed company.''

Comment: An insurance service organization suggested that section 2(a) be rearranged as follows: ''* * * a basic unit, as defined in section 1 of the Basic Provisions, may be divided * * *'' (instead of ''(basic unit))'' at the end of the earlier phrase.

Response: All definitions and those provisions common to most crops with respect to units have been deleted and moved to the Basic Provisions.

Comment: A reinsured company and an insurance service organization stated that the provisions contained in section 2(e)(1), which require the insured to keep records by optional unit for optional units to apply, conflict with section 3(b) which correctly indicates that production reporting requirements do not apply to this crop. In most instances the seed corn is harvested and hauled directly to the seed companies' processing facilities. The seed company maintains records of planted acreage and harvested production and provides all of the yield records used by the FCIC RSO to establish the approved yields. All references to the insured maintaining records by optional unit should not be a requirement since this is maintained at the seed company level. The historical yield of the producer's seed corn is not used to establish the amount of insurance as stated in this item as this is based on the county yield, coverage level and price elected and any minimum guaranteed payment. Seed corn producers will often plant different varieties from year to year with different expected yields. Therefore, the actual yield produced from the previous year has little or no value for the producer in subsequent years.

Response: The insured must have verifiable records of planted acreage and production for each optional unit for at least the ''* * * last crop year used to determine the amount of insurance''. This requirement should not be removed simply because the seed company maintains those records. In order to protect the integrity of the program, FCIC must be able to verify the accuracy of the guarantee for each unit. If the producer cannot produce the records from each optional unit, they will be combined into basic units. The insured can obtain the necessary records from the seed company. These provisions have been deleted and moved to the Basic Provisions.

Comment: A reinsured company was concerned about the requirement that the producer must meet all the requirements in section 6. They stated

that these requirements should not be mandatory for every acreage report.

Response: The information required by the acreage report is necessary to establish liability, premium, and insurability of the acreage. No change has been made.

Comment: A reinsured company and an insurance service organization mentioned that in section 6(a), each individual producer is the named insured under this program and may not know the type or variety of hybrid. The seed companies provide the seed and the producer grows it. Seed companies do not want this information going any further than necessary while still meeting the requirements of the MPCI program. This information is needed only in the event of a claim and can be obtained from the seed company as needed at that time. The commenter believes collection of this information should be an option since the insurance provider may want to capture it in certain instances but not for all insureds. Therefore, this should be an option, not mandatory as it would be with the word ''must'' in the proposed language.

Response: The reporting requirement by type or variety must be maintained for rating purposes and to determine liability and premium for the unit. Such information cannot be obtained only at the time of loss. It is the responsibility of the producer to provide the information which should be contained in the hybrid seed corn processor contract. No change has been made.

Comment: A reinsured company and an insurance service organization mentioned that section 6(b) requires that acreage occupied by the male parent plants be reported. They realize it is common for other crops to obtain all insurable and uninsurable acreage of the crop. However, this stipulation to capture the total acreage occupied by the male parent plants is an unnecessary and burdensome requirement for hybrid seed corn. The commenter suggested that this should be determined in the event of a claim. A number of seed companies require that the male acres be destroyed after pollination.

Response: The requirement to report any acreage occupied by male parent plants is necessary to determine the correct amount of insurance for a unit since acres with male plants are not insurable. The amount of insurance is determined on the Summary of Coverage so the insurance provider cannot wait until a loss to determine insurable acreage. The burden of determining the amount of acreage occupied by the male plant can be minimized by mathematical calculation based on the planting pattern of the crop. No change has been made.

Comment: A reinsured company and an insurance service organization questioned section 6(c), which requires the insured to certify that there is a hybrid seed corn processor contract and the amount of any minimum guaranteed payment. The commenter questions what constitutes certification. It is their feeling that if the insured goes through the FCIC RSO to obtain an approved yield, and upon receiving copies of this information, this would be adequate certification as to the insured having a contract. The presumption is that the FCIC RSO would not go through this process between the producer and the seed company if there was not some type of contractual agreement in place. If they obtain some of this information directly from the seed company it would also constitute certification as the seed company would not provide this information if a contract was not in place. If this does not constitute certification for the purposes of having a contract then they have some concerns as to what additional requirements must be met.

Response: The certification requirement is satisfied by a written statement on the acreage report, signed by the producer, that such a contract exists. In many cases, the RSO provides an approved yield for a variety, not specifically for individual producers. Since a contract is a condition of insurance, the insurance provider must have some assurance that a contract exists. Receipt of an approved yield from the RSO is not evidence of a contract between the processor and the producer. No change has been made.

Comment: A reinsured company and an insurance service organization were concerned with section 6(c) references to the minimum guaranteed payment which, according to the Crop Insurance Handbook, must be obtained from each insured. If an insurance company happens to insure all producers of a seed company, there is generally only one base contract which is used for all the individual seed corn producers. If the base contract does not provide a minimum guarantee, each insured is still required to certify to this effect even though this information can be determined from the base contract.

Response: Section 6(c) only requires the producer to report a minimum guaranteed payment if the hybrid seed corn processor contract contains such a payment. No change has been made.

Comment: An insurance service organization asked if all the exceptions in section 7(a)(4)(I)–(iv) should be required by written agreement. For example, the commenter questions why acreage with female and male parent plants in the same row would ever be insurable. Perhaps the phrase ''unless allowed'' should be removed from item (4) and inserted at the specific items where it is actually possible.

Response: Current planting practices do not allow male and female plants to be planted in the same row. However, acceptable planting practices may change and the provision must allow a certain amount of flexibility to cover such changes. No change has been made.

Comment: A reinsured company questioned section 7(c) pertaining to a producer who is also the seed company. If a seed corn producer is insured as an individual, and also owns the seed corn company under a corporate name and the company contracts with other producers, the commenter questions whether this situation would fall into the procedure outlined.

Response: If the other conditions in section 7(c) are met, the seed company could be eligible for insurance. Section 7(c) has been amended for clarification.

Comment: An insurance service organization asked that since ''seed company,'' by definition, is required to be a corporation, whether it is necessary to repeat the requirement again in section 7(c)(1).

Response: A seed company is no longer required to be a corporation except when the seed company is also the producer. FCIC has revised the definition of ''seed company'' to specify business enterprise and added a provision requiring a seed company that is also an insured to be a corporation.

Comment: A reinsured company and an insurance service organization were concerned with section 7(c)(3) which states that if acceptable sales records are not available, the crop may only be insured under the Coarse Grains Crop Provisions. Since the yield potential for seed corn is considerably less than for commercial field corn, a normal seed corn crop could be harvested and still potentially have a payable loss under the Coarse Grains Crop Provisions. Language similar to ''* * * may only be insured by written agreement * * *'' is recommended.

Response: FCIC agrees that hybrid seed corn is best suited for insurance under the Hybrid Seed Corn Crop Provision, but records must be provided to assure that the person seeking insurance is a bona-fide producer of hybrid seed corn. If the crop is insured under the Coarse Grains Crop Provisions, the approved yield would be derived from hybrid seed corn production records of the processor for

the particular variety. The last sentence of section 7(c)(3) has been revised to read ''If such records are not available, the crop may be insured under the Coarse Grains Crop Provisions with a written agreement; and * * *.''

Comment: An insurance service organization asked if it is necessary that the phrase ''Of the insured crop'' be specified in section 8(c) but not for items (a) or (b).

Response: FCIC has clarified the provisions. Further, since damage to the male plant could also necessitate replanting, FCIC has modified section 8(c) to include both male and female parent plants.

Comment: An insurance service organization stated that the phrase ''insurance attaches after'' in section 9(a) creates an ambiguity with respect to when insurance attaches. The commenter suggested that the term ''after'' could be changed to ''once'' (or ''upon completion of planting:'') and then delete ''is completely planted'' from items (1) and (2).

Response: Section 9(a) has been clarified.

Comment: A reinsured company and an insurance service organization stated that the provisions in section 11(a) stipulate that any representative samples must consist of one complete planting pattern the entire length of the field if the acreage will not be harvested. The commenters prefer that each representative sample be one complete pattern which is long enough to provide a 1/100 acre sample, and that these be at various representative areas of the field rather than the entire length of the field. This would be consistent with the appraisal methods specified in the loss adjustment procedures.

Response: More than one representative sample may be required by the insurance provider, and such samples may be in different parts of the field. However, by having a strip the entire length of the field, the loss adjuster can choose the areas to be sampled and is not restricted to the crop the insured chose to leave for this purpose. This permits a more accurate appraisal. Further, it would be difficult for the person harvesting the crop to know what constitutes 1/100 of an acre. No change has been made.

Comment: An insurance service organization suggested that since the Basic Provisions state that the term ''representative sample'' will be further defined in the Crop Provisions, it should be included in section 1 with the other definitions (as in the 1986–CHIAA 738) so the term would be more easily located.

Response: The requirements for representative samples are substantive and, therefore, should not be in the definition section. The Basic Provisions are revised to amend the definition to state ''as specified in the Crop Provisions''.

Comment: A reinsured company and an insurance service organization disagreed that section 11(b)(2) should be a mandatory requirement for all producers having a loss. If all seed corn producers for a seed company are insured with the same insurance company, the company knows that all of their producers have a seed corn contract. The company will already have a copy of the base contract for the seed company and are not gaining anything by having to obtain the exact contract in effect for each producer. If some producers insured with an insurance company grow seed corn for various seed companies (not all of their producers are insured with them) there may be some benefit in obtaining a copy of the contract. The commenter does not believe this should be a mandatory requirement for all losses.

Response: Since not all producers may receive the same contract terms, the insurance company must verify contract terms, unless it has been determined that the contract provided by the seed company is used for all its producers without any waivers or amendments. Section 11(b)(2) has been revised accordingly.

Comment: An insurance service organization suggested that section 12(e)(1)(v) (redesignated section 12(d)(1)(v)) of the policy should not allow the insured to defer settlement and wait for a later, generally lower appraisal, especially on crops that have a short ''shelf life.''

Response: A later appraisal will only be necessary if the insurance provider and the insured do not agree on the appraisal or the insurance provider believes the crop needs to be carried further. The producer must continue to care for the crop. If the producer does not care for the crop, the original appraisal will be used. No change has been made.

Comment: An insurance service organization stated that section 12(e)(2) (redesignated section 12(d)(2)) counts harvested production *delivered* to the seed company, whereas section 4d(1)(I) of the 1986–CHIAA 738 counts harvested production delivered to *and accepted* by the seed company. The commenter questioned whether this is change, or should this provision be interpreted to mean that production is not considered delivered until it is accepted.

Response: This is a change. Section 12(d)(2) provides that seed production to be counted includes mature harvested production that is delivered as commercial hybrid seed corn to the seed company stated in the hybrid seed corn processor contract, regardless of quality, unless the production has inadequate germination.

Comment: A reinsured company and an insurance service organization asked that since there has been a change in amounts for moisture content (to 15 percent moisture content instead of 15.5 percent, and increased for ear corn by 1.5 pounds, instead of 2.0 pounds, for each percentage point of moisture in excess of 14.0 percent) in sections 12(f)(1) and (2), whether FCIC plans any adjustments to previous yields that were adjusted using the previous amounts.

Response: Previous yield information will not be affected. These changes will be effective for 1998 and subsequent crop years. Approved yields after these provisions are effective will be determined on the revised basis.

Comment: An insurance service organization suggested that section 13(d)(2) may be confusing because a sentence that states ''The unit consists of 185 acres * * *'' is followed immediately by a sentence that states ''The unit consists of 150 acres * * *.'' The example would be clearer if it stated ''The unit consists of 150 acres of female parent plants of the same type and variety (an additional 35 acres are occupied by the male parent plants, which are not insurable). Of the 150 acres, 50 acres were planted * * *'' or some similar statement. At the least, the latter should read ''The unit consists of 150 insurable acres * * *.''

Response: The late and prevented planting provisions, common to most crops, are deleted and moved to the Basic Provisions.

Comment: A reinsured company and an insurance service organization favored the elimination of the substitute crop provisions under prevented planting coverage.

Response: The late and prevented planting provisions, common to most crops, are deleted and moved to the Basic Provisions. FCIC has revised those provisions to remove the substitute crop provisions.

Comment: A reinsured company and an insurance service organization stated that section 13(d)(5), which defines the maximum eligible acreage for prevented planting, conflicts with the current provisions, which correctly states that the maximum eligible acres for seed corn is the number of acres the producer contracted for the crop year.

Response: FCIC has clarified the provision in the Basic Provisions.

Comment: A reinsured company stated that it understands that FCIC is revising prevented planting for 1998 and assumes these new provisions would be incorporated into the crop provisions for hybrid seed corn.

Response: The late and prevented planting provisions have been moved to the Basic Provisions and will be applicable to this policy.

Comment: A reinsured company and an insurance service organization recommended deleting section 14(d). Written agreements should not be limited to one year. Rather, such agreements should be valid for the period stated in the agreement. In most cases, written agreements should be continuous, as is the case with the policy. Limiting written agreements to one year only increases administrative cost, complexity and opportunity for misunderstanding and error.

Response: Written agreements are, by design, temporary and intended to address unusual circumstances. If the conditions that require a written agreement exists for multiple crop years, the policy or Special Provisions should be amended to accommodate the conditions. The written agreement provisions have been deleted and moved to the Basic Provisions.

Comment: An insurance service organization suggested that section 14(e) be combined with the provisions in section 14(a).

Response: Section 14(e) is intended to be a limited exception, not the rule, affecting only those cases in which conditions discovered after the sales closing date make a written agreement necessary. Therefore, these provisions should be kept separate. No change has been made in the Basic Provisions.

Comment: A reinsured company expressed a general concern about many of the mandatory requirements added to these provisions. In its view, most of these requirements are unnecessary. Failure to collect this information in prior years has not caused problems. The issues of reduced expense reimbursement and simplification should be considered prior to finalizing these provisions. This policy proposes to increase the expense of writing hybrid seed corn along with the added complexity involved from the additional collection requirements.

Response: FCIC understands the concerns of this commenter. These Crop Provisions were revised to reduce program vulnerabilities and make the insuring language more precise. FCIC has attempted to minimize any additional requirements imposed upon the policyholder, the reinsured company, and the seed company. All mandatory information is required to fairly and properly administer the policy.

In addition to the changes described above, FCIC has made minor editorial changes and has amended the following provisions:

1. The paragraph preceding section 1 has been revised to refer to the Catastrophic Risk Protection Endorsement for the purpose of clarification.

2. The definition of ''adjusted yield,'' ''amount of insurance per acre,'' ''approved yield,'' ''county yield,'' ''dollar value per bushel,'' ''field run,'' ''hybrid seed corn processor contract,'' and ''insurable interest'' have been revised for clarification.

3. A definition of ''coverage level factor'' has been added for clarification.

4. The definitions of ''days,'' ''FSA,'' ''final planting date,'' ''interplanted,'' ''irrigated practice,'' ''late planted,'' ''late planting period,'' and ''timely planted'' have been deleted and moved to the Basic Provisions.

5. The definition of ''good farming practices,'' ''planted acreage,'' and ''prevented planting'' have been revised to delete the provisions moved to the Basic Provisions.

6. The definition of ''practical to replant'' has been revised to clarify that it will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the hybrid seed corn processor contract, or the seed company agrees to accept such production.

7. Section 2 has been revised to delete those provisions that have been moved to the Basic Provisions, and to clarify the unit structure for hybrid seed corn when the hybrid seed corn processor contract specifies an amount of production to be delivered.

8. Section 7(d) has been added to allow the insured crop that is under contract with different seed companies to be insured under separate policies with different insurance providers provided all acreage of the insured crop in the county is insured.

9. Section 8(c) has been revised for clarification.

10. In section 10(b)(4), the requirement that the crop be inspected and the loss appraised before harvest is completed has been deleted to be consistent with section 11(b)(1).

11. Section 12(c) has been revised for clarification. Also, an example of an indemnity calculation has been added for illustration. Section 12(d) is deleted since it was redundant with section 12(e) and the following section redesignated accordingly.

12. In section 12(e)(1)(I), as redesignated, adjusted yield has been changed to amount of insurance per acre.

13. In section 12(f)(3), as redesignated, the last sentence has been corrected to clarify that records of the seed company will only be used to determine the amount of production to count if the production is calculated on the same basis as that used to determine the approved yield.

14. Add provision specifying the prevented planting coverage available.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the hybrid seed corn insurance coverage and brings it under the Common Crop Insurance Policy, Basic Provisions for consistency among policies. The earliest contract change date that can be met for the 1998 crop year is December 31, 1997. It is, therefore, imperative that these provisions be made final before that date so that reinsured companies and insureds may have sufficient time to implement these changes. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

List of Subjects in 7 CFR Parts 443 and 457

Crop insurance, Hybrid seed crop insurance regulations, Hybrid seed corn.

Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 443 and 457 as follows:

PART 443—HYBRID SEED CROP INSURANCE REGULATIONS FOR THE 1986 THROUGH 1997 CROP YEARS

1. The authority citation for 7 CFR part 443 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. The part heading is revised to read as set forth above.

3. Subpart Heading ''Subpart—Regulations for the 1986 and Succeeding Crop Years'' is removed.

4. Section 443.7 is amended by revising the introductory text of paragraph (d) to read as follows:

§ 443.7 The application and policy.

* * * * *

(d) The application for the 1986 through 1997 crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37 and 400.38). The provisions of the Hybrid Seed Crop Insurance

Regulations for the 1986 through 1997 crop years are as follows:

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

5. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

6. Section 457.152 is added to read as follows:

§ 457.152 Hybrid seed corn crop insurance provisions.

The Hybrid Seed Corn Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Hybrid Seed Corn Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, (§ 457.8) with (1) controlling (2), etc.

1. Definitions.

Adjusted yield. An amount determined by multiplying the county yield by the coverage level factor.

Amount of insurance per acre. A dollar amount determined by multiplying the adjusted yield by the price election you select and subtracting any minimum guaranteed payment, not to exceed the total compensation specified in the hybrid seed corn processor contract. If your hybrid seed corn processor contract contains a minimum guaranteed payment that is stated in bushels, we will convert that value to dollars by multiplying it by the price election you selected.

Approved yield. In lieu of the definition contained in the Basic Provisions, an amount FCIC determines to be representative of the yield that the female parent plants are expected to produce when grown under a specific production practice. FCIC will establish the approved yield based upon records provided by the seed company and other information it deems appropriate.

Bushel. Fifty-six pounds avoirdupois of shelled corn, 70 pound avoirdupois of ear corn, or the number of pounds determined under the seed company's normal conversion chart when that chart is used to determine the approved yield and the claim for indemnity.

Certified seed test. A warm germination test performed on clean seed according to specifications of the ''Rules for Testing Seeds'' of the Association of Official Seed Analysts.

Commercial hybrid seed corn. The offspring produced by crossing a male and female parent plant, each having a different genetic character. This offspring is the product intended for use by an agricultural producer to produce a commercial field corn crop for grain.

County yield. An amount contained in the actuarial documents that is established by FCIC to represent the yield that a producer of hybrid seed corn would be expected to produce if the acreage had been planted to commercial field corn.

Coverage level factor. A factor contained in the Special Provisions to adjust the county yield for commercial field corn to reflect the higher value of hybrid seed corn.

Dollar value per bushel. An amount that determines the value of any seed production to count. It is determined by dividing the amount of insurance per acre by the result of multiplying the approved yield by the coverage level percentage, expressed as a decimal.

Female parent plants. Corn plants that are grown for the purpose of producing commercial hybrid seed corn and have had the stamens removed or are otherwise male sterile.

Field run. Commercial hybrid seed corn production before it has been dried, screened, or processed.

Good farming practices. In addition to the definition contained in the Basic Provisions, good farming practices include those practices required by the hybrid seed corn processor contract.

Harvest. Combining, threshing or picking ears from the female parent plants to obtain commercial hybrid seed corn.

Hybrid seed corn processor contract. An agreement executed between the hybrid seed corn crop producer and a seed company containing, at a minimum:

(a) The producer's promise to plant and grow male and female parent plants, and to deliver all commercial hybrid seed corn produced from such plants to the seed company;

(b) The seed company's promise to purchase the commercial hybrid seed corn produced by the producer; and

(c) Either a fixed price per unit of measure (bushels, hundredweight, etc.) of the commercial hybrid seed corn or a formula to determine the value of such seed. Any formula for establishing the value must be based on data provided by a public third party that establishes or provides pricing information to the general public, based on prices paid in the open market (*e.g.*, commodity futures exchanges), to be acceptable for the purpose of this policy.

Inadequate germination. Germination of less than 80 percent of the commercial hybrid seed corn as determined by using a certified seed test.

Insurable interest. Your share of the financial loss that occurs in the event seed production is damaged by a cause of loss specified in section 10.

Local market price. The cash price offered by buyers for any production from the female parent plants that is not considered commercial hybrid seed corn under the terms of this policy.

Male parent plants. Corn plants grown for the purpose of pollinating female parent plants.

Minimum guaranteed payment. A minimum amount (usually stated in dollars or bushels) specified in your hybrid seed corn processor contract that will be paid or credited to you by the seed company regardless of the quantity of seed produced.

Non-seed production. Production that does not qualify as seed production because of inadequate germination.

Planted acreage. In addition to the definition contained in the Basic Provisions, the insured crop must be planted in rows wide enough to permit mechanical cultivation, unless otherwise provided by the Special Provisions or by written agreement.

Planting pattern. The arrangement of the rows of the male and female parent plants in a field. An example of a planting pattern is four consecutive rows of female parent plants followed by two consecutive rows of male parent plants.

Practical to replant. In addition to the definition contained in the Basic Provisions, practical to replant applies to either the female or male parent plant. It will not be considered practical to replant unless production from the replanted acreage can be delivered under the terms of the hybrid seed corn processor contract, or the seed company agrees that it will accept the production from the replanted acreage.

Prevented planting. In addition to the definition contained in the Basic Provisions, prevented planting applies to the female and male parent plants. The male parent plants must be planted in accordance with the requirements of the hybrid seed corn processor contract to be considered planted.

Sample. For the purpose of the certified seed test, at least 3 pounds of randomly selected field run shelled corn for each variety of commercial hybrid seed corn grown on the unit.

Seed company. A business enterprise that possesses all licenses for marketing commercial hybrid seed corn required by the state in which it is domiciled or operates, and which possesses facilities with enough storage and drying capacity to accept and process the insured crop within a reasonable amount of time after harvest. If the seed company is the insured, it must also be a corporation.

Seed production. All seed produced by female parent plants with a germination rate of at least 80 percent as determined by a certified seed test.

Shelled corn. Kernels that have been removed from the cob.

Variety. The name, number or code assigned to a specific genetic cross by the seed company or the Special Provisions for the insured crop in the county.

2. Unit Division.

For any processor contract that stipulates the amount of production to be delivered:

(a) In lieu of the definition of ''basic unit'' contained in the Basic Provisions, a basic unit will consist of all acreage planted to the insured crop in the county that will be used to fulfill a hybrid seed corn processor contract;

(b) There will be no more than one basic unit for all production contracted with each processor contract;

(c) In accordance with section 12, all production from any basic unit in excess of the amount under contract will be included as production to count if such production is applied to any other basic unit for which the contracted amount has not been fulfilled; and

(d) Optional units will not be established.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the hybrid seed corn in the county insured under this policy unless the Special Provisions provide different price elections by variety, in which case you may select one price election for each hybrid seed corn variety designated in the Special Provisions. The price election you choose for each variety must have the same percentage relationship to the maximum price offered by us for each variety. For example, if you choose 100 percent of the maximum price election for one specific variety, you must also choose 100 percent of the maximum price election for all other varieties.

(b) The production reporting requirements contained in section 3 of the Basic Provisions are not applicable to this contract.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are March 15.

6. Report of Acreage.

In addition to the requirements of section 6 of the Basic Provisions, you must:

(a) Report by type and variety, the location and insurable acreage of the insured crop;

(b) Report any acreage that is uninsured, including that portion of the total acreage occupied by male parent plants; and

(c) Certify that you have a hybrid seed corn processor contract and report the amount, if any, of any minimum guaranteed payment.

7. Insured Crop.

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the female parent plants in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share;

(2) That are grown under a hybrid seed corn processor contract executed before the acreage reporting date;

(3) That are planted for harvest as commercial hybrid seed corn in accordance with the requirements of the hybrid seed corn processor contract and the production management practices of the seed company; and

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Planted with a mixture of female and male parent seed in the same row;

(ii) Planted for any purpose other than for commercial hybrid seed corn;

(iii) Interplanted with another crop; or

(iv) Planted into an established grass or legume.

(b) An instrument in the form of a ''lease'' under which you retain control of the acreage on which the insured crop is grown and that provides for delivery of the crop under substantially the same terms as a hybrid seed corn processor contract will be treated as a contract under which you have an insurable interest in the crop.

(c) A commercial hybrid seed corn producer who is also a seed company may be able to insure the hybrid seed corn crop if the following requirements are met:

(1) The seed company has an insurable interest in the hybrid seed corn crop;

(2) Prior to the sales closing date, the Board of Directors of the seed company has executed and adopted a corporate resolution that contains the same terms as a hybrid seed corn processor contract. This corporate resolution will be considered a contract under this policy;

(3) Sales records for at least the previous years' seed production must be provided to confirm that the seed company has produced and sold seed. If such records are not available, the crop may be insured under the Coarse Grains Crop Provisions with a written agreement; and

(4) Our inspection reveals that the storage and drying facilities satisfy the definition of a seed company.

(d) Any of the insured crop that is under contract with different seed companies may be insured under separate policies with different insurance providers provided all acreage of the insured crop in the county is insured. If you elect to insure the insured crop with different insurance providers, you agree to pay separate administrative fees for each insurance policy.

8. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions, we will not insure any acreage of the insured crop:

(a) Planted and occupied exclusively by male parent plants;

(b) Not in compliance with the rotation requirements contained in the Special Provisions or, if applicable, required by the hybrid seed corn processor contract; or

(c) If either the female or male parent plants are damaged before the final planting date and we determine that the insured crop is practical to replant but it is not replanted.

9. Insurance Period.

(a) In addition to the provisions of section 11 of the Basic Provisions, insurance attaches upon completion of planting of:

(1) The female parent plant seed on or before the final planting date designated in the Special Provisions, except as allowed in section 16 of the Basic Provisions; and

(2) The male parent plant seed.

(b) In accordance with the provisions of section 11 of the Basic Provisions, the calendar date for the end of the insurance period is the October 31 immediately following planting.

10. Causes of Loss.

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss contained in section 10(a) (1) through (7) that occurs during the insurance period.

(b) In addition to the causes of loss excluded by section 12 of the Basic Provisions, we will not insure against any loss of production due to:

(1) The use of unadapted, incompatible, or genetically deficient male or female parent plant seed;

(2) Frost or freeze after the date established by the Special Provisions;

(3) Failure to follow the requirements stated in the hybrid seed corn processor contract and production management practices of the seed company;

(4) Inadequate germination, even if resulting from an insured cause of loss, unless you have provided adequate notice as required by section 11(b)(1); or

(5) Failure to plant the male parent plant seed at a time or in a manner sufficient to assure adequate pollination of the female parent plants, unless you are prevented from planting the male parent plant seed by an insured cause of loss.

11. Duties In The Event of Damage or Loss.

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples of at least one complete planting pattern of the female and male parent plant rows and extend the entire length of each field in the unit. If you are going to destroy any acreage of the insured crop that will not be harvested, the samples must not be destroyed until after our inspection.

(b) In addition to the requirements of section 14 of the Basic Provisions:

(1) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate inadequate germination on any unit; and

(2) You must provide a completed copy of your hybrid seed corn processor contract unless we have determined it has already been provided by the seed company, and the seed company certifies that such contract is used for all its growers without any waivers or amendments.

12. Settlement of Claim.

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) You will not receive an indemnity payment on a unit if the seed company refuses to provide us with records we require to determine the dollar value per bushel of production for each variety.

(c) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by its respective amount of insurance per acre, by type and variety if applicable;

(2) Totaling the results of section 12(c)(1) if there are more than one type or variety;

(3) Multiplying the total seed production to count (see section 12(d)) for each type and variety of commercial hybrid seed corn by the applicable dollar value per bushel for that type or variety;

(4) Multiplying the total non-seed production to count (see section 12(e)) for each type and variety by the applicable local market price determined on the earlier of the date the non-seed production is sold or the date of final inspection;

(5) Totaling the results of sections 12(c)(3) and 12(c)(4) by type and variety;

(6) Subtracting the result of section 12(c)(5) from the result of section 12(c)(1) if there is only one type or variety, or subtracting the result of 1or variety; and

(7) Multiplying the result of section 12(c)(6) by your share. For example:

You have a 100 percent share in 50 acres insured for the development of variety ''A'' hybrid seed corn in the unit, with an amount of insurance per acre guarantee of $340 (county yield of 160 bushels times a coverage level factor of .867 for the 65 percent coverage level, times a price election of $2.45 per bushel, minus the minimum guaranteed payment of zero). Your seed production was 1,400 bushels and the dollar value per bushel was $9.80. Your non-seed production was 100 bushels with a local market value of $2.00 per bushel. Your indemnity would be calculated as follows:

(1) 50 acres×$340=$17,000 amount of insurance guarantee;

(3) 1,400 bushels×$9.80=$13,720 value of seed production;

(4) 100 bushel of non-seed×$2.00=$200 of non-seed production;

(5) $13,720+$200=$13,920;

(6) $17,000 − $13,920=$3,080; and

(7) $3,080×100 percent share=$3,080 indemnity payment.

You also have a 100 percent share in 50 acres insured for the development of variety ''B'' hybrid seed corn in the unit, with an amount of insurance per acre guarantee of $297 (county yield of 140 bushels times a coverage level factor of .867 for the 65 percent coverage level, times a price election of $2.45 per bushel, minus the minimum guaranteed payment of zero). You harvested 1,200 bushels and the dollar value per bushel for the harvested amount was $8.56. You also harvested 200 bushels of non-seed with a market value of $2.00 per bushel. Your indemnity would be calculated as follows:

(1) 50 acres×$340=$17,000 amount of insurance guarantee for type ''A'' and 50 acres×$297=$14,850 amount of insurance guarantee for type ''B'';

(2) $17,000+$14,850=$31,850 amount of insurance guarantee;

(3) 1,400 bushels×$9.80=$13,720 value of seed production for type ''A'' and 1,200 bushels×$8.56=$10,272 value of seed production for type ''B'';

(4) 100 bushels of non-seed×$2.00=$200 of non-seed production for type ''A'' and 200 bushels of non-seed×$2.00=$400 of non-seed production for type ''B'';

(5) $13,720+$200+$10,272+$400=$24,592 value of production to count;

(6) $31,850 − $24,592=$7,258; and

(7) $7,258×100 percent share=$7,258 indemnity payment.

(d) Production to be counted as seed production will include:

(1) All appraised production as follows:

(i) Not less than the amount of insurance per acre for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Mature unharvested production with a germination rate of at least 80 percent of the commercial hybrid seed corn as determined by a certified seed test. Any such production may be adjusted in accordance with section 12(f);

(iv) Immature appraised production;

(v) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) Harvested production that you deliver as commercial hybrid seed corn to the seed company stated in your hybrid seed corn processor contract, regardless of quality, unless the production has inadequate germination.

(e) Production to be counted as non-seed production will include all harvested or mature appraised production that does not qualify as seed production to count as specified in section 12(d). Any such production may be adjusted in accordance with section 12(f).

(f) For the purpose of determining the quantity of mature production:

(1) Shelled commercial hybrid seed corn will be:

(i) Increased 0.12 percent for each 0.1 percentage point of moisture below 15 percent; or

(ii) Decreased 0.12 percent for each 0.1 percentage point of moisture in excess of 15 percent.

(2) The weight of ear corn required to equal one bushel of shelled seed corn will be increased 1.5 pounds for each full percentage point of moisture in excess of 14 percent, and any portion of a percentage point will be disregarded. The moisture content of ear corn will be determined from a shelled sample of the ear corn.

(3) When records of commercial hybrid seed corn production provided by the seed company have been adjusted to a shelled corn basis of 15.0 percent moisture and 56 pound avoirdupois bushels, sections 12(f)(1) and (2) above will not apply to harvested production. In such cases, records of the seed company will be used to determine the amount of production to count, provided that the moisture and weight of such production are calculated on the same basis as that used to determine the approved yield.

13. Prevented Planting.

Your prevented planting coverage will be 50 percent of your amount of insurance for timely planted acreage. If you have limited or additional levels of coverage as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to a level specified in the actuarial documents.

Signed in Washington, D.C., on December 5, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–32498 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–295–AD; Amendment 39–10250; AD 97–26–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires a one-time inspection to detect damage of the sleeving and wire bundles of the boost pumps of the numbers 1 and 4 main fuel tanks, and of the auxiliary tank jettison pumps (if installed); replacement of any damaged sleeving with new sleeving; and repair or replacement of any damaged wires with new wires. For airplanes on which any

burned wires are found, that AD also requires an inspection to detect damage of the conduit, and replacement of any damaged conduit with a serviceable conduit. This amendment requires repetitive inspections in lieu of the one-time inspection. This amendment also expands the applicability of the existing AD. This amendment is prompted by reports of chafing of the sleeving. The actions specified in this AD are intended to detect and correct abrasion of the Teflon sleeving and wires in the bundles of the fuel boost pumps for the numbers 1 and 4 main fuel tanks and of the auxiliary tank jettison pumps (if installed), which could result in electrical arcing between the wires and the aluminum conduit and consequent fire or explosion of the fuel tank.

DATES: Effective December 29, 1997.

The incorporation by reference of Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997, as listed in the regulations, is approved by the Director of the Federal Register as of December 29, 1997.

The incorporation by reference of Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 21, 1997 (62 FR 304, January 3, 1997).

Comments for inclusion in the Rules Docket must be received on or before February 10, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97-NM–295–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ed Hormel, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2681; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On December 23, 1996, the FAA issued AD 96–26–06, amendment 39–9870 (62 FR 304, January 3, 1997), applicable to certain Boeing Model 747 series airplanes, to require a one-time inspection to detect damage of the sleeving and wire bundles of the boost pumps of the numbers 1 and 4 main fuel tanks, and of the auxiliary tank jettison pumps (if installed); replacement of any damaged sleeving with new sleeving; and repair or replacement of any damaged wires with new wires. For airplanes on which any burned wires are found, that AD also requires an inspection to detect damage of the conduit, and replacement of any damaged conduit with a serviceable conduit. That action was prompted by an FAA determination that an environment conducive to vibration exists in the conduit and wire bundles of the boost pumps and of the auxiliary tank jettison pumps, which can cause abrasion of the Teflon sleeving and consequent abrasion of the wires in the bundles. The actions required by that AD are intended to detect and correct such abrasion, which could result in electrical arcing between the wires and the aluminum conduit and consequent fire or explosion of the fuel tank.

Actions Since Issuance of Previous Rule

Since the issuance of AD 96–26–06, the FAA has received numerous reports of chafing through the outer Teflon sleeve of the wire bundles of the boost pumps of the numbers 1 and 4 main fuel tanks. Several of the sleeves had large holes. No cases of wire chafing through the insulation to the conductor were reported. Investigation revealed that two of the affected operators had varying levels of chafing with damage on 48 percent of their airplanes. Both of these operators had replaced the aluminum conduits with stainless steel conduits. Other affected operators' airplanes (with flight hour totals similar to those of the airplanes discussed previously) that were equipped with aluminum conduits had a much lower incidence of reported damage.

At the time of issuance of AD 96–26–06, the FAA considered the aluminum conduit to be more susceptible to chafing and burning as a result of electrical arcing between the wires and the aluminum conduit than the stainless steel conduit. Therefore, the FAA limited the inspection required by AD 96–26–06 to Boeing Model 747 series airplanes equipped with aluminum conduits (line numbers 001 through 432 inclusive).

In light of these new findings, the FAA has determined that Boeing Model 747 series airplanes equipped with stainless steel conduits are subject to the same unsafe condition addressed in AD 96–26–06. In addition, the FAA finds that, regardless of the conduit material, repetitive inspections are necessary to determine if the sleeving of the wire bundles continues to provide a protective barrier after extended time in service.

Explanation of Relevant Service Information

Additionally, since the issuance of AD 96–26–06, the FAA has reviewed and approved Revision 1 of Boeing Service Bulletin 747–28A2204, dated October 30, 1997. Revision 1 of the service bulletin revises the effectivity listing of the original version of the service bulletin (which was referenced in AD 96–26–06 as the appropriate source of service information) by adding Boeing Model 747 series airplanes having line numbers 433 through 1120 inclusive. The inspection and corrective procedures described in Revision 1 are essentially identical to those described in the original version of the alert service bulletin.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 96–26–06 to require repetitive inspections, in lieu of the previously required one-time inspection, to detect damage of the sleeving and wire bundles of the boost pumps of the numbers 1 and 4 main fuel tanks, and of the auxiliary tank jettison pumps (if installed); replacement of any damaged sleeving with new sleeving; and repair or replacement of any damaged wires with new wires. For airplanes on which any burned wires are found, this AD also continues to require an inspection to detect damage of the conduit, and replacement of any damaged conduit with a serviceable conduit. This AD also expands the applicability of the existing AD to include additional airplanes. This AD requires that operators submit a report to the FAA of any damage found as a result of the initial inspection.

Differences Between the AD and the Relevant Service Information

Operators should note that the applicability of the AD differs from the effectivity listing of Revision 1 of the referenced service bulletin. The FAA has determined that all Boeing Model 747 series airplanes are subject to the addressed unsafe condition.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–295–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9870 (62 FR 304, January 3, 1997), and by adding a new airworthiness directive (AD), amendment 39–10250, to read as follows:

97–26–07 Boeing: Amendment 39–10250. Docket 97–NM–295–AD. Supersedes AD 96–26–06, Amendment 39–9870.

Applicability: All Model 747 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct abrasion of the Teflon sleeving and wires in the bundles of the fuel boost pumps for the numbers 1 and 4 main fuel tanks and of the auxiliary tank jettison pumps (if installed), which could result in electrical arcing between the wires and the aluminum conduit and consequent fire or explosion of the fuel tank, accomplish the following:

(a) Perform an initial inspection to detect damage of the sleeving and wire bundles of the forward and aft boost pumps of the numbers 1 and 4 main fuel tanks, and of the wire bundles of the auxiliary tank jettison pumps (if installed), in accordance with Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996, or Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes having line numbers 001 through 432 inclusive: Inspect within 120 days after January 21, 1997 (the effective date of AD 96–26–06, amendment 39–9870).

(2) For airplanes having line numbers 433 and subsequent: Inspect at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to the accumulation of 20,000 flight cycles or 60,000 flight hours, whichever occurs first; or

(ii) Within 120 days after the effective date of this AD.

(b) Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 20,000 flight cycles or 60,000 flight hours since the last inspection, whichever occurs first.

(c) If any damaged sleeving is found, prior to further flight, replace the sleeving with new sleeving in accordance with Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996, or Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997.

(d) If any damaged wire is found, prior to further flight, repair or replace the wire with a new wire in accordance with Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996, or Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997.

(e) If any burned wire is found, prior to further flight, perform an inspection to detect damage of the conduit, in accordance with Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996, or Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997. If any damage is found, prior to further flight, replace the conduit with a serviceable conduit in accordance with either of the service bulletins. After the effective date of this AD, only Revision 1 of this service bulletin shall be used.

(f) For airplanes having line numbers 433 and subsequent: Within 14 days after accomplishing the initial inspection required by paragraph (a) of this AD, submit a report of any damaged sleeving (i.e., holes, breaks, cuts, splits), damaged wire (i.e., worn or cracked insulation, exposed conductor, indication of arcing/burning), or damaged conduit to the Manager, Seattle Aircraft

Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, WA 98055–4056; fax (425) 227–1181. The report shall include the information specified in paragraphs (f)(1), (f)(2), (f)(3), (f)(4), and (f)(5) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) The airplane serial number.

(2) The total hours time-in-service accumulated on the airplane.

(3) The total number of flight cycles accumulated on the airplane.

(4) A description of any damage found.

(5) The location of where the damaged part was installed.

(g) For airplanes having line numbers 433 and subsequent: Within 14 days after accomplishing the initial inspection required by paragraph (a) of this AD, submit any damaged part to the Manager, Seattle ACO. The damaged part shall be tagged to include the information specified in paragraphs (f)(1), (f)(2), (f)(3), (f)(4), and (f)(5) of this AD. Additionally, operators shall align the inner sleeving, outer sleeving, and wire as installed in the airplane, and secure the sleeving and wiring in place by taping or other means when submitting the damaged part to the Manager, Seattle ACO. Information collection requirements contained in this regulation have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(j) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996, or Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997.

(1) The incorporation by reference of Boeing Service Bulletin 747–28A2204, Revision 1, dated October 30, 1997, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 747–28A2204, dated December 19, 1996, was approved previously by the Director of the Federal Register as of January 21, 1997 (62 FR 304, January 3, 1997).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on December 29, 1997.

Issued in Renton, Washington, on December 9, 1997.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32611 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–282–AD; Amendment 39–10239; AD 97–25–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes. This action requires repetitive inspections to detect cracking of the rear spar web or fuel leakage of the wing center section, and repair, if necessary. This amendment also provides for an optional modification of the rear spar web that constitutes terminating action for the repetitive inspections. This amendment is prompted by several reports of fuel leakage due to cracking of the rear spar web of the wing center section. The actions specified in this AD are intended to detect and correct such cracking of the rear spar web, which could permit fuel leakage into the airflow multiplier, and could result in an electrical short that could cause a fire.

DATES: Effective December 29, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 29, 1997.

Comments for inclusion in the Rules Docket must be received on or before February 10, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–282–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports indicating that fuel leakage of the wing center section has occurred on several Boeing Model 727 series airplanes due to cracking of the rear spar web of the wing center section. The cracking initiates on the forward side of the spar and propagates through the web at the upper machined land radius between Left Body Buttock Line (BBL) 40 and Right BBL 40. In two instances, cracking was reported on airplanes that had accumulated less than 25,000 total flight cycles. In another case, fuel leakage resulted in fuel odors being emitted into the cabin area. Investigation revealed that fuel was leaking into the airflow multiplier. Fuel leakage into the airflow multiplier due to cracking of the rear spar web of the wing center section, if not detected and corrected, could result in an electrical short that could cause a fire.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997. This alert service bulletin describes procedures for removing the access panels of the wing center section to perform repetitive visual inspections using a borescope, or ultrasonic with high frequency eddy current inspections, to detect cracking of the rear spar web or fuel leakage of the wing center section, and repair, if necessary.

In addition, the alert service bulletin describes procedures for modification of the rear spar web of the wing center section to prevent cracking of the rear spar web, which eliminates the need for the repetitive inspections the modification involves stop drilling any

cracking, and repairing the rear spar web.

The alert service bulletin references Boeing Drawing 65C37620 as an additional source of service information for accomplishment of the repair and modification.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 727 series airplanes of the same type design, this AD is being issued to detect and correct cracking of the rear spar web, which could permit fuel leakage into the airflow multiplier and resultant electrical shorting and fire. This AD requires repetitive inspections [either visual inspections using a borescope or a mirror, or ultrasonic and high frequency eddy current (HFEC) inspections] to detect cracking of the rear spar web or fuel leakage of the wing center section, and repair, if necessary. This AD also provides for an optional modification of the rear spar web of the wing center section, which constitutes terminating action for the repetitive inspection requirements of this AD. The inspections, certain repairs, and the modification are required to be accomplished in accordance with the alert service bulletin described previously. Certain repairs are required to be accomplished in accordance with a method approved by the FAA.

Operators should note the following differences between this AD and the Boeing alert service bulletin:

- Although the alert service bulletin recommends an initial inspection threshold of within 500 flight cycles for airplanes that have accumulated between 15,000 and 25,000 total flight cycles, and an initial inspection threshold of within 300 flight cycles for airplanes that have accumulated 25,000 or more total flight cycles, this AD specifies an initial compliance time of ''prior to the accumulation of 15,000 total flight cycles, or within 300 flight cycles after the effective date of this AD, whichever occurs later.'' The FAA finds that, in view of the reports of cracking of the rear spar web on two airplanes that had accumulated less than 25,000 total flight cycles, the initial compliance time specified in this AD is appropriate. Further, the FAA finds that adequate justification for permitting an inspection threshold of 500 flight cycles for airplanes that have accumulated over 15,000 total flight cycles, but under 25,000 total flight cycles, has not been presented. Therefore, an initial inspection is required to be accomplished on all airplanes within 300 flight cycles after the effective date of this AD.
- This AD requires that, for any cracking or fuel leakage detected that is outside the areas specified in the alert service bulletin, repair must be accomplished in accordance with a method approved by the FAA.
- This AD requires that the access panel only be opened in order to perform the inspections, rather than removed, as described in the Boeing alert service bulletin. The manufacturer has advised the FAA that procedures to remove the access panels were inadvertently included in the alert service bulletin and will be removed at the next revision of the alert service bulletin.
- Although the alert service bulletin describes procedures for performing the visual inspection using a borescope, the manufacturer has advised the FAA that the option of performing the visual inspection using a mirror was inadvertently omitted from the alert service bulletin. Moreover, Figure 1 of the Accomplishment Instructions of the alert service bulletin specifies that the subject area can be examined with a borescope or mirror. Therefore, the FAA has included the option of using a mirror as an acceptable method of compliance with the visual inspection requirements of this AD.

Interim Action

This is considered to be interim action. The FAA is currently considering requiring the modification of the rear spar web of the wing center section, which will constitute terminating action for the repetitive inspections required by this AD. However, the planned compliance time for the installation of the modification is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–282–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the

Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–25–15 Boeing: Amendment 39–10239. Docket 97–NM–282–AD.

Applicability: Model 727 series airplanes having line numbers 858 through 864 inclusive, 867 through 869 inclusive, 872 through 883 inclusive, and 885 through 1832 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the rear spar web, which could permit fuel leakage into the airflow multiplier, and could result in an electrical short that could cause a fire, accomplish the following:

(a) Prior to the accumulation of 15,000 total flight cycles, or within 300 flight cycles after the effective date of this AD, whichever occurs later: Accomplish the inspections specified in either paragraph (a)(1) or (a)(2) of this AD, in accordance with Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997. For purposes of this AD, the access panels specified in the alert service bulletin need not be removed; the access panels need only be opened.

Note 2: The fuel tank of the wing center section may be filled with fuel to assist in detecting cracking or fuel leakage during the accomplishment of the visual inspections required by this AD.

(1) Perform a visual inspection using a borescope or mirror to detect cracking of the rear spar web and/or fuel leakage of the wing center section between Right Body Buttock Line (BBL) 40 and Left BBL 40, in accordance with Part I of the Accomplishment Instructions of the alert service bulletin. Thereafter, repeat this inspection at intervals not to exceed 300 flight cycles. Or

(2) Perform an ultrasonic and high frequency eddy current (HFEC) inspection to detect cracking of the rear spar web of the wing center section between Right BBL 40 and Left BBL 40, in accordance with Part II of the Accomplishment Instructions of the alert service bulletin. Thereafter, repeat this inspection at intervals not to exceed 3,000 flight cycles.

(b) If any cracking of the rear spar web and/or fuel leakage of the wing center section is detected between Right BBL 40 and Left BBL 40 near the upper machined land radius, prior to further flight, repair in accordance with Part III of the Accomplishment Instructions in Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997. Accomplishment of this repair constitutes terminating action for the repetitive inspection requirements of this AD.

(c) If any cracking of the rear spar web and/or fuel leakage of the wing center section is detected that is outside the area specified in paragraph (b) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(d) Accomplishment of paragraphs (d)(1) and either (d)(2) or (d)(3) of this AD, as applicable, constitute terminating action for the repetitive inspection requirements of this AD.

(1) Accomplish an ultrasonic and HFEC inspection in accordance with the requirements of paragraph (a)(2) of this AD. And,

(2) If no cracking is detected, prior to further flight, modify the rear spar web of the center section of the fuel tank between Right BBL 40 and Left BBL 40, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997.

(3) If any cracking is detected, prior to further flight, repair in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Seattle ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided the limitations specified in paragraphs (f)(1) through (f)(6) of this AD are included in the special flight permit:

''(1) Required trip and reserve fuel must be carried in the No. 1 and No. 3 outer wing tanks.

(2) Wing center tank No. 2 must be empty of fuel.

(3) The fuel system must be checked for normal operation prior to flight by verifying that all boost pumps are operational; configuring the fuel system by turning on all boost pumps in the No. 1 and 3 outer wing tanks and by opening all crossfeed valve selectors; and by confirming that fuel is not bypassing tank No. 2 check valves by observing that there is no leakage into tank No. 2.

(4) Maintain a minimum of 5,300 pounds of fuel in tanks No. 1 and No. 3 to prevent uncovering the fuel bypass valve.

(5) The fuel quantity indication system must be operational in all three tanks.

(6) The effects of loading fuel only in the wing tanks on the airplane weight and balance must be considered and accounted for.''

(g) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 727–57A0182, dated September 18, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on December 29, 1997.

Issued in Renton, Washington, on December 3, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–32233 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 95–ASO–21]

RIN 2120–AA66

Modification of Jet Route J–46

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule extends Jet Route J–46 from Volunteer, TN, to Alma, GA.

This action will assist aircraft navigating between Tennessee and Georgia, reduce controller workload, and improve air traffic procedures.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On August 26, 1996, the FAA proposed to amend 14 CFR part 71 to extend J–46 from Volunteer, TN, to Alma, GA (61 FR 43694). Interested parties were invited by the FAA to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received. Except for editorial changes, this amendment is the same as proposed in the notice. Jet routes are published in paragraph 2004 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 extends J–46 from Volunteer, TN, to Alma, GA. Extending this jet route will assist aircraft navigating between Tennessee and Georgia, reduce controller workload, and improve air traffic procedures.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–46 [Revised]

From Tulsa , OK, via Walnut Ridge, AR; Nashville, TN; to Volunteer, TN; Athens, GA; to Alma, GA.

* * * * *

Issued in Washington, DC, on December 2, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–32573 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–9]

RIN 2120–AA66

Modifications of the Legal Descriptions of Federal Airways in the Vicinity of Colorado Springs, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the legal descriptions of Federal Airways V–19, V–81, v-83, and V–108 by replacing the words ''Colorado Springs'' with the words ''Black Forest'' wherever they appear. The name of the Colorado Springs, CO, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility will be changed to the Black Forest, CO, VORTAC concurrently with the effective date of this rule. This action ensures that the legal descriptions of the affected airways will reflect the name change of the VORTAC.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends 14 CFR part 71 (part 71) by changing the legal descriptions of four Federal airways that have ''Colorado Springs VORTAC'' included as part of their route structure. Currently, the Colorado Springs VORTAC and the Colorado Springs Municipal Airport have the same name. FAA Order 7400.2D states that a navigational aid with the same name as the airport should be located on the airport. This action reflects the name change, where necessary, of the Colorado Springs VORTAC, which is not located on the airport. The fact that the VORTAC is approximately 9 NM north of the airport has caused confusion among users because the VORTAC and the airport are not collocated. To eliminate the confusion, the Colorado Springs VORTAC will be renamed the ''Black Forest VORTAC,'' and all the airways with ''Colorado Springs VORTAC'' included in their legal descriptions will be amended to reflect the name change. The effective date changing the name of the VORTAC will coincide with this rulemaking action.

Since this action merely involves a change in the legal descriptions of four Federal airways, and does not involve a change in the dimensions or operating requirements of the airways, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not

a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–19 [Revised]

From Newman, TX, via INT Newman 286° and Truth or Consequences, NM, 159° radials; Truth or Consequences; INT Truth or Consequences 028° and Socorro, NM, 189° radials; Socorro; Albuquerque, NM; INT Albuquerque 036° and Santa Fe, NM, 245° radials; Santa Fe; Las Vegas, NM; Cimarron, NM; Pueblo, CO; Black Forest, CO; INT Black Forest 036°T(023°M) and Gill, CO, 149° radials; Gill; Cheyenne, WY; Muddy Mountain, WY; 5 miles, 45 miles 71 MSL, Crazy Woman, WY; Sheridan, WY; Billings, MT; 38 miles 72 MSL, INT Billings 347° and Lewistown, MT, 104° radials; Lewistown; INT Lewistown 322° and Havre, MT, 226° radials; to Havre.

* * * * *

V–81 [Revised]

From Chihuahua, Mexico, via Marfa, TX; Fort Stockton, TX; Midland, TX; Lubbock, TX; Plainview, TX; Amarillo, TX; Dalhart, TX; Tobe, CO; Pueblo, CO; Black Forest, CO; Jeffco, CO; Cheyenne, WY; Scottsbluff, NE; to Chadron, NE. The airspace outside the United States is excluded.

* * * * *

V–83 [Revised]

From Carlsbad, NM, via Chisum, NM; 40 miles 85 MSL Corona, NM; Otto, NM; Santa Fe, NM; Taos, NM; Alamosa, CO; INT Alamosa 074° and Pueblo, CO, 191° radials; Pueblo; INT Pueblo 002° and Black Forest, CO, 153°T(140°M) radials; to Black Forest.

* * * * *

V–108 [Revised]

From Santa Rosa, CA, via Scaggs Island, CA; INT Scaggs Island 131° and Concord, CA, 276° radials; 7 miles wide (4 miles N. and 3 miles S. of centerline), Concord; Linden, CA. From Meeker, CO; via Red Table, CO; Black Forest, CO; 74 miles, 65 MSL, Goodland, KS; Hill City, KS.

* * * * *

Issued in Washington, DC, on December 2, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–32572 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 97–AEA–38]

RIN 2120–AA66

Name Change for Restricted Area 4007A (R–4007A); Patuxent River, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the name of Restricted Area R–4007A, Patuxent River, MD, to R–4007, by deleting the ''A'' suffix. This action is necessary because the former ''B'' area subdivision no longer exists and there is no requirement for further subdivision of the restricted area. This action simplifies the name of the restricted area to eliminate confusion.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9361.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1978, the FAA redesignated Restricted Area R–4007 as R–4007A, and temporarily established a new restricted area, R–4007B, directly above it which extended up to 17,000 feet mean sea level (MSL) (43 FR 28813). The purpose of R–4007B was to provide additional airspace to accommodate F–18 development testing. The R–4007B designation expired on January 1, 1983. However, R–4007A was not renumbered at that time due to the possibility of future rulemaking action to re-establish the ''B'' area to contain other flight test projects.

Based on forecast requirements at the Patuxent River test facility, the U.S. Navy determined that there is no future need for R–4007B. Consequently, the U.S. Navy requested that R–4007A be redesignated R–4007.

The Rule

This amendment to 14 CFR part 73 (part 73) changes the designation of Restricted Area R–4007A, Patuxent River, MD, to R–4007, Patuxent River, MD. There are no changes to the boundaries, altitudes, time of designation, or activities conducted within the restricted area.

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

Since this action simply changes the name of restricted area

R–4007A, and does not involve a change in the dimensions or operating requirements of that airspace, the FAA finds that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Environmental Review

This action is a minor administrative change amending the name of an existing restricted area. There are no changes to air traffic control procedures or routes as a result of this action. Therefore, this action is not subject to environmental assessments and procedures under FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,''

and the National Environmental Policy Act of 1969.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

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

§ 73.40 [Amended]

2. Section 73.40 is amended as follows:

* * * * *

R–4007A Patuxent River, MD [Removed]

R–4007 Patuxent River, MD [New]

Boundaries. Beginning at lat. 38°21′00″ N., long. 76°13′59″ W.; to lat. 38°11′10″ N., long. 76°25′09″ W.; to lat. 38°05′10″ N., long. 76°34′04″ W.; to lat. 38°15′00″ N., long. 76°36′34″ W.; to lat. 38°17′25″N., long. 76°32′59″ W.; to lat. 38°25′40″ N., long. 76°23′34″ W.; to the point of beginning.

Designated Altitudes: Surface to but not including 5,000 feet MSL.

Time of designation: 0700–2300 local time, daily; other times as specified by NOTAM.

Controlling agency: FAA, Washington ARTCC. Using agency. Commanding Officer, NAS Patuxent River, MD.

* * * * *

Issued in Washington, DC, on December 2, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–32574 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 97–ASO–24]

RIN 2120–AA66

Change Controlling Agency for Restricted Area R–5301, Albemarle Sound, NC; and Restricted Areas R–5302A, R–5302B, and R–5302C, Harvey Point, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the designated controlling agency for Restricted Areas R–5301, R–5302A, R–5302B, and R–5302C from ''Norfolk Airport Traffic Control Tower (ATCT)'' to ''Washington Air Route Traffic Control Center (ARTCC).'' This action is being taken due to the improved radar coverage at Washington ARTCC in the vicinity of these restricted areas.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

Due to the addition of the Oceana long-range system, Washington ARTCC now has improved radar coverage in the vicinity of Restricted Areas R–5301, R–5302A, R–5302B, and R–5302C. Consequently, Washington ARTCC has better capabilities for performing the function of controlling agency for those areas.

The Rule

This amendment to 14 CFR part 73 changes the designated controlling agency for R–5301, Albemarle Sound, NC, and R–5302A, R–5302B, and R–5302C, Harvey Point, NC, from ''FAA, Norfolk ATCT, Norfolk, VA,'' to ''FAA, Washington ARTCC.'' There are no changes to the boundaries, altitudes, time of designation, or activities conducted within the restricted areas.

Since this action simply changes the controlling agency for the existing restricted areas, and does not involve a change in the dimensions or operating requirements of the restricted areas, the FAA finds that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Section 73.53 of part 73 was republished in FAA Order 7400.8E, dated November 7, 1997.

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

Environmental Review

This action is a minor administrative change amending the published designation of the controlling agency for existing Restricted Areas R–5301, R–5302A, R–5302B, and R–5302C. There are no changes to air traffic control procedures or routes as a result of this action. Therefore, this action is not subject to environmental assessments and procedures under FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,'' and the National Environmental Policy Act of 1969.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

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

§ 73.53 [Amended]

2. § 73.53 is amended as follows:

R–5301 Albemarle Sound, NC [Amended]

By removing the words ''Controlling agency. FAA, Norfolk ATCT, Norfolk, VA,'' and substituting the words ''Controlling agency. FAA, Washington ARTCC.''

R–5302A Harvey Point, NC [Amended]

By removing the words ''Controlling agency. FAA, Norfolk ATCT, Norfolk, VA,'' and substituting the words ''Controlling agency. FAA, Washington ARTCC.''

R–5302B Harvey Point, NC [Amended]

By removing the words ''Controlling agency. FAA, Norfolk ATCT, Norfolk, VA,'' and substituting the words ''Controlling agency. FAA, Washington ARTCC.''

R–5302C Harvey Point, NC [Amended]

By removing the words ''Controlling agency. FAA, Norfolk ATCT, Norfolk, VA,'' and substituting the words ''Controlling agency. FAA, Washington ARTCC.''

* * * * *

Issued in Washington, DC, on December 2, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–32570 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 29079; Amdt. No. 405]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

EFFECTIVE DATE: 0901 UTC, November 6, 1997.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8277.

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

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on October 10, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, November 6, 1997.

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

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

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 405 Effective Date, November 6, 1997]

From	To	MEA
§ 95.1001 Direct Routes-U.S.		
§ 95.6009 VOR Federal Airway 9 is Amended to Read in Part		
Sidon, MS VORTAC	Marvell, AR VOR/DME	2100
Marvell, AR VOR/DME	Gilmore, AR VOR/DME	1900
§ 95.6016 VOR Federal Airway 16 is Amended to Read in Part		
Pine Bluff, AR VOR/DME	Marvell, AR VOR/DME	1900
Marvell, AR VOR/DME	Holly Springs, MS VORTAC	2200
§ 95.6054 VOR Federal Airway 54 is Amended to Read in Part		
Little Rock, AR VORTAC	Marvell, AR VOR/DME	1900
Marvell, AR VOR/DME	Holly Springs, MS VORTAC	2200
§ 95.6116 VOR Federal Airway 116 is Amended to Read in Part		
Macon, MO VOR/DME	Quincy, IL VORTAC	*2700

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 405 Effective Date, November 6, 1997]

From	To	MEA
*2100–MOCA		
§ 95.6148 VOR Federal Airway 148 Is Amended to Read in Part		
Mayer, MN FIX *2400–MOCA	Gopher, MN VORTAC	*3000
§ 95.6397 VOR Federal Airway 397 Is Amended to Read in Part		
Greenville, MS VOR/DME	Marvell, AR VOR/DME	1900
Is Amended to Delete		
Kocha, MS FIX *1800–MOCA	Walet, MS FIX	*5000
Walet, MS FIX *2000–MOCA	Holly Springs, MS VORTAC	*2500
§ 95.6436 VOR Federal Airway 436 Is Amended to Read in Part		
Barns, OK FIX *2400–MOCA	Sappa, OK FIX	*4000
§ 95.6453 VOR Federal Airway 453 Is Amended to Read in Part		
King Salmon, AK VORTAC	Dillingham, AK VOR/DME	2100
§ 95.6509 VOR Federal Airway 509 Is Amended to Read in Part		
St. Petersburg, FL VORTAC *5000–MRA **2600–MOCA	*Crowd, FL FIX	**5000

From	To	MEA	MAA
§ 95.7010 Jet Route No. 10 Is Amended to Read in Part			
Twentynine Palms, CA VORTAC	Hippi, AZ FIX	20000	45000
Hippi, AZ FIX	Drake, AZ VORTAC	18000	45000
§ 95.7074 Jet Route No. 74 Is Amended to Read in Part			
Parker, CA VORTAC	Nabob, AZ FIX	21000	45000
Nabob, AZ FIX	St. Johns, AZ VORTAC	18000	45000
§ 95.7086 Jet Route No. 86 Is Amended to Read in Part			
Winslow, AZ VORTAC	El Paso, TX VORTAC	*27000	45000
*MEA is established with a gap in navigation signal coverage.			
§ 95.7231 Jet Route No. 231 Is Amended by Adding			
Twentynine Palms, CA VORTAC	Hippi, AZ FIX	20000	45000
Hippi, AZ FIX	Drake, AZ VORTAC	18000	45000
Drake, AZ VORTAC	St. Johns, AZ VORTAC	18000	45000

From	To	Changeover points	
		Distance	From
§ 95.8003 VOR Federal Airways Changeover Points V–16 Is Amended to Delete			
Pine Bluff, AR VOR/DME	Holly Springs, MS VORTAC	35	Pine Bluff.
V–186 is Amended to Read in Part			
Van Nuys, CA VOR/DME	Paradise, CA VORTAC	39	Van Nuys.

[FR Doc. 97–32576 Filed 12–11–97; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 29078; Amdt. No. 404]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

EFFECTIVE DATE: 0901 UTC, September 11, 1997.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8277.

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

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on August 14, 1997.

Thomas E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, September 11, 1997.

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

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

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 404 Effective Date, September 11, 1997]

From	TO	MEA
§ 95.1001 Direct Routes—U.S. Bahama Routes—58V—Is Amended to Read in Part		
*Melon, BF FIX *8000—MRA **1200—MOCA	Hankx, BF FIX	**2000
Hankx, BF FIX *1200—MOCA	Barts, BF FIX	*4000
§ 95.6001 VOR Federal Airway 1 Is Amended to Read in Part		
Norfolk, VA VORTAC *1800—MOCA	Cape Charles, VA VORTAC	*2500
§ 95.6002 VOR Federal Airway 2 Is Amended to Read in Part		
Madison, WI VORTAC *4000—MRA	*Waits, WI FIX	2800
Waits, WI FIX	Badger, WI VORTAC	2800
§ 95.6012 VOR Federal Airway 12 Is Amended to Read in Part		
Gage, OK VORTAC	Caron, OK FIX	**5000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 404 Effective Date, September 11, 1997]

From	TO	MEA
*5000—MRA **3700—MOCA		
§ 95.6020 VOR Federal Airway 20 Is Amended to Read in Part		
South Boston, VA VORTAC *9000—MRA **2000—MOCA	*Nutts, VA FIX	**3000
Nutts, VA FIX *2400—MOCA	Melia, VA FIX	*3000
§ 95.6023 VOR Federal Airway 23 Is Amended to Read in Part		
Paine, WA VOR/DME	Egret, WA FIX	4500
Egret, WA FIX	Acord, WA FIX	3500
Acord, WA FIX *2200—MOCA	Bellingham, WA VORTAC	*3000
§ 95.6056 VOR Federal Airway 56 Is Amended to Read in Part		
Columbia, GA VORTAC	Talbo, GA FIX	2500
§ 95.6130 VOR Federal Airway 130 Is Amended to Read in Part		
Albany, NY VORTAC *3800—MOCA	Stela, MA FIX	*6000
Stela, MA FIX	Bradley, CT VORTAC	3800
§ 95.6139 VOR Federal Airway 139 Is Amended to Read in Part		
Sunns, NC FIX *1600—MOCA	Norfolk, VA VORTAC	*2000
Norfolk, VA VORTAC *1800—MOCA	Cape Charles, VA VORTAC	*2500
§ 95.6190 VOR Federal Airway 190 Is Amended to Read in Part		
Gage, OK VORTAC *5000—MRA **3700—MOCA	*Caron, OK FIX	**5000
§ 95.6205 VOR Federal Airway 205 Is Amended to Read in Part		
Weets, NY FIX	Stuby, CT FIX	8500
Stuby, CT FIX	Bradley, CT VORTAC	3500
Bradley, CT VORTAC *2200—MOCA	Darth, CT FIX	*3000
§ 95.6341 VOR Federal Airway 341 Is Amended to Read in Part		
Dubuque, IA VORTAC *4000—MRA	*Baulk, WI FIX	3600
Baulk, WI FIX	Madison, WI VORTAC	3600
§ 95.6405 VOR Federal Airway 405 Is Amended to Read in Part		
Veers, CT FIX	Bradley, CT VORTAC	3500
Bradley, CT VORTAC *2200—MOCA	Providence, RI VORTAC	*3000
§ 95.6413 VOR Federal Airway 413 Is Amended to Read in Part		
Ironwood, MI VORTAC	Russh, WI FIX	8000
Russh, WI FIX *2900—MOCA	Eau Claire, WI VORTAC	*6000
Eau Claire, WI VORTAC *2300—MOCA	Bitlr, WI FIX	*3500
§ 95.6419 VOR Federal Airway 419 Is Amended to Read in Part		
Bradley, CT VORTAC	Boston, MA VORTAC	*3000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 404 Effective Date, September 11, 1997]

From	TO	MEA
*2500—MOCA		
§ 95.6505 VOR Federal Airway 505 Is Amended to Read in Part		
Gopher, MN VORTAC	Siren, WI VOR/DME	3000
§ 95.6547 VOR Federal Airway 547 Is Amended to Read in Part		
Cheyenne, WY VORTAC	Douglas, WY VOR/DME	9000

From	To	Changeover Points	From
		Distance	
95.8003 VOR Federal Airways Changeover Points Airway Segment V–23 Is Amended To Delete			
Paine, WA VOR/DME	Bellingham, WA VORTAC	14	Paine.
V–186 Is Amended to Read in Part			
Van Nuys, CA VOR/DME	Paradise, CA VORTAC	13	Van Nuys.

[FR Doc. 97–32575 Filed 12–11–97; 8:45 am]
BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300594; FRL–5760–9]
RIN 2070–AB78

Imidacloprid; Tolerance Extension for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the insecticide imidacloprid and its metabolites in or on beet and turnip roots at 0.3 part per million (ppm) beet and turnip tops at 3.5 ppm for an additional 1-year period, to November 29, 1998. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on table beets and turnip greens. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

EFFECTIVE DATE: This regulation becomes effective December 12, 1997. Objections and requests for hearings must be received by EPA, on or before February 10, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300447], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300594], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–308–9367; e-mail: ertman.andrew@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of November 29, 1996 (61 FR 60622) (FRL–5575–1), which announced that on its own initiative and under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of imidacloprid and its metabolites in or on beet and turnip roots at 0.3 ppm and beet and turnip tops at 3.5 ppm, with an expiration date of November 29, 1997. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of imidacloprid on table beets and turnip greens for this year growing season due to the lack of acceptable control with currently registered products and the loss of the insecticide Phosdrin. Under moderate to severe infestation conditions, the aphids are expected to cause serious reductions

due to contamination problems at harvest, primarily due to the large number of aphids remaining on the crop. The overall threshold that the market will allow is two aphids or less per plant. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under section 18 of FIFRA the use of imidacloprid on table beets and turnip greens for control of aphids in California.

EPA assessed the potential risks presented by residues of imidacloprid in or on beet and turnip roots and beet and turnip tops. In doing so, EPA considered the new safety standard in section 408(b)(2) of the FFDCA, and decided that the necessary tolerance under FFDCA section 408(l)(6) of the FFDCA would be consistent with the new safety standard and with section 18 of FIFRA. The data and other relevant material have been evaluated and discussed in the final rule published in the **Federal Register** of November 29, 1997. Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6) of the FFDCA. Therefore, the time-limited tolerance is extended for an additional 1-year period. Although this tolerance will expire and is revoked on November 29, 1998, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on beet and turnip roots and beet and turnip tops after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) of the FFDCA as was provided in the old section 408 and in section 409 of the FFDCA. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 10, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300594]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance under section 408(l)(6) of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under section 408(l)(6) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that

there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: November 26, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

§ 180.472 [Amended]

2. In § 180.472, by amending paragraph (a) in the table, for the commodities ''beet roots,'' ''beet tops,'' ''turnip roots,'' and ''turnip tops'' by removing ''November 29, 1997'' and adding in its place ''November 29, 1998''.

[FR Doc. 97–32550 Filed 12–11–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300591; FRL–5760–4]

RIN 2070–AB78

Myclobutanil; Tolerance Extension for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the fungicide myclobutanil and its metabolites in or on cucurbits at 0.3 parts per million (ppm) for an additional 1-year period, to November 30, 1998. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on cucurbit vegetables. Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

EFFECTIVE DATE: This regulation becomes effective December 12, 1997. Objections and requests for hearings must be received by EPA, on or before February 10, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300447], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300591], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–308–9358; e-mail: deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of January 9, 1997 (62 FR 1284) (FRL–5579–7), which announced that on its own initiative and under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of myclobutanil and its metabolites in or on cucurbit vegetables at 0.3 ppm, with an expiration date of November 30, 1997. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA established the initial tolerance in response to a section 18 authorization granted to the state of California for use of myclobutanil on cucurbit vegetables in July 1996. EPA granted this use to California consistent with provisions of section 18 of FIFRA, after finding that there was an emergency condition in the state requiring use of this product. When EPA established the time-limited tolerance it did so consistent with a review of available information as required under section 408(l)(6) of the FFDCA. EPA is taking action now to extend this tolerance because the Agency authorized, as allowed under section 18, this use to occur in the states of Arizona and Hawaii to control powdery mildew on cucurbit vegetables (Arizona) and limited to watermelons (Hawaii). This authorization occurred on May 8, 1997, and allowed use of the product for one year.

EPA assessed the potential risks presented by residues of myclobutanil in or on cucurbit vegetables. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2) of the FFDCA, and decided that the necessary tolerance under FFDCA section 408(l)(6) of the FFDCA would be consistent with the new safety standard and with section 18 of FIFRA. The data and other relevant material have been evaluated and discussed in the final rule published in the **Federal Register** of January 9, 1997. Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet

the requirements of section 408(l)(6) of the FFDCA. Therefore, the time-limited tolerance is extended for an additional 1-year period. Although this tolerance will expire and is revoked on November 30, 1998, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cucurbit vegetables after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) of the FFDCA as was provided in the old section 408 and in section 409 of the FFDCA. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 10, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300591]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

This final rule extends a time-limited tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408 (d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: November 25, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

§ 180.443 [Amended]

2. In § 180.443, by amending paragraph (b) in the table, for the commodity ''cucurbit vegetables'' by removing ''November 30, 1997''and adding in its place ''November 30, 1998''.

[FR Doc. 97–32549 Filed 12–11–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300590; FRL–5759–5]

RIN 2070–AB78

Chlorothalonil; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of chlorothalonil in or on ginseng. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on ginseng. This regulation establishes a maximum permissible level for residues of chlorothalonil and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile, expressed as chlorothalonil, in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on December 31, 1998.

DATES: This regulation is effective December 12, 1997. Objections and requests for hearings must be received by EPA on or before February 10, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300590], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300590], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300590]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Olga Odiott, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9363, e-mail: odiott.olga@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the fungicide chlorothalonil and its 4-hydroxy-2,5,6-trichloroisophthalonitrile metabolite, expressed as chlorothalonil, in or on ginseng at 0.10 parts per million (ppm). This tolerance will expire and is revoked on December 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq*., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

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

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Chlorothalonil on Ginseng and FFDCA Tolerances

The state of Wisconsin availed itself of the authority to declare a crisis exemption to use chlorothalonil to control the ginseng leaf and stem blight caused by *Alternaria panax*. *A. panax* may cause substantial losses of ginseng yield if not controlled. Specific emergency exemptions have been granted for the use of mancozeb for several years based on loss of efficacy of iprodione due to development of resistance in the pathogen to the latter fungicide. The state argues that while mancozeb affords good protection during typical years, during years of very heavy precipitation, as in 1996 and 1997, mancozeb is inadequate because it is easily washed off plants by rain. In this respect, the state claims, chlorothalonil provides superior control during very rainy summers. EPA has authorized under FIFRA section 18 the use of chlorothalonil on ginseng for control of leaf and stem blight in Wisconsin.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of chlorothalonil in or on ginseng. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 1998, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on ginseng after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether chlorothalonil meets EPA's registration requirements for use on ginseng or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of chlorothalonil by a state for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any state other than Wisconsin to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for chlorothalonil, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include ''acute,'' ''short-term,'' ''intermediate term,'' and ''chronic'' risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1-day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1-7 days,

and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g., frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in ground water or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children.The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent of crop treated estimates are derived from Federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup (children 1 to 6 years old) was not regionally based.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of chlorothalonil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of chlorothalonil and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile, expressed as chlorothalonil, in or on ginseng at 0.10 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by chlorothalonil are discussed below. The nature of the toxic effects caused by hexachlorobenzene (HCB), a contaminant of chlorothalonil, are also discussed.

1. *Acute toxicity*. The lowest observed effect level (LOEL) of 175 milligrams/kilogram/day (mg/kg/day) (only dose tested) from a 3-month rat study was used for evaluating acute dietary risk from chlorothalonil to all subgroups. The LOEL was based on renal and gastric lesions observed within 4 days of testing. An uncertainty factor of 300 was recommended since a LOEL instead of a NOEL was used for the assessment.

No acute dietary endpoints have been identified for HCB.

2. *Short - and intermediate - term toxicity*. The NOEL of 600 mg/kg/day highest dose tested (HDT) from a 21-day dermal toxicity study in male Fischer 344 rats was recommended to assess risks from short and intermediate-term exposures to residues of chlorothalonil.

There is no toxicological endpoint identified for short and intermediate-term exposure to HCB.

3. *Chronic toxicity*. EPA has established the RfD for chlorothalonil at 0.018 mg/kg/day. This RfD is based on a 2-year dog feeding study with a NOEL of 1.8 mg/kg/day and an uncertainty factor of 100 (based on increased urinary bilirubin levels and kidney vacuolated epithelium at 3.5 mg/kg/day).

The EPA has established the RfD for HCB at 0.0008 mg/kg/day. This RfD is based on the NOEL of 0.08 mg/kg/day from a 130-week feeding study in rats. At the LEL of 0.29 mg/kg/day, there was hepatic centrilobular basophilic chromogenesis. An uncertainty factor of 100 was used to account for inter-species extrapolation and intra-species variability.

4. *Carcinogenicity*. The OPP Cancer Peer Review Committee (CPRC) classified chlorothalonil as a Group B2 (probable human carcinogen) chemical with a $Q_1^* = 7.66 \times 10^{-3}$ $(mg/kg/day)^{-1}$. The classification was based on

forestomach tumors in mice and renal tumors in rats. The Q_{1*} was based upon female rat renal (adenoma and/or carcinoma) tumor rates. A 3/4 scaling factor was used to determine the Q_1* from the rat data. HCB, an impurity in chlorothalonil, is also classified as a Group B2 chemical (probable human carcinogen) with a Q_1* = 1.02 (mg/kg/day)$^{-1}$. The classification was based on positive results in hamsters and rats.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.275) for residues of chlorothalonil and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile, expressed as chlorothalonil, in or on a variety of raw agricultural commodities at levels ranging from 0.05 ppm in cocoa beans and bananas, edible pulp to 15 ppm in celery and papayas. There are no established tolerances on meat, milk, poultry and eggs. Risk assessments were conducted by EPA to assess dietary exposures and risks from chlorothalonil as presented below. Ginseng is not presently represented in the Dietary Risk Evaluation System (DRES) data files because of very low consumption in the U.S. Thus, the dietary exposure analysis does not include a contribution for ginseng. The consumption of ginseng is not expected to significantly alter exposure.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The acute dietary (food only) risk assessment used tolerance level residues (published and pending tolerances included). The resulting high-end exposure estimate of 0.2 mg/kg/day results in a dietary (food only) MOE of 1,500 for infants < 1 year old and children 1-6 years old. This should be viewed as a conservative risk estimate.

ii. *Chronic exposure and risk.* For the chronic dietary risk assessment, the Agency used anticipated residue data. The anticipated residues based on existing chlorothalonil tolerances (published and pending) result in an anticipated residue contribution (ARC) that is equivalent to percentages of the RfD that range from 19.8% for non-nursing infants to 85.8% for children 1 to 6 years old.

Estimates for HCB result in an ARC that is equivalent to percentages of the RfD that range from 0.01% for non-nursing infants to 0.05% for children 1 to 6 years old. Residues of HCB were estimated to be present at a level not exceeding 0.05% (the maximum, allowed in chlorothalonil formulations) of the residues of chlorothalonil.

2. *From drinking water.* Based on available data used in EPA's assessment of environmental risk, chlorothalonil is not persistent and is moderately mobile. Health advisory levels for chlorothalonil in drinking water have been established as follows: for a 10 kg child, the one day finalized level and the long term level is 0.2 mg/L; for a 70 kg adult, the long term is 0.5 kg/L. No lifetime health advisory level has been established for chlorothalonil, but the Office of Drinking Water estimates that a long term average chlorothalonil concentration of 150 µg/L would correspond to an additional lifetime carcinogenic risk of 10-4. Consequently, a concentration of 1.5 µg/L would correspond to a lifetime carcinogenic risk of 10^{-6}. Chlorothalonil is not currently regulated under the Safe Drinking Water Act (SDWA), therefore water supply systems are not required to sample and analyze for it. The intermediate soil/water partitioning of chlorothalonil should make the primary treatment processes employed by most surface water source supply systems at least partially effective in removing it.

Ground water. Degradates (metabolites) of chlorothalonil, not chlorothalonil itself, have been found in ground water in the states of New York, Massachusetts, Florida, Maine, and California (U.S. HED, 1993). The reported metabolites (SDS-46851, SDS-47525, SDS-3701, and SDS-19221) were measured at the highest combined concentration of approximately 16 ppb in New York's Suffolk County (Long Island) in 1981. It is not clear how the use of chlorothalonil in New York compares to use in other areas, but it is expected that the levels of chlorothalonil metabolites detected in the ground water in New York are unrepresentatively high compared to the country as a whole. A small-scale ground water monitoring study is underway, and will give the Agency a more quantitative measure of the ground water contamination potential.

Surface water. Chlorothalonil can contaminate surface water at application via spray drift. The intermediate soil/water partitioning of chlorothalonil indicates that its concentration in suspended and bottom sediment will be substantially greater than its concentration in water.

The following surface water label advisory is required for chlorothalonil:

Chlorothalonil can contaminate surface water through spray drift. Under some conditions, chlorothalonil may also have a high potential for runoff into surface water (via both dissolution in runoff water and adsorption to eroding soil), for several weeks to months post-application. These include poorly draining or wet soils with readily visible slopes toward adjacent surface waters, frequently flooded areas, areas over-laying extremely shallow ground water, areas with in-field canals or ditches that drain to surface water, areas not separated from adjacent surface waters with vegetated filter strips, and highly erodible soils.

The South Florida Water Management District (SFWMD; Miles and Pfeuffer 1994) summarized chlorothalonil detections in samples collected every 2 to 3 months from 27 surface water sites within the SFWMD from November 1988 through November 1993. Approximately 810 samples were collected. Chlorothalonil was detected in 25 samples at concentrations ranging from 0.003 to 0.035 µg/L (0.003 ppb to 0.035 ppb).

Exposures and risks. The Agency does not have sufficient data to complete a comprehensive drinking water risk assessment for the potential of chlorothalonil and its degradates to contaminate ground water. For this drinking water risk assessment the Agency assumed that the metabolites of chlorothalonil have the same toxicity as the parent chlorothalonil and used the highest measured concentration levels to calculate acute and chronic risks from drinking water exposures to residues of chlorothalonil. The Agency also assumed that adults weighing 70 kg consume 2 liters of drinking water per day while children weighing 10 kg drink 1 liter. The acute drinking water risk was calculated by dividing the LOEL identified for acute dietary risk assessment by the exposure from drinking water sources. The chronic risk for drinking water was calculated by comparing exposure from drinking water sources to the appropriate RfD.

The following risk assessments should be considered as worst case scenarios. As the necessary data are received, the risk assessments will be reviewed and evaluated based on the new data.

i. *Acute exposure and risk— Ground water.* In order to calculate acute drinking water risk, the highest concentration detected in ground water (16 ppb) was compared to the acute dietary exposure LOEL of 175 mg/kg/day. Acute exposures were estimated to be 0.0016 mg/kg/day for children and 0.00046 mg/kg/day for adults. The corresponding MOEs were estimated as 109,375 for children and 380,435 for adults.

Surface water. The available surface water monitoring information was used to perform an exposure assessment of

surface water as a drinking water source. The highest measured concentration (0.035 µg/L) and the acute dietary LOEL were used to estimate exposures and risks. Exposures were estimated to be 0.000035 mg/kg/day for children and 0.00001 mg/kg/day for adults. The corresponding MOEs were estimated as 5,000,000 for children and 17,500,000 for adults.

The large MOEs provide a reasonable certainty of no harm from the potential exposures associated with chlorothalonil in water.

Acute drinking water risk to HCB was not calculated since no acute dietary endpoint has been identified for HCB.

ii. *Chronic exposure and risk—Ground water.* The highest concentration detected in ground water (16 ppb) and the RfD for chlorothalonil were used to estimate exposures and risks. The Agency estimated that chronic dietary risks from drinking water will utilize 8% of the RfD for children and 2% of the RfD for adults.

Surface water. The highest measured concentration (0.035 µg/L) from the available surface water monitoring data and the RfD for chlorothalonil were used to estimate exposures and risks. The Agency estimated that chronic dietary risks from surface water exposures to residues of chlorothalonil will utilize < 1% of the RfD for both children and adults.

To estimate the chronic dietary risk from exposures to HCB, concentrations for chlorothalonil were assumed to be contaminated with 0.05% HCB. The resulting concentration was compared to the RfD for HCB (0.0008 mg/kg/day). The Agency estimated that chronic dietary risks from surface water exposures to residues of HCB will utilize < 1% of the RfD for both children and adults.

3. *From non-dietary exposure.* Chlorothalonil is currently registered for use on the following residential non-food sites: turf, lawn, trees, grasses, bulbs, plants, and shrubs. Indoor uses include: paints, coatings, adhesives, wood treatments, and resin emulsions.

The Agency currently lacks residential-related exposure data to complete a comprehensive residential risk assessment for many pesticides, including chlorothalonil.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

Chlorothalonil (tetrachloroisophthalonitrile) is a member of the substituted aromatics class of pesticides (George W. Ware, *The Pesticide Book*, 4th edition, page 144, Thomson Publications, 1994). Other members of this class include pentachloronitrobenzene (PCNB) and 2,6-dichloro-4-nitroaniline (dicloran, DCNA).

EPA does not have, at this time, available data to determine whether chlorothalonil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerance action, therefore, EPA has not assumed that chlorothalonil has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* For the overall U.S. population the calculated MOE value (food) is 2,000 for chlorothalonil. For acute drinking water risk, the calculated MOE for adults, based on ground water monitoring data, is 380,435. The acute aggregate risk for general U.S. population is 1,163 (175 mg/kg/day ÷ 0.15046 mg/kg/day). The acute aggregate risk for chlorothalonil for all population subgroups is below HED's level of concern.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to chlorothalonil from food and water will utilize ≈46.5% (44.5% from food + ≈ 2% from water) of the RfD for the U.S. population. The aggregate exposure to HCB from food and water will utilize ≈1.03% (0.03% from food + ≈1% from water) of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children 1 to 6 year old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to chlorothalonil and HCB residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Based on the registered uses of chlorothalonil short and intermediate-term exposure scenarios may exist. However, the Agency currently lacks sufficient residential-related exposure data to complete a comprehensive residential risk assessment for chlorothalonil.

D. Aggregate Cancer Risk for U.S. Population

The cancer risk from food uses of chlorothalonil (a B2 carcinogen with a Q_1^* of 7.66×10^{-3} $(mg/kg/day)^{-1}$) for the general U.S. population was estimated as 1.1×10^{-6} (upper bound). The calculation was based on ARC estimates. EPA used all the published, pending and new uses for chlorothalonil

and substracted the risk figures from consumption of meat and milk products. Residues of chlorothalonil per se are not expected to transfer from feed items to meat and milk, but residues of the 4-hydroxy metabolite (which is not of carcinogenic concern) could occur in these commodities. Thus, there is no carcinogenic risk attributable to chlorothalonil from its use on livestock feed items.

The dietary (food) cancer risk from HCB (a B2 carcinogen with a Q_1* of 1.02 $(mg/kg/day)^{-1}$) for the general U.S. population was estimated as 3.6×10^{-7} (upper bound). The concentrations for chlorothalonil were assumed to be contaminated with 0.05% HCB. The calculation was based on ARC estimates and all the published, pending and new uses for chlorothalonil.

The drinking water cancer risk from exposure to chlorothalonil residues was estimated as 2×10^{-7} for children and 7×10^{-8} for adults. These estimates are based on the highest measured concentration from the available surface water monitoring data. Only metabolites of chlorothalonil have been found in ground water. These metabolites are not of carcinogenic concern, therefore an assessment of the cancer risks associated with dietary exposures to chlorothalonil from ground water sources was not conducted. The drinking water cancer risk from exposure to HCB residues was estimated as 1×10^{-7} for children and 5×10^{-9} for adults. The concentrations for chlorothalonil were assumed to be contaminated with 0.05% HCB.

For the drinking water risk assessment the Agency assumed that water comes from the same source containing the same contaminant level and is consumed throughout a 36-year period. This is extremely conservative, since it is likely that frequency and amounts of chlorothalonil used vary widely over this time, and most of the U.S. population moves at some time and does not live in the same area, drinking from the same water source for a 36-year period. Therefore, the risk to both adults and children from drinking water is likely an over-estimate.

The Agency concludes that the aggregate (food + water) cancer risks from exposures to chlorothalonil and HCB do not exceed the levels of concern.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of chlorothalonil, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 100-fold safety factor (for combined inter- and intra-species variability) and not the additional tenfold safety factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard safety factor.

ii. *Developmental toxicity studies—Rats.* The maternal (systemic) NOEL was 100 mg/kg/day, based on increased mortality and reduced weight gain at the LOEL of 400 mg/kg/day. The developmental (fetal) NOEL was 100 mg/kg/day, based on increase in total resorptions and resorptions per dam with related increase in postimplantation loss at the LOEL of 400 mg/kg/day.

Rabbits. The maternal (systemic) NOEL was 10 mg/kg/day, based on reductions in weight gain and food consumption during dosing at the LOEL of 20 mg/kg/day. The developmental (fetal) NOEL was 20 mg/kg/day (HDT).

iii. *Reproductive toxicity study—Rats.* In the 2-generation reproductive toxicity study in rats, the maternal (systemic) NOEL was less than 38 mg/kg/day lowest dose tested (LDT), based on hyperplasia of renal and forestomach tissues at the LOEL of 38 mg/kg/day. The reproductive/developmental (pup) NOEL was 115 mg/kg/day, based on decreased pup weight on day 21 of lactation and a suggestive increase in the incidence of neonatal renal pelvis dilation in the F_{1a} generation at the LOEL of 234 mg/kg/day.

iv. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal toxicity for chlorothalonil is complete with respect to current data requirements. There are no pre- or post-natal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation rat reproductive toxicity study. In these studies, the fetal or pup NOELs occur at or above the maternal NOELs indicating that there is no extra-sensitivity for infants and children.

v. *Conclusion.* Based on the above, HED concludes that reliable data support use of the standard uncertainty factor of 100 and that an additional safety factor is not needed to protect infants and children.

2. *Acute risk.* The acute dietary MOE (food) was calculated to be 1,500 for infants (<1 year), 1,500 for children (1-6 years), and 3,000 for females 13+ years (accounts for both maternal and fetal exposure). The acute aggregate MOE (food and water) for the most highly exposed subpopulation (children 1 - 6 years old) was calculated to be 868. These MOE calculations were based on the systemic LOEL in rats of 175 mg/kg/day. This risk assessment assumed 100% crop-treated with tolerance level residues on all treated crops consumed, resulting in a significant over-estimate of dietary exposure. The large acute dietary MOE calculated for females 13+ years provides assurance that there is a reasonable certainty of no harm for both females 13+ years and the pre and post-natal development of infants.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate dietary (food + water) exposure to chlorothalonil will utilize percentages of the RfD that range from 27.8% (19.8% for food + 8% for water) for nursing infants, up to 93.8% (85.8% for food + 8% for water) for children 1-6 years old.

The percentage of the RfD that will be utilized by aggregate exposure food + water to residues of HCB ranges from ≈1.01% for nursing infants, up to ≈1.05% for children 1-6 years old.

EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to chlorothalonil residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants and animals is adequately understood. The residues of concern are chlorothalonil and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile is an impurity in chlorothalonil products.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography-electron capture detection) is available in PAM II (Method I) to enforce the tolerance expression.

C. Magnitude of Residues

Residues of chlorothalonil and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile are not expected to exceed 0.10 ppm in/on ginseng as a result of this section 18 use. Secondary residues are not expected in animal commodities as no feed items are associated with this section 18 use.

D. International Residue Limits

There are no Codex proposals, Canadian limits, or Mexican limits for chlorothalonil on ginseng.

E. Rotational Crop Restrictions

EPA has determined that rotational crop studies will not be required for uses of pesticides on ginseng.

VI. Conclusion

Therefore, the tolerance is established for chlorothalonil and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile (expresed as chlorothalonil) in ginseng at 0.10 ppm.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 10, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300590] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408(l)(d). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for

the Agency's generic certification for tolerance acations published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, the Agency has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: December 1, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

Authority : 21 U.S.C. 346a and 371.

2. In § 180.275, by adding a heading to paragraph (a); by redesignating paragraph (b) as paragraph (c) and adding a heading; by adding new paragraph (b); and by adding and reserving paragraph (d) with a heading to read as follows:

§ 180.275 Chlorothalonil; tolerances for residues.

(a) *General* . * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for chlorothalonil and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile (expresed as chlorothalonil) in connection with use of the pesticide under the section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table:

Commodity	Parts per million	Expiration/revocation date
Ginseng	0.10	12/31/98

(c) *Tolerances with regional registrations.* * * *

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 97–32548 Filed 12–11–97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3740, 3810, and 3820

[WO–340–1220–00–24 1A]

RIN 1004–AD05

Multiple Use, Mining; Mining Claims Under the General Mining Laws

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is removing several obsolete or unnecessary regulations, and revising regulations concerning mining on Papago Indian Reservation lands. The regulations BLM is removing concern certain programs under the Multiple Minerals Development Act: claimant's rights; opening of Helium reserves to mining location and mineral leasing; and regulations under the statute entitled ''Mining Rights in Prescott National Forest'' concerning mining in the watershed of the city of Prescott, Arizona. Each of the regulations being removed is unnecessary or obsolete, either because it describes programs which no longer exist or because it contains requirements already achieved by statutes or other applicable regulations. Removing these items will have no impact on BLM customers or the public at large.

EFFECTIVE DATE: January 12, 1998.

ADDRESSES: You may send inquiries or suggestions to: Director (630), Bureau of Land Management, 1849 C Street, N.W., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Roger Haskins, Bureau of Land Management, Solid Minerals Group, 1849 C Street, N.W., Washington, DC 20240; Telephone: 202–452–0355.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion of Final Rule as Adopted

The regulations that are being removed are obsolete and unnecessary, and therefore can be eliminated without negative consequences.

Subpart 3744 concerns the rights of leasable minerals mining claimants. These rights are derived from the Multiple Mineral Development Act, 30 U.S.C. 521 *et seq.* (the Leasing Act). However, rather than implementing or interpreting the Act, subpart 3744 merely quotes Sections 7(d) and 8 of the Act, 30 U.S.C. 527(d), 528. The regulation consists entirely of duplicated statutory language and adds nothing to the protections of mining claimants' rights already contained in the statute. Because those rights are preserved by the statute and not the regulation, this regulation serves no substantive purpose, and can be deleted without any impact on the regulated community or the United States.

Subpart 3745, concerning the conditions for opening Helium Reserves to mining location and mineral leasing, also consists of unnecessary recitation of the Leasing Act. 43 CFR 3745.1(a) is merely a direct quote of section 9 of the Act, 30 U.S.C. 529. In addition, 43 CFR 3745.1(b) contains language not derived from the Act, asserting that applications filed prior to published notice to open the helium reserves will confer no rights. However, this provision is completely obsolete and without any substantive importance. Merely filing an application cannot confer any rights until the application is approved. Furthermore, Helium Reserves Numbers 1 and 2 were opened in 1955, have since been withdrawn, and BLM has determined that no pre-existing applications under this subpart currently exist. Therefore, because this regulation contains only duplicated statutory language and obsolete provisions, it can be deleted without

affecting the rights of the public at large or altering existing law.

Section 3811.2–7 is also obsolete and will be removed. This section indicates that claims to mine fissionable source material may be located on coal lands under certain circumstances and regulations. This provision is merely informational and is wholly unnecessary. Claims to mine fissionable and other source material on lands valuable for coal are governed by 30 U.S.C. 541i, which withdrew coal-bearing public lands from these types of claims on August 11, 1975. All mining claims on the subject lands became void as of that date, except where a claimant had previously filed a mineral patent application. Therefore, no further claims can be located under the provisions of 43 CFR 3811.2–7, making this regulation obsolete as well as redundant.

Subpart 3824, concerning mining in the Prescott (AZ) city watershed, will also be removed because it consists entirely of restatements from the underlying statute at 16 U.S.C. 482a, internal procedures, and non-binding policy statements. Section 3824.1(a) and the first sentence of 3824.1(c) unnecessarily restate statutory language. Section 3824.1(b), which directs the authorized officer to note certain application terms on the application itself, depicts internal procedures better suited to the BLM Manual. The remainder of 3824.1(c) elaborates on the statutory provision that valid, pre-existing mining claims in this location may be perfected as the claimant desires. This subsection adds nothing to the statutory law by pointing out that ''as the claimant desires'' means claimants can subject themselves to the statutory provisions or not; therefore this section is also redundant and unnecessary.

Subpart 3825, concerning mining on Papago Indian Reservation lands, is partially obsolete. Papago lands were closed to mineral entries in 1955; therefore, the provisions of this subpart pertaining to locating claims are obsolete. However, BLM has determined that there are 11 unpatented claims remaining within the lands owned by the Papago Indians (now known as Tohono O'Odham). These claims are still subject to the restrictions and rental payments described in the existing subpart 3825. Therefore, BLM will revise the regulations in this subpart to incorporate the Tohono O'Odham tribe's name change. Subpart 3825 will be revised in a separate rulemaking, to remove obsolete provisions and rewrite the regulations in plain English.

The final rule published today is a stage of a rulemaking process that will conclude with the removal of 43 CFR subparts 3744, 3745, 3824, and section 3811.2–7, and the revision of subpart 3825. This rule was preceded by a proposed rule which introduced this action and BLM's purpose and need. The proposed rule was published in the **Federal Register** on October 5, 1996 (61 FR 51667). This proposed rule was intended to give anyone who would be adversely affected by this action an opportunity to call their concerns to our attention. The BLM invited public comments for 30 days, and received only one comment, which came from a Federal agency.

II. Responses to Comments

The only comment came from BLM's Arizona state office, which pointed out that there were 11 active, unpatented claims and at least one active mine presently operating on Tohono O'Odham lands, and therefore they recommended we not remove subpart 3825 in its entirety. As a result of this information, BLM proposes instead to only revise 43 CFR subpart 3825 by incorporating the Tohono O'Odham tribe's name change.

III. Procedural Matters

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) and has found that the final rule would not constitute a major federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record. BLM invites the public to review these documents by contacting us at the addresses listed above (see **ADDRESSES**).

Paperwork Reduction Act

This rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.* (RFA), as amended, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis unless an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Because this rule is limited to removing regulations which have become obsolete or which duplicate statutory language, BLM believes that this final rule will not impact any small entities. Therefore, BLM certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Revising 43 CFR subpart 3825 and removing 43 CFR subparts 3744, 3745 and 3824 and 43 CFR 3811.2–7 will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

Executive Order 12612

The final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, BLM has determined that this final rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12630

The final rule does not represent a government action capable of interfering with constitutionally protected property rights. Section 2(a)(1) of Executive Order 12630 specifically exempts actions abolishing regulations or modifying regulations in a way that lessens interference with private property use from the definition of ''policies that have takings implications.'' Since the primary function of the final rule is to abolish unnecessary regulations, there will be no private property rights impaired as a result. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 12866

According to the criteria listed in section 3(f) of Executive Order 12866, BLM has determined that the final rule is not a significant regulatory action. As such, the final rule is not subject to Office of Management and Budget review under section 6(a)(3) of the order.

Executive Order 12988

The Department of the Interior has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Author. The principal author of this rule is Roger Haskins, Solids Group, Bureau of Land Management, 1849 C Street, N.W., Room 401–LS, Washington, DC 20240; Telephone: 202–452–0355.

List of Subjects

43 CFR Part 3740

Administrative practice and procedure, Mines, Public lands-mineral resources.

43 CFR 3810

Mines, Public lands-mineral resources, Reporting and recordkeeping requirements.

43 CFR 3820

Mines, Monuments and memorials, National forests, National parks, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

Dated: December 1, 1997.

For the reasons stated in the preamble, and under the authority of 43 U.S.C. 1740, parts 3740 of Group 3700 and parts 3810 and 3820 of Group 3800, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations are amended as set forth below:

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

PART 3740—[AMENDED]

1. Part 3740 is amended by removing subpart 3744 in its entirety.

2. Part 3740 is amended by removing subpart 3745 in its entirety.

PART 3810—[AMENDED]

3. The authority citation for part 3810 continues to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1201 and 1740.

4. Part 3810 is amended by removing Section 3811.2–7 in its entirety.

PART 3820—[AMENDED]

5. The authority citation for part 3820 continues to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1201 and 1740.

6. Part 3820 is amended by removing subpart 3824 in its entirety.

7. Part 3820 is amended by revising the heading for subpart 3825 to read as follows:

Subpart 3825—Tohono O'Odham (Formerly Papago) Indian Reservation, Arizona

8. Part 3820 is amended by revising all references to the name ''Papago'' in subpart 3825 to read ''Tohono O'Odham''.

[FR Doc. 97–32508 Filed 12–11–97; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1241

[Ex Parte No. 431 (Sub–No. 2)]

Review of the General Purpose Costing System

AGENCY: Surface Transportation Board.

ACTION: Policy Statement; Request for Comments.

SUMMARY: The Surface Transportation Board (Board) is modifying the procedures used for determining the variable cost of using privately-owned rail cars, and requesting comments on certain modifications to the recently adopted procedures used to determine the variable costs associated with rail movements of intermodal traffic.

DATES: The policy statement modifying the costing of privately-owned cars is effective December 12, 1997 . The policy statement revising the procedures for costing intermodal traffic is scheduled to be effective February 10, 1998; if this effective date is delayed, timely notice will be published in the **Federal Register**.

Comments are due January 12, 1998.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 431 (Sub-No. 2) to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, D.C. 20423–001.

FOR FURTHER INFORMATION CONTACT: Thomas J. Stilling, (202) 565–1567. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: To provide consistent and comparable information on railroad costs, the Board maintains a general purpose costing system known as the Uniform Railroad Costing System (URCS). This rulemaking was instituted to review the procedures used by the URCS to develop the variable costs of providing rail service. As a result of the comments received, the Board is adopting modifications to the procedures for determining the variable cost of using privately-owned rail cars. In addition, as discussed below, the Board is modifying certain procedures used to develop the costs associated with movements of intermodal traffic, absent objections within 30 days. The Board's decision may be reviewed at the agency's offices in Washington, D.C. during normal business hours. The decision is also available from our Internet site at www.stb.dot.gov or for a charge by calling DC NEWS & DATA INC. at (202) 289–4357.

Intermodal Costing

In response to the reconsideration request of the Association of American Railroads, the Board is proposing to modify several intermodal costing procedures adopted previously in this proceeding. These modifications recognize changes that have taken place in the railroad industry since evidence was last submitted in this proceeding. Unless adverse comments are received, the Board will adopt for the purposes of waybill and URCS movement costing (1) an intertrain and intratrain switching factor for intermodal cars of 4,163 miles, (2) an intermodal car spotted-to-pulled ratio equal to the intermodal car empty-to-loaded ratio, (3) a RoadRailer tare weight of 13.9 tons, and (4) use of our standard default costing procedure to assign locomotive cost to RoadRailer shipments. Absent receipt of comments voicing opposition to this modification within 30 days of this decision, it will become a permanent change effective February 10, 1998. If the effective date of this modification is delayed, timely notice will be published in the **Federal Register**.

The Board certifies that the new procedures will not have a significant economic effect on a substantial number of small entities. The impact on small entities, if any, will be to provide them with better cost estimates.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: December 5, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–32565 Filed 12–11–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970806191–7279–02; I.D. 072297A]

RIN 0648–AJ71

Fisheries of the Exclusive Economic Zone Off Alaska; Improved Retention/ Improved Utilization

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 49 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This final rule requires all vessels fishing for groundfish in the Gulf of Alaska (GOA) to retain all pollock and Pacific cod beginning January 1, 1998, and all shallow water flatfish beginning January 1, 2003. This final rule also establishes a 15-percent minimum utilization standard for all at-sea processors beginning January 1, 1998, for pollock and Pacific cod and, beginning January 1, 2003, for shallow-water flatfish. This action is necessary to respond to socioeconomic needs of the fishing industry that have been identified by the North Pacific Fishery Management Council (Council) and is intended to further the goals and objectives of the FMP.

DATES: Effective January 12, 1998.

ADDRESSES: Copies of Amendment 49 and the Environmental Assessment/ Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/ RIR/FRFA) prepared for this action may be obtained from NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503, Attn: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the GOA are managed by NMFS under the FMP. The FMP was prepared by the Council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the GOA appear at 50 CFR parts 600 and 679.

At its June 1997 meeting, the Council adopted Amendment 49 to the FMP and recommended that NMFS initiate a rulemaking to implement the amendment. A notice of availability of Amendment 49 was published in the **Federal Register** on July 29, 1997 (62 FR 40497), and invited comment on the amendment through September 29, 1997. No comments were received by the end of the comment period on Amendment 49. A proposed rule to implement Amendment 49 was published in the **Federal Register** on August 18, 1997 (62 FR 43977). Comments on the proposed rule were invited through October 2, 1997. No comments were received by the end of the comment period on the proposed rule.

In September 1996, the Council adopted an Improved Retention/ Improved Utilization (IR/IU) program for the Bering Sea and Aleutian Islands Management Area (BSAI) as Amendment 49 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. A final rule to implement Amendment 49 in the BSAI was published on December 3, 1997 (62 FR 63880). During development of the IR/ IU program for the BSAI, the Council began to consider a parallel IR/IU program for the GOA, also designated as Amendment 49. Amendments 49 and 49 are the result of over 3 years of analysis and debate by the Council of alternative solutions to the problem of discards occurring in the groundfish fisheries off Alaska. The management background and need for the IR/IU program in the GOA are described in the proposed rule for the IR/IU program in the GOA (62 FR 43977).

Elements of the Final Rule

This final rule to implement Amendment 49 in the GOA expands the geographical scope of the final rule published to implement Amendment 49 in the BSAI (62 FR 63880, December 3, 1997). Two changes are made to the IR/ IU program set out at § 679.27 to extend the program to the GOA. First, paragraph (a) *Applicability,* is amended to extend the IR/IU program to the GOA, and second, paragraph (b) *IR/IU species,* which lists species covered by the program, is revised to add the shallow-water flatfish species complex for the GOA.

To assist the vessel owners and operators in compliance with IR/IU requirements in the GOA, key elements of the IR/IU program are summarized below.

Affected Vessels and Processors

The IR/IU program applies to all vessels fishing for groundfish in the GOA and all at-sea processors processing groundfish harvested in the GOA, regardless of vessel size, gear type, or target fishery. Because the Magnuson-Stevens Act does not authorize NMFS to regulate on-shore processing of fish, the requirements of this final rule do not extend to shore-based processors.

The State of Alaska (State) is developing a parallel IR/IU program for shore-based processors. The State anticipates that parallel IR/IU regulations requiring retention and utilization of pollock by shoreside processors will be in place by January 1, 1998, while parallel regulations requiring retention and utilization of Pacific cod by shoreside processors will be in place by mid-1998.

IR/IU Species

The IR/IU program for the GOA defines pollock, Pacific cod, and the shallow-water flatfish species group as IR/IU species. In the FMP and in the annual harvest specifications, the shallow-water flatfish species group is defined as all flatfish species, other than deep-water flatfish (Dover sole and Greenland turbot), flathead sole, rex sole, and arrowtooth flounder. Retention and utilization requirements apply to pollock and Pacific cod beginning January 1, 1998, and to shallow-water flatfish beginning January 1, 2003. The purpose of the 5-year delay for shallow-water flatfish is to provide industry with sufficient time to develop more selective fishing techniques and/or markets for these fish.

Minimum Retention Requirements

The IR/IU program establishes minimum retention requirements by vessel type (catcher vessel, catcher/ processor, and mothership) and by the directed fishing status of the IR/IU species (open to directed fishing, closed to directed fishing, and retention prohibited). In general, vessel operators are required to retain 100 percent of their catch of an IR/IU species unless a closure to directed fishing limits retention of that species. When a closure to directed fishing limits retention of an IR/IU species, the vessel operator is required to retain all catch of that species up to the maximum retainable bycatch (MRB) amount in effect for that species, and to discard catch in excess of the MRB amount. The specific retention requirements by vessel type

and directed fishing status are set out at § 679.27(c) and are repeated below:

If you own or operate a * * *	and * * *	you must retain on board until lawful transfer * * *
(i) catcher vessel	(A) directed fishing for an IR/IU species is open	all fish of that species brought on board the vessel.
	(B) directed fishing for an IR/IU species is prohibited	all fish of that species brought on board the vessel up to the MRB amount for that species.
	(C) retention of an IR/IU species is prohibited	no fish of that species.
(ii) catcher/processor.	(A) directed fishing for an IR/IU species is open	a primary product from all fish of that species brought on board the vessel.
	(B) directed fishing for an IR/IU species is prohibited	a primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRB amount for that species.
	(C) retention of an IR/IU species is prohibited	no fish or product of that species.
(iii) mothership	(A) directed fishing for an IR/IU species is open	a primary product from all fish of that species brought on board the vessel.
	(B) directed fishing for an IR/IU species is prohibited	a primary product from all fish of that species brought on board the vessel up to the point that the round-weight equivalent of primary products on board equals the MRB amount for that species.
	(C) retention of an IR/IU species is prohibited	no fish or product of that species.

Additional Retention Requirements

Bleeding Codends and Shaking Longline Gear

The minimum retention requirements set out at § 679.27(c) apply to all fish of each IR/IU species that are brought on board a vessel. Any activity intended to cause the discarding of IR/IU species prior to their being brought on board a vessel, such as bleeding codends or shaking fish off longlines, is prohibited. NMFS recognizes that some escapement of fish from fishing gear does occur in the course of fishing operations. Therefore, incidental escapement of IR/IU species, such as fish squeezing through mesh or dropping off longlines, will not be considered a violation unless the escapement is intentionally caused by action of the vessel operator or crew.

At-Sea Discard of Products

Any product from an IR/IU species may not be discarded at sea, unless such discarding is necessary to meet other requirements of 50 CFR part 679.

Discard of Fish or Product Transferred From Other Vessels

The retention requirements of this final rule apply to all IR/IU species brought on board a vessel, whether caught by that vessel or transferred from another vessel. Discard of IR/IU species or products that were transferred from another vessel is prohibited.

IR/IU Species Used as Bait

IR/IU species may be used as bait provided the bait is physically attached to authorized fishing gear when deployed. Dumping IR/IU species as loose bait (i.e., chumming) is prohibited.

Minimum Utilization Requirements

Beginning January 1, 1998, all catcher/processors and motherships are required to maintain a 15-percent utilization rate for each IR/IU species. Calculation of a vessel's utilization rate depends on the directed fishing status of the IR/IU species in question. The minimum utilization requirements are set out at § 679.27(i) and in the following table:

If * * *	your total weight of retained or lawfully transferred products produced from your catch or receipt of that IR/IU species during a fishing trip must * * *
(1) directed fishing for an IR/IU species is open.	equal or exceed 15 percent of the round-weight catch or round-weight delivery of that species during the fishing trip.
(2) directed fishing for an IR/IU species is prohibited.	equal or exceed 15 percent of the round-weight catch or round-weight delivery of that species during the fishing trip or 15 percent of the MRB amount for that species, whichever is lower.
(3) retention of an IR/IU species is prohibited.	equal zero.

Recordkeeping Requirements

The IR/IU program for the BSAI contained changes to existing recordkeeping requirements to aid the monitoring and enforcement of the IR/IU program. Because NMFS uses the same logbooks for both the BSAI and GOA, the recordkeeping requirements for the GOA were included in the collection-of-information request approved by the Office of Management and Budget (OMB) for the BSAI IR/IU program (OMB control number 0648–0213). The IR/IU-related recordkeeping requirements are as follows: Beginning January 1, 1998, all catcher vessels and catcher/processors that are currently required to maintain NMFS logbooks are required to log the round weight catch of pollock and Pacific cod in the NMFS catcher vessel daily fishing logbook or daily catcher/processor logbook (DCPL) on a haul-by-haul or set-by-set basis. Motherships are required to log the receipt of round weight of pollock and Pacific cod in the mothership DCPL on a delivery-by-delivery basis. Beginning January 1, 2003, this requirement extends to rock sole and yellowfin sole in the BSAI and the shallow-water flatfish complex in the GOA. These changes are necessary to provide vessel operators and enforcement agents with round weight information for each IR/IU species in order to monitor compliance with the IR/IU program.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendment 49 is necessary for the conservation and management of the groundfish fishery of

the GOA and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

An RIR was prepared for this final rule that describes the management background, the purpose and need for action, the management action alternatives, and the social impacts of the alternatives. The RIR also estimates the total number of small entities affected by this action and analyzes the economic impact on those small entities.

An FRFA was prepared that describes the impact this action will have on small entities. In 1996, of the 444 vessels that participated in the GOA trawl fishery, 404 were determined to be small entities. The analysis concluded that the economic effects on longline, pot, and jig gear vessels would not be significant. The economic effects on trawl vessels participating in the pollock, sablefish, deep-water flatfish, shallow-water flatfish, rockfish, and Atka mackerel fisheries also would not be significant. The analysis concluded that the economic effects on some trawl vessels participating in the Pacific cod, arrowtooth flounder, and rex sole fisheries could be significant. Finally, the analysis concluded that the overall economic effects on vessels participating in the flathead sole fishery would be significant. This action will have a significant economic impact on an estimated 96 trawl vessels (24 percent of the GOA trawl fleet determined to be small entities).

The analysis also concluded that for fish for which markets are limited or undeveloped (e.g., small Pacific cod, and some flatfish species) 100-percent retention requirements will impose direct operational costs that probably cannot be offset (in whole or in part) by expected revenues generated by the sale of the additional catch. No quantitative estimate can be made of these costs at present. In general, the impacts on any operation will vary inversely with the size and configuration of the vessel, hold capacity, processing capability, markets, and market access, as well as the specific composition and share of the total catch of pollock, Pacific cod, and shallow-water flatfish. The burden will tend to fall most heavily upon the smallest, least diversified operations, especially smaller catcher/processors. The ability of smaller catcher/processors to adapt to the proposed IR/IU program will be further limited due to such programs such as the vessel moratorium, license limitation, and Coast Guard load-line requirements that place severe limits on reconstruction to increase vessel size and/or processing capacity.

The economic impacts imposed by this rule would not be alleviated by modifying reporting requirements for small entities. Where relevant, this final rule employs performance standards rather than design standards and allows maximum flexibility in meeting its requirements. The Council considered and rejected the following alternatives that might have mitigated impacts on small entities: (1) An alternative that would have allowed exemptions or modified phase-in periods based on vessel size was rejected because it would have diluted the reductions in bycatch and discards and would have provided an unfair advantage to a certain sector of the industry; (2) a ''harvest priority program'' that would have rewarded vessels demonstrating low bycatch was rejected because it would not reduce discard rates expeditiously enough; and (3) a voluntary bycatch and discard reduction program was rejected because it would not have met statutory requirements of the Magnuson-Stevens Act. In selecting its preferred alternative for Amendment 49, the Council minimized the economic impact of the IR/IU program on small entities in a variety of ways. First, the Council adopted a 5-year delay in the effective date for rock sole and yellowfin sole to provide industry with sufficient time to develop more selective fishing techniques and/or markets for fish that are currently being discarded. Second, the Council rejected utilization alternatives that would have limited product forms or placed limits on fishmeal production, in order to allow industry more flexibility in complying with the utilization requirements of the IR/IU program. Finally, the Council rejected monitoring alternatives that would have imposed substantial costs in the form of increased observer coverage requirements or required a full time compliance monitor aboard all vessels. A copy of this analysis is available from NMFS (see **ADDRESSES**).

This rule contains a collection-of-information requirement subject of the Paperwork Reduction Act. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0213.

Under this revision to the collection-of-information requirement, vessel operators would be required to log the round weight of each IR/IU species on a haul-by-haul basis for catcher vessels and catcher/processors and on a delivery-by-delivery basis for motherships. The estimated current and new public reporting burdens for these collections of information are as follows: For catcher vessels using fixed gear, the estimated burden would increase from 20 minutes to 23 minutes; for catcher vessels using trawl gear, the estimated burden would increase from 17 minutes to 22 minutes; for catcher/processors using fixed gear, the estimated burden would increase from 32 minutes to 35 minutes; for catcher/processors using trawl gear, the estimated burden would increase from 29 minutes to 34 minutes; for motherships, the estimated burden would increase from 28 to 33 minutes.

Public comment is sought regarding: Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these, or on any other aspect of the collection of information, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB number.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 8, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. Section 679.27 is amended by revising paragraphs (a) and (b) to read as follows:

§ 679.27 Improved Retention/Improved Utilization Program.

(a) *Applicability.* The owner or operator of a vessel that is required to

obtain a Federal fisheries or processor permit under § 679.4 must comply with the IR/IU program set out in this section while fishing for groundfish in the GOA or BSAI, fishing for groundfish in waters of the State of Alaska that are shoreward of the GOA or BSAI, or when processing groundfish harvested in the GOA or BSAI.

(b) *IR/IU species.* The following species are defined as ''IR/IU species'' for the purposes of this section:

(1) Pollock.

(2) Pacific cod.

(3) Rock sole in the BSAI (beginning January 1, 2003).

(4) Yellowfin sole in the BSAI (beginning January 1, 2003).

(5) Shallow-water flatfish species complex in the GOA as defined in the annual harvest specifications for the GOA (beginning January 1, 2003).

* * * * *

[FR Doc. 97–32492 Filed 12–11–97; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 62, No. 239
Friday, December 12, 1997

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AAL–10]

Proposed Realignment of Colored Federal Airway A–1; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify a Colored Federal Airway, Amber-1 (A–1), between Campbell Lake Nondirectional Radar Beacon (NDB) and Takotna River NDB, AK, due to the decommissioning of the Puntilla Lake and Farewell Lake NDB's and their subsequent removal from the National Airspace System (NAS).

DATES: Comments must be received on or before January 30, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL–500, Docket No. 97–AAL–10, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99533.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916G, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 97–AAL–10.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, Attention: Airspace and Rules Division, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to realign A–1 by providing a direct route between Campbell Lake, AK, NDB and Takotna River, AK, NDB due to the decommissioning of the Puntilla Lake and Farewell Lake NDBs and their subsequent removal from the NAS. Colored Federal airways are published in paragraph 6009 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Colored Federal airway listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6009(c)—Amber Federal Airways

A–1 [Revised]

From Sandspit, BC, Canada, NDB 96 miles 12 AGL, 102 miles 35 MSL, 57 miles 12 AGL, via Sitka, AK, NDB; 31 miles 12 AGL, 50 miles 47 MSL, 88 miles 20 MSL, 40 miles 12 AGL, Ocean Cape, AK, NDB; INT Ocean Cape NDB 283° and Hinchinbrook, AK, NDB 106° bearings; Hinchinbrook NDB; INT Hinchinbrook NDB 286° and Campbell Lake, AK, NDB 123° bearings; Campbell Lake NDB; Takotna River, AK, NDB; 24 miles 12 AGL, 53 miles 55 MSL; 51 miles 40 MSL, 25 miles 12 AGL, North River, AK, NDB; 17 miles 12 AGL, 89 miles 25 MSL, 17 miles 12 AGL, to Fort Davis, AK, NDB. That airspace within Canada is excluded.

* * * * *

Issued in Washington, DC, on December 2, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–32569 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 960

[Docket No. 951031259–7103–02]

Licensing of Private Land Remote-Sensing Space Systems

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice; extension of public comment period.

SUMMARY: Pursuant to public request, the National Oceanic and Atmospheric Administration (NOAA) is extending by 90 days its public comment period for the Notice of Proposed Rulemaking concerning the licensing of private land remote-sensing space systems, published on November 3, 1997, 62 FR 59317.

DATES: Comments must be received by April 2, 1998.

ADDRESSES: Comments should be sent to, Charles Wooldridge, NOAA, National Environmental Satellite, Data, and Information Service, 1315 East-West Highway Room 3620 Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: Charles Wooldridge at (301) 713–2024 ext. 107 or Kira Alvarez, NOAA, Office of General Counsel at (301) 713–1217.

SUPPLEMENTARY INFORMATION: On November 3, 1997, NOAA published a Notice of Proposed Rulemaking (62 FR 59317) proposing regulations revising its regime for the licensing of private Earth remote-sensing space systems under Title II of the Land Remote Sensing Policy Act of 1992, 15 U.S.C. 5601 *et seq.* (1992 Act). These proposed regulations implement the licensing provisions of the 1992 Act and the Presidential Policy announced March 10, 1994. In response to numerous written comments, NOAA is extending the original 60 day public comment period by 90 days. As a result, comments on the notice of proposed rulemaking must now be received by April 2, 1998.

Dated: December 5, 1997.

Gregory W. Withee,

Deputy Assistant Administrator for Satellite and Information Services.

[FR Doc. 97–32472 Filed 12–11–97; 8:45 am]

BILLING CODE 3510–12–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 808

[Docket No. 97N–0222]

Medical Devices; Preemption of State Product Liability Claims

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations regarding preemption of State and local requirements applicable to medical devices. This action is being taken to clarify and codify the agency's longstanding position that available legal remedies, including State common law tort claims, generally are not preempted under the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Written comments by February 10, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–827–2974.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 521 of the act (21 U.S.C. 360k) contains an express preemption provision applicable to medical devices regulated by FDA. The Supreme Court recently addressed whether section 521 of the act preempts State common law tort claims arising from allegedly defective medical devices. (See *Medtronic, Inc.* v. *Lohr (Lohr)*, 116 S. Ct. 2240 (1996).) The Court concluded that section 521 of the act did not supplant the State law duties at issue in that case. In reaching that conclusion, the Court noted that FDA has provided interpretive guidance with respect to section 521 of the act's preemptive effect. (See *id.* at 2255–2256 (citing 21 CFR 808.1(d)(2) and 808.5(b)(1)(i) (1995)).) The Court gave ''substantial weight to the agency's view of the statute'' (*Id.* at 2256). (See also *id.* at 2257; *id.* at 2260–2261 (Breyer, J., concurring in part and concurring in the judgment).)

The Court's decision in *Lohr* construed section 521 of the act in the context of a medical device that FDA had cleared for distribution under section 510(k) of the act (21 U.S.C. 360k), which requires premarket notification for certain types of medical devices. The Court did not definitively decide whether section 521 of the act may preempt State law claims in other circumstances. Since *Lohr* was decided, the lower courts have interpreted section 521 of the act inconsistently and have reached conflicting conclusions with respect to whether section 521 of the act preempts State law claims for injuries allegedly resulting from medical devices that have received premarket approval under section 515 of the act (21 U.S.C. 360e), or have received an investigational device exemption (IDE) under section 520(g) of the act (21 U.S.C. 360j(g)).

In light of the confusion among the lower courts in interpreting section 521 of the act since *Lohr*, and in accordance with the Supreme Court's recognition that FDA's interpretation of the preemptive effect of section 521 is entitled to substantial weight, the agency is issuing this proposed interpretive rule, which addresses the circumstances in which section 521 of the act preempts State common tort claims based on injury from allegedly defective medical devices.

II. Background

Congress enacted the Medical Device Amendments of 1976 (the amendments) (21 U.S.C. 360c *et seq.*), ''to provide for the safety and effectiveness of medical devices intended for human use.'' It

enacted the amendments largely in response to public concerns over injuries caused by medical products, such as the Dalkon Shield intrauterine device. (See S. Rept. No. 33, 94th Cong., 1st sess. 1 (1975); H. R. Rept. No. 853, 94th Cong., 2d sess. 8 (1976); 122 Congressional Record 13,779 (1976)). Congress sought ''to assure that the public is protected from unsafe and ineffective medical devices, that health professionals have more confidence in the devices they use or prescribe, and that innovations in medical device technology are not stifled by unnecessary restrictions'' (H. R. Rept. No. 853, *supra*, at 12).

Section 521 of the act was included as part of the amendments, and generally states that except as provided in section 521(b) of the act no State or political subdivision of a State may establish or continue in effect with respect to a device intended for human use any requirement which is different from, or in addition to, any Federal requirement applicable to the device, and which relates to the safety or effectiveness of the device or to any other matter included in a Federal requirement applicable to the device.

Section 521(b) sets forth the requirements if a political subdivision thereof applies for an exemption from a Federal requirement. The Secretary may issue a regulation to exempt from section 521(a) of the act, under conditions prescribed in the regulation, if the requirement is more stringent than the Federal requirement which would be applicable to the device if an exemption were not in effect or the requirement is required by compelling local conditions, and compliance with the requirement would not cause the device to be in violation of any applicable Federal requirement under this chapter.

FDA has interpreted the preemptive scope of section 521 of the act in light of its specific language and Congress's expressed objectives. Section 521(a) forbids a State from subjecting a medical device to any ''requirement'' that is ''different from, or in addition to,'' any Federal requirement imposed under the act; and relates to ''the safety or effectiveness of the device'' or to ''any other matter'' included in the Federal requirement. FDA has indicated, through regulations that have been in place since 1978, that section 521 of the act's preemptive effect is limited in light of the section's precise terminology and Congress's declared intention to promote the safety and effectiveness of medical devices. (See 21 CFR 808.1.)

When FDA issued its 1978 regulations, the regulated community was primarily interested in the effect of section 521 of the act on State or local requirements that were expressed through positive enactments, such as statutes or regulations. FDA's regulations addressed the question of preemption in that general context. Section 808.1(d), which has remained substantially unchanged for nearly 20 years, states that State or local requirements are preempted only when FDA has established specific counterpart regulations or there are other specific requirements applicable to a particular device under the act, thereby making any existing divergent State or local requirements applicable to the device different from, or in addition to, the specific FDA requirements. There are other State or local requirements that affect devices that are not preempted by section 521(a) of the act because they are not ''requirements applicable to a device'' within the meaning of section 521(a) of the act.

FDA's regulations (§ 808.1) provide nine examples of State or local provisions that are not preempted, including:

(1) Generally applicable requirements not limited to medical devices (e.g., general electrical codes and the Uniform Commercial Code (warranty of fitness));

(2) Requirements that are equal to or substantially identical to requirements imposed by or under the act;

(3) Occupational licensing requirements;

(4) Specifications in government contracts for the procurement of devices;

(5) Criteria for payment of State or local obligations under Medicaid and similar Federal, State or local health care programs;

(6) General enforcement requirements, including State inspection and registration requirements, or a State or local prohibition against the manufacturer of adulterated or misbranded devices (except where the prohibition, as interpreted and enforced, has the effect of establishing a substantive requirement for a specific device);

(7) Provisions respecting delegations of authority and related administrative matters respecting devices;

(8) Fee and other revenue raising requirements; and

(9) State or local requirements issued under the authority of other Federal statutes.

In 1992, the Supreme Court decided *Cippolone* v. *Liggett Group, Inc.* (505 U.S. 504 (1992)). Among other things, the Court ruled in that case that section 5(b) of the Public Health Cigarette Smoking Act of 1969 (15 U.S.C. 1334(b)) could preempt State common law suits alleging that the manufacturers breached their duty to warn about hazards associated with smoking. Section 5(b) states that no requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this chapter.

A majority of the Supreme Court concluded that the phrase ''[n]o requirement or prohibition,'' as used in that statute, describes both positive enactments and common law duties. (See 505 U.S. at 521 (opinion of Stevens, J.); *id.* at 548–549 (Scalia, J., concurring in the judgment in part and dissenting in part).)

After the Supreme Court's decision in *Cippolone*, a number of lower courts interpreted section 521 of the act to preempt tort actions respecting allegedly defective medical devices in which the plaintiff sought to hold the manufacturer liable based on State common law. Those courts found preemption in a variety of contexts, including situations in which FDA had allowed marketing of the device after ''premarket notification'' under section 510(k) of the act (21 U.S.C. 360(k)), (e.g., *Mendes* v. *Medtronic, Inc.*, 18 F.3d 13 (1st Cir. 1994)); in which FDA had granted premarket approval of the device under section 515 of the act (21 U.S.C. 360e), (e.g., *King* v. *Collagen Corp.*, 983 F.2d 1130 (1st Cir.) *cert. denied*, 510 U.S. 824 (1993)); and in which FDA had granted an IDE under section 520(g) of the act (21 U.S.C. 360j(g)), (e.g., *Slater* v. *Optical Radiation Corp.*, 961 F.2d 1330 (7th Cir.), *cert. denied*, 506 U.S. 917 (1992)).

The Supreme Court addressed the scope of section 521 of the act's preemptive effect in *Medtronic, Inc.* v. *Lohr*, 116 S. Ct. 2240 (1996). That case arose out of Medtronic's marketing of a cardiac pacemaker that FDA found was ''substantially equivalent'' to a medical device already on the market and that was therefore subject to the premarket notification requirements of section 510(k) of the act (21 U.S.C. 360(k)). The plaintiffs alleged that they were injured by the device and sought damages under Florida common law. They asserted that Medtronic breached its common law duty ''to use reasonable care in the design, manufacture, assembly, and sale of the subject pacemaker'' and that Medtronic was strictly liable because the device ''was in a defective condition and unreasonably dangerous to foreseeable users at the time of its sale'' (116 S. Ct. at 2248).

The Court concluded that section 521 of the act did not preempt the plaintiffs' negligent design claim. It specifically rejected Medtronic's contention that the company's compliance with its statutory obligation to demonstrate through the premarket notification process that the pacemaker was ''substantially equivalent'' to a preexisting device preempted those claims (116 S. Ct. at 2254–2255). The Court noted that, when FDA reviews a device under the premarket notification provisions, it does so with ''a concern for the safety and effectiveness of the device'' (*id*. at 2254), but that FDA ''did not 'require' Medtronics' pacemaker to take any particular form for any particular reason'' (*ibid*). Rather, FDA simply allowed Medtronic to market the pacemaker based on the article's equivalence to the preexisting device (*Id*. at 2254–2255). The Supreme Court was unanimous on this point, since Justice O'Connor's separate opinion for four Justices agreed that the section 510(k) premarket notification process ''places no 'requirement' on a device'' and therefore does not preempt a defective design claim (*Id*. at 2264).

The Court also concluded that section 521 of the act did not preempt the plaintiffs' State law claims that Medtronic had violated FDA requirements (116 S. Ct. at 2255–2256). The Court reasoned that State common law claims premised on Medtronic's failure to comply with FDA requirements do not subject the manufacturer to requirements that are ''different from, or in addition to,'' the Federal requirements (*Id*. at 2255). The Court noted that FDA's interpretive regulations ''expressly support the conclusion that [section 521] 'does not preempt State or local requirements that are equal to, or substantially identical to, requirements imposed by or under the act.''' (*Id*. at 2256 (quoting 21 CFR 808.1(d)(2) (1995))). It also observed that FDA's views on the scope of section 521 of the act's preemptive effect are entitled to ''substantial weight.'' (*Ibid*).

The Court additionally concluded that section 521 of the act did not preempt the plaintiffs' State law claims based on negligent manufacturing and labeling (116 S. Ct. at 2256–2258). The Court recognized that FDA had developed regulations that set out general ''requirements'' for manufacturing and labeling medical devices (*Id*. at 2256). It concluded, however, that section 521 generally does not mandate preemption of a standard of care under State common law unless, as FDA had suggested in its interpretive regulations, FDA has issued ''specific counterpart regulations or * * * other specific requirements applicable to a particular device'' (*Id*. at 2257 (quoting 21 CFR 808.1(d) (1995))). The Court concluded that the ''entirely generic'' Federal requirements did not provide a basis for preemption of the nonspecific State common law duties at issue in that case (*Id*. at 2258). Justice Breyer, agreeing with Justice O'Connor's opinion (see *id*. at 2262–2263), concluded that, insofar as the act preempts a State requirement embodied in a statute or regulation, it also preempts a similar State requirement that takes the form of a standard of care imposed by State tort law (*id*. at 2259–2260), but he concurred in the Court's holding that manufacturing and labeling requirements issued by FDA were not sufficiently specific to trigger preemption (*id*. at 2260–2261).

Since the Supreme Court's decision in *Lohr*, the lower courts have continued to reach contradictory determinations respecting section 521 of the act's preemptive effect, particularly as it relates to medical devices that have received premarket approval or an investigatory device exemption. Compare, e.g., *Fry* v. *Allergan Medical Optics*, 695 A.2d 511 (R.I. 1997) (finding preemption), *cert. denied*, No. 97–513 (U.S. Sup. Ct., Nov. 3, 1997) with *Kernats* v. *Smiths Indus. Med. Sys., Inc.*, 669 N.E. 2d 1300 (Ill. App. Ct.) (finding no preemption), *appeal denied*, 675 N.E.2d (Ill. 1996), *petition for cert. pending*, No. 96–1405 (U.S. Sup. Ct., filed Mar. 4. 1997).

III. The Proposed Rule

FDA interprets section 521 of the act's preemptive effect on the basis of congressional intent. As the Supreme Court stated in *Lohr*, congressional purpose ''is the ultimate touchstone'' in every preemption case, and ''a fair understanding of congressional purpose'' may be discerned not only from the text of the statute, but also through a ''reasoned understanding of the way in which Congress intended the statute and its surrounding regulatory scheme to affect business, consumers, and the law'' (116 S. Ct. at 2250–2251 (emphasis deleted)). In addition, the statutory text must be read in light of established presumptions respecting preemption. As the Supreme Court stated in *Lohr*, the States are presumed to retain their historic police powers unless Congress expresses a ''clear and manifest purpose'' to supersede those powers (*Id*. at 2250).

Section 521 of the act does not, as a general matter, prevent a party who is injured by a defective medical device from seeking redress under a State's common law. Rather, section 521(a) of the act provides that a State may not ''establish or continue in effect with respect to a device'' a ''requirement'' that is ''different from, or in addition to,'' a ''requirement applicable under this chapter to the device'' that ''relates to the safety or effectiveness of the device'' or to ''any other matter included in'' the Federal requirement (21 U.S.C. 360k(a)). By its plain terms, section 521 of the act does not prevent a State from imposing common law duties on manufacturers of medical devices unless those duties are ''requirements'' of the kind described in the statute.

When FDA articulated its understanding of section 521 of the act in its 1978 regulations, it stated the general rule to be that ''State or local requirements are preempted only when the agency has established specific counterpart regulations or there are other specific requirements applicable to a particular device under the act, thereby making any existing divergent State or local requirements applicable to the device different from, or in addition to, the specific Food and Drug Administration requirements'' (§ 808.1(d)). The Supreme Court explicitly endorsed FDA's position in the *Lohr* decision. (See 116 S. Ct. at 2257; *id*. at 2260–2261 (Breyer, J., concurring in part and concurring in the judgment)). Similarly, the 1978 regulations provide that section 521 of the act does not preempt a State or local requirement prohibiting the manufacture of adulterated or misbranded devices, but that where such a prohibition, as ''interpreted and enforced by the State and local government,'' ''has the effect of establishing a substantive requirement for a specific device, e.g., a specific labeling requirement,'' it will be preempted if it is different from, or in addition to, a specific requirement established by FDA for the device (§ 808.1(d)(6)(ii)).

In 1978, FDA stated its understanding of section 521 of the act in the general context of State requirements that are imposed through positive law, such as statutes or regulations. The same principles should govern, however, in the case of State requirements that are imposed through the common law. FDA has consistently concluded that the same principles govern when it has addressed the question of preemption through its regulations, advisory opinions, and its judicial filings as amicus curiae. The Supreme Court implicitly endorsed that conclusion in the *Lohr* decision by applying the principles that FDA has announced in its 1978 regulations to the Lohrs'

common law suit. (See 116 S. Ct. at 2255–2256, 2257–2258; *id.* at 2260–2261 (Breyer, J., concurring in part and concurring in the judgment in part)).

In accordance with the principles that FDA articulated in its 1978 regulations, to which the Supreme Court in *Lohr* held that deference is owed, FDA believes that, as a general matter, an FDA-imposed requirement will preempt a State common law duty only when: (1) FDA has expressly imposed, by regulation or order, a specific substantive requirement applicable to a particular medical device; and (2) the State common law, as interpreted and applied, imposes a substantive requirement applicable to the same particular medical device that is different from, or in addition to, FDA's counterpart requirement. Under this approach, FDA requirements that are applicable to devices in general, or that are established by means other than through regulation or order, should generally not result in preemption of State tort claims.

FDA bases its interpretation primarily on the language of section 521 of the act and the agency's past regulatory interpretation set out in § 808.1. In addition, a plurality of the Court noted in *Lohr* that there is no indication in the legislative history of the amendments that Congress intended to make a ''dramatic change'' in the availability of State common law remedies (*Id.* at 2253 n.13 (opinion of Stevens, J.)). The legislative history indicates that Congress was aware of ongoing product liability suits involving medical devices, but it contains no indication that Congress intended that the amendments would preempt those suits. See, e.g., S. Rept. No. 33, supra, at 1; H. R. Rept. No. 853, *supra*, at 8; 121 Congressional Record 10,688 (1975) (Sen. Kennedy); *id.* at 10,689 (Sen. Nelson); 122 Congressional Record 5850 (1976) (Rep. Abzug)).

FDA's interpretation is also founded in its experience and understanding gained through implementing the amendments. FDA believes that its general regulatory review and approval processes provide a significant measure of protection against the marketing of dangerous or defective medical devices. FDA does not believe, however, that those processes can guarantee the safety of such devices. Accordingly, compliance with general FDA requirements should not broadly preempt State common law remedies, which provide an important (and frequently the only) mechanism for persons to seek redress for injuries resulting from defective medical devices. FDA notes below several situations in which the agency's regulatory activities will typically not preempt State law remedies.

First, FDA's general clearance and approval processes, such as the clearance for marketing under section 510(k) of the act; the grant premarket approval under section 515 of the act; or the grant of an IDE under section 520(g) of the act, do not, by themselves, preempt State common law claims. Section 521 of the act provides for preemption of a State common law duty only if it imposes a requirement that is different from, or in addition to, a specific substantive requirement pertaining to the particular device that has been imposed by or under the act. FDA's action in clearing a product for marketing or granting an application for a PMA or an IDE signifies that the manufacturer's proposal for marketing or use of the device in question satisfies the relevant statutory and regulatory criteria for the clearance, approval, or exemption. It does not signify, however, that Congress or FDA has established a specific Federal requirement (e.g., with respect to the design of the device) that supplants a State common law duty.

Second, FDA's notification of deficiencies in, or proposal of modifications to, an application for a PMA or an IDE does not, as a general matter, create specific Federal requirements that have preemptive effect. Under FDA's approval and exemption programs, the applicant bears responsibility for preparing an acceptable application. FDA may notify the applicant of deficiencies and propose modifications to ensure that the applicant has satisfied the minimum standards for FDA approval or exemption, but those actions do not relieve the applicant of its ultimate responsibility for proposing the design, manufacturing, and labeling of the device. For purposes of preemption analysis, the applicant who modifies an application in response to an agency notification of deficiency or proposal for modification has simply achieved the same status as an applicant who had submitted a satisfactory application at the outset.

Third, as the Supreme Court concluded in *Lohr*, FDA's general requirements respecting labeling (21 CFR 801.1 through 801.16), and good manufacturing practices, (21 CFR 820.1 through 820.198), do not preempt State requirements, because the general Federal requirements do not pertain to specific devices. (See *Lohr*, 116 S. Ct. at 2256–2258). The same controlling principle applies whether the device subject to those requirements is a ''grandfathered'' device that was marketed before the enactment of the amendments, received FDA clearance for marketing under section 510(k) of the act, received a PMA under section 515 of the act, or received an IDE under section 520(g) of the act.

Fourth, even if FDA has imposed specific Federal requirements respecting a particular medical device, those requirements do not preempt all State common law claims respecting the device. Section 521 of the act provides for preemption only if the State common law duties are ''different from, or in addition to,'' the specific Federal requirements. In many cases, preemption will depend on the plaintiff's precise legal claims and theories of recovery. For example, as the Supreme Court noted in *Lohr*, if the state common law required the manufacturer to comply with the Federal requirements, section 521 of the act would not preempt that duty (116 S. Ct. at 2255–2256). Furthermore, the courts may be able to reconcile an apparent conflict between Federal and State requirements by, for example, carefully formulating jury instructions to limit the bases for liability to substantive standards of care that are consistent with any specific requirement that FDA has made applicable to the device.

In every case, section 521 of the act's preemptive effect should be evaluated in light of the statute's precise terms. As the Supreme Court noted in *Lohr*, section 521 of the act and FDA's regulations ''require a careful comparison between the allegedly preempting Federal requirement and the allegedly preempted State requirement to determine whether they fall within the intended preemptive scope of the statute and regulations'' (116 S. Ct. at 2257–2258). The outcome of particular cases will frequently depend on the character and circumstances of the particular state law claim. FDA will continue to monitor the development of the law in this area and provide additional guidance as the need arises.

This proposed rule would make no change in the agency's prior or current construction of the scope of section 521 of the act. Rather, the rule would simply clarify and codify the agency's longstanding interpretation of the scope of section 521 of the act as generally not preempting available legal remedies, including State common law tort claims.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore,

neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule only interprets the statute and does not establish any requirements, the agency certifies that this proposed rule will not have a significant impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Request for Comments

Interested persons may, on or before (*insert date 60 days after date of publication in the* **Federal Register**), submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 808

Intergovernmental relations, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 808 be amended as follows:

PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS

1. The authority citation for 21 CFR part 808 continues to read as follows:

Authority: 21 U.S.C. 360j, 360k, 371.

2. Section 808.1 is amended by adding new paragraphs (d)(11) and (d)(12) to read as follows:

§ 808.1 Scope.

* * * * *

(d) * * *

(11) * * *

(i) An FDA imposed requirement will preempt a State common law duty only when:

(A) FDA has expressly imposed, by regulation or order, a specific substantive requirement applicable to a particular device; and

(B) The State common law, as interpreted and applied, imposes a substantive requirement applicable to the same particular device that is different from, or in addition to, FDA's counterpart requirement.

(ii) FDA requirements that are applicable to devices in general, or that are established by means other than through regulation or order, should not result in preemption of State tort claims.

(12) The clearance or approval of a particular device for marketing under section 510(k), 515, or 520(g) of the act does not in itself constitute the imposition of a specific substantive requirement with respect to that particular device that preempts a State or local requirement, including a standard of care imposed under State common law, with respect to the same device.

* * * * *

Dated: December 8, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–32551 Filed 12–10–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H–371]

RIN 1218–AB46

Occupational Exposure to Tuberculosis

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

ACTION: Proposed rule; extension of comment period; rescheduling of the informal public hearings in Washington D.C.; announcement of additional hearings sites.

SUMMARY: On October 17, 1997, the Occupational Safety and Health Administration (OSHA) published in the **Federal Register** its proposed standard for occupational exposure to tuberculosis (62 FR 54160). An informal public hearing was scheduled for Washington, D.C., and deadlines were set for submission of public comments, Notices of Intention to Appear at the hearing, and documentary evidence from parties requesting more than 10 minutes for their hearing presentations. With this notice, OSHA is extending those deadlines, rescheduling the Washington, D.C., hearings to begin April 7, 1998, and adding three hearing sites.

DATES: Written comments on the proposed standard and Notices of Intention to Appear at the hearings must be postmarked on or before February 13, 1998.

Testimony and documentary evidence from parties requesting more than 10 minutes for their presentations at the hearings must be submitted no later than February 27, 1998.

The hearings will begin April 7, 1998, in Washington, D.C., starting at 10:00 a.m. on the first day and at 9:00 a.m. on succeeding days. Public hearings will also be held in Los Angeles, CA, and Chicago, IL, and New York City, NY. The dates and locations of these additional hearings will be published in the **Federal Register** at a later date.

ADDRESSES: Comments on the proposed standard, Notices of Intention to Appear at the hearings, testimony, and documentary evidence are to be submitted in quadruplicate to the Docket Officer, Docket No. H–371, Room N–2625, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210, telephone (202) 219–7894. Comments of 10 pages or fewer may be transmitted by fax to (202) 219–5046, provided the original and three copies are sent to the Docket Officer thereafter.

All material related to the development of this proposed standard will be available for inspection and copying in the Docket Office Monday through Friday from 10:00 a.m. until 4:00 p.m.

The hearing location for Washington, D.C., is the Frances Perkins Building Auditorium, U.S. Department of Labor, 200 Constitution Avenue, NW. The hearing locations and dates for Los Angeles, CA, and Chicago, IL and New

York City, NY will be announced at a later date.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3647, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210, Telephone (202) 219–8148, FAX (202) 219–5986.

SUPPLEMENTARY INFORMATION: OSHA proposed a new standard for occupational exposure to tuberculosis on October 17, 1997 (62 FR 54160). The deadline for submitting written comments was December 16, 1997. On November 5, 1997, five organizations representing more than 4 million individuals and 5,300 facilities potentially affected by the proposed standard, collectively requested that OSHA consider extending the public comment period by a minimum of 30 days. Citing the complexity and the far-reaching implications of the proposed standard, these organizations stated that they believed that the current deadline of December 16, 1997, provided insufficient time for a thorough examination and consideration of the important issues. A similar request was made by the American Medical Association, which urged OSHA to extend the deadline to allow sufficient time for a complete and thoughtful analysis of the proposed TB standard.

OSHA considers the testimony to be offered by these organizations to be important and necessary for the development of the final rule. In addition, OSHA recognizes that other parties that will be affected by the rulemaking may need more time to prepare their comments and testimony. In order to accommodate these organizations and others, OSHA has extended the comment period and has rescheduled the informal public hearings in Washington, D.C.

The deadline for written comments and Notices of Intention to Appear at the informal public hearings is being extended from December 16, 1997, to February 13, 1998. The deadline for submission of testimony for parties requesting more than 10 minutes at the public hearings or submitting documentary evidence is being extended from December 31, 1997, to February 27, 1998. The hearing presently scheduled to begin on February 3, 1998 in Washington, D.C., is being rescheduled to begin on April 7, 1998.

In addition to the informal public hearings in Washington D.C., three sites are being added: Chicago, IL, and Los Angeles, CA, and New York City, NY. Because the proposed standard will impact employees and employers across the nation, the Agency believes that is appropriate to hold public hearings at additional sites in order to give parties who may not be able to attend the hearings in Washington, D.C., an opportunity to participate in the public hearing process. OSHA has found that the hearings provide an important forum for interested parties to submit their comments and concerns on OSHA's proposed rulemakings and that the hearings provide the Agency with valuable information in developing its final standards.

Public Participation

Persons desiring to participate at the hearings must submit four copies of a Notice of Intention to Appear containing the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The hearing site that the party is requesting to attend;

(3) The capacity in which the person will appear;

(4) The approximate amount of time requested for the presentation;

(5) The specific issues that will be addressed;

(6) A detailed statement of the position that will be taken with respect to each issue addressed;

(7) Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence; and

(8) Whether the party wishes to testify on the days set aside to focus on homeless shelters.

A tentative schedule of appearances at the hearings will be prepared and distributed to parties who have submitted Notices of Intention to Appear so parties will know when issues that concern them are likely to be raised at the hearing.

Filing of Testimony and Evidence Before Hearings

Any party requesting more than 10 minutes for a presentation at the hearing, or who will present documentary evidence, must submit four copies of the complete text of the testimony, including any documentary evidence to be presented at the hearing to the Docket Officer at the above address.

Each submission will be reviewed in light of the amount of time requested in the Notice of Intention to Appear. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation. Any party who has not filed a Notice of Intention to Appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed Notices of Intention to Appear will be entitled to ask questions and otherwise participate fully in the proceeding.

Authority

This document has been prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

It is issued under section 6(b) of the Occupational Safety Health Act (29 U.S.C. 655), Secretary of Labor's Order 6–96, (62 FR 111) and 29 CFR Part 1911.

Signed at Washington, D.C. on this 9th day of December, 1997.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 97–32546 Filed 12–9–97; 3:59 pm]

BILLING CODE 4510–26–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45 and 97–160; DA 97–2372]

Universal Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; guidance for design and submission of proposed models.

SUMMARY: The Common Carrier Bureau (Bureau) provided guidance to proponents of forward-looking cost models in the universal service proceeding on issues related to customer location and outside plant design. The Bureau provided this guidance to improve the models that the Commission will consider to select a mechanism for determining non-rural carriers' forward-looking cost to provide the supported services. This guidance is intended to encourage model proponents to alter their models to conform them to the guidance provided in this Public Notice. Models conforming to the guidance provided in this Public Notice are more likely to be considered favorably in this proceeding.

DATES: Proponents of a model should file their submission on or before December 12, 1997.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20052. See **SUPPLEMENTARY INFORMATION** for further instructions.

FOR FURTHER INFORMATION CONTACT: Chuck Keller, Common Carrier Bureau, Accounting and Audits Division, Universal Service Branch, (202) 418–7400, or via E-mail to ''ckeller@fcc.gov''.

SUPPLEMENTARY INFORMATION:

Released: November 13, 1997.

In the Universal Service Order released May 8, 1997, the Commission, acting on the recommendation of the Federal-State Joint Board, concluded that non-rural carriers providing supported services to rural, insular, and high cost areas (collectively referred to as high cost areas) should receive universal service support based on the forward-looking cost of providing the supported services. (*See* Federal-State Joint Board on Universal Service (Joint Board), CC Docket No. 96–45, *Report and Order,* FCC 97–157 (62 FR 32862, June 1997) (*Order*)). The Commission determined that it could not select a mechanism for computing forward-looking costs because none of the mechanisms that had been submitted for consideration was sufficiently developed at that time. The Commission stated that it would continue to review two cost models, the Hatfield Model and the Benchmark Cost Proxy Model (the BCPM). The Commission stated that it would select a forward-looking economic cost mechanism with platform design features and input values by August 1998.

In a Further Notice of Proposed Rulemaking in this proceeding (*FNPRM*), the Commission established a multi-step approach to refining and selecting a mechanism for determining a non-rural carrier's forward-looking economic cost of providing supported services to high cost areas. (*See* Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECLs, CC Docket Nos. 96–45 and 97–160, Further Notice of Proposed Rulemaking, FCC 97–256 (62 FR 42457, August 1997)(*FNPRM*)). The Commission specified that the Common Carrier Bureau (Bureau) would ''issue orders and public notices on a regular basis explaining its analysis of the model submissions and industry comments and to select particular design features.'' The Commission further stated its expectation that ''such guidance from the Bureau will provide the proponents with necessary direction to refine their models.''

In meetings with proponents of the BCPM and the Hatfield model and other interested parties, the Bureau staff has encouraged the continued evolution and refinement of the models. This Public Notice offers guidance to proponents of models regarding the customer location and outside plant platform design issues raised in the FNPRM. In the *Order*, the Commission stated its ''anticipat[ion] that by the end of the year [it] will choose a specific model'' as the platform for a federal mechanism. In order to choose a ''specific model,'' however, the Commission must evaluate and compare completed versions of the models. The Bureau therefore requests that parties seeking consideration of their model as the platform for a federal mechanism submit their models within four weeks after the release of this Public Notice. Models that conform to the guidance in this Public Notice are likely to be considered more favorably in this proceeding.

The Commission stated in the *FNPRM* that it may select a model submitted to the Commission by a proponent, or it may select a hybrid model incorporating the best features of proposed models and design components developed by the Commission staff or other parties. On October 31, 1997, staff members of the Common Carrier Bureau proposed an alternate approach to customer location and outside plant design issues in the form of a Hybrid Cost Proxy Model (HCPM). The HCPM is in many respects a hybrid of the BCPM and the Hatfield model, although it also contains features that differ from both the BCPM and the Hatfield model. The Bureau anticipates that the Commission will consider the HCPM as an alternative to the customer location and outside plant design modules in the BCPM and the Hatfield model. The Bureau observes, however, that the *FNPRM* leaves open the possibility that the Commission may consider other models or other components of models in selecting the best mechanism for determining non-rural carriers' forward looking cost for providing the supported services.

I. Customer Location

A. Geocode Data

The *FNPRM* requested comment on the use of data that associate the location of each customer with latitudinal and longitudinal coordinates (geocode data) in a forward-looking economic cost mechanism. Many commenters agree that geocode data, which provide the actual geographic location of customers, are preferable to algorithms intended to estimate customer locations based on Census data or other information regarding the number of customers in a given geographic area. Because assumptions about the location of customers have a large impact on loop length calculations, the use of more accurate customer location data is consistent with the criterion specified in the *Order* that ''a model's average loop length should reflect the incumbent carrier's actual average loop length.'' Some commenters, however, question the feasibility of using geocode data in the federal mechanism because of the lack of reliable data in rural areas and the burden of developing such data. The Bureau recommends that models be capable of accepting and using geocode data to the extent that such data are available and reliable.

B. Wire Center Boundaries

In their evaluation of previous versions of cost models submitted to the Commission, State members of the Joint Board have noted that inaccurately mapping customers to a wire center may result in inaccurate line counts and impede the determination of the most efficient engineering practices for serving that wire center. Through the model development process, the BCPM and the Hatfield model have been refined so that both models determine wire center boundaries based, at least in part, on a database provided by Business Location Research (BLR). The BCPM has improved the accuracy of the BLR data it uses by using wire center boundary data based on Census Blocks (CBs), rather than the larger Census Block Groups (CBGs). The Hatfield model also uses BLR data at the Census Block-level, although its proponents have stated that they intend to use the Census Block Group data in isolated instances where those data appear to be more accurate. This refinement decreases the discrepancies between the two industry-proposed models. Consistent with the criterion specified in the *Order* that ''[w]ire center line counts should equal actual ILEC wire center line counts'' however, the Bureau recommends that models be capable of accepting wire center boundary data in standard Geographic Information System (GIS) format from any source that the Commission finds may estimate those boundaries more accurately.

II. Outside Plant Design

A. Documentation of Assumptions

The *Order* requires that cost models employ the ''least-cost, most-efficient and reasonable technology for providing the supported services that is currently being deployed,'' and that all engineering assumptions be reasonable. Furthermore, the *Order* also requires the models' algorithms, data, and assumptions to be open and verifiable. These criteria suggest that outside plant design should be considered both from an engineering perspective, to ensure that the network provides the type and quality of service specified in the *Order*, and from an economic perspective, to ensure that the network design minimizes cost and maximizes efficiency. Moreover, the requirement that assumptions be open and verifiable ensures that the Commission can confirm that the other criteria have been met. To the extent that models' algorithms do not explicitly explore different loop architectures in varying situations and select the least-cost alternative for that particular situation, the Bureau recommends that model proponents provide detailed documentation that explains and justifies any assumptions and engineering rules of thumb that their models employ. This documentation should demonstrate how these assumptions and rules of thumb meet the *Order's* requirement that a model employ the least-cost, most-efficient, and reasonable technology.

One assumption for which model proponents should provide documentation is a model's algorithm for deploying digital loop carrier (DLC) devices. For example, the basic outside plant design structures presently employed in the BCPM and the Hatfield model involve running optical fiber feeder cables from the central office to a point within designated serving areas and serving the customers within each serving area with copper distribution cables from a DLC device within the serving area. Because DLC devices are expensive, costs per customer can be minimized by connecting larger numbers of customers to each device, subject to the DLC's capacity limitations and the limits on the length of the copper cable between the DLC and the customer premises. The BCPM and the Hatfield model currently determine which customers are located in a given serving area using either grids (BCPM) or clusters (Hatfield). Both approaches must account for the fact that, particularly in rural areas, some customers are located relatively far from other customers, and therefore are difficult to associate with any single serving area. Presently, the Hatfield model serves geographically isolated customers with the nearest DLC, while the BCPM will place a separate DLC in grids with only a small number of customers. The Bureau recommends that proponents of a model demonstrate how their approaches to deploying DLC devices employ the least-cost, most-efficient, and reasonable technology, as required by the Commission's *Order*.

Another algorithm that is relevant to whether a model has employed the least-cost, most-efficient, and reasonable technology is a model's algorithm for feeder routes. Earlier versions of the BCPM and the Hatfield model extended four fiber feeder cables, at 90 degree angles from each other, from each central office in all cases. More recent iterations of these models have eliminated feeder cables to quadrants with no population and adjusted feeder route angles directing feeder cables to areas of population concentration. Although these approaches seem to represent improvements in the designs of these industry-proposed models, the Bureau recommends that each proponent of a model demonstrate how their feeder routing algorithms meet the criterion of being the least-cost, most-efficient, and reasonable technology currently being deployed.

In addition to the examples of DLC placement and feeder routing, the Bureau recommends that model proponents demonstrate how every aspect of their outside plant design approach is consistent with the least-cost criterion, while maintaining the network standards established in the *Order*.

B. Advanced Services

The Commission specified in the *Order* that the loop design in a forward-looking mechanism ''should not impede the provision of advanced services.'' For example, the Commission determined that loading coils may impede advanced services such as high-speed data transmission and therefore disallowed their use in a model. The Bureau recommends that model proponents explain their assumptions about network configurations and capacity, and explain why such assumptions are reasonable and consistent with common configurations and capabilities of networks of non-rural carriers. For example, model proponents should demonstrate how their models permit standard customer premises equipment (CPE) available to consumers today, such as 28.8 kbps or 56 kbps modems, to perform at speeds at least as fast as the same CPE can perform on the typical existing network of a non-rural carrier.

The Commission also concluded that the definition of supported services should ''advance with technology'' and will be re-examined in light of ''changes in technology, network capacity, consumer demand, and service deployment.'' The Bureau therefore recommends that models incorporate sufficient flexibility in their loop design algorithms so that the platform of the selected model does not have to be rebuilt in the event that the Commission revises the definition of universal service.

C. Wireless Threshold

In the *FNPRM*, the Commission sought comment on whether a model should assume that, if the loop investment for a single customer exceeds a certain threshold, an efficient carrier would substitute wireless service for wireline service. The Commission's directive that a cost model use the ''least-cost, most-efficient, and reasonable technology'' suggests that a model should be able to use information about the costs of wireless service if the Commission concludes that such data are available and reliable. Because the Commission also determined that support calculations should be based on a geographic area that is the size of a wire center or smaller, and the geographic area for estimating costs may not be larger than the support area, the Bureau recommends that models be capable of accommodating as inputs wireless cost thresholds at the level of the wire center or a smaller geographic unit.

D. Fiber-Copper Cross-Over Point

The fiber-copper cross-over point determines where the network will employ optical fiber cable rather than copper cable in its feeder plant. The Commission specified in the *Order* that a model ''must include the capability to examine and modify the critical assumptions and engineering principles * * * includ[ing] * * * fiber-copper cross-over points.'' While the BCPM assumes that the maximum copper loop length may be 12,000 feet and the Hatfield model assumes that the maximum copper loop length may be 18,000 feet, the Commission noted in the *FNPRM* that neither proponent has documented that its assumption is the least-cost alternative. In order for the Commission to better understand the cost differences associated with each of these assumptions, the Bureau recommends that proponents of models provide comparative outputs for each of the following five states, using both the

12,000 foot standard and the 18,000 foot standard: Florida, Georgia, Maryland, Missouri, and Montana.

E. Proprietary or Confidential Information

In light of the Commission's requirement in the *Order* that ''all underlying data, formulae, computations, and software associated with the model must be available to interested parties for review and comment,'' the Bureau recommends that each model proponent submit detailed descriptions of all information or software alleged to be confidential, proprietary, or otherwise unavailable to the public that is used either in the model or in a preprocessing module. The descriptions should include estimates of the costs and procedures that may be associated with making the information or software available to the Commission and to the administrator of the universal service support mechanisms.

III. Follow-Up Requirements

The Commission established criteria for its forward-looking economic cost mechanism in the *Order.* The Bureau recommends that model proponents ensure that their modules for determining the location of customers and estimating outside plant investment comply with all of the criteria set out in the *Order,* in addition to the recommendations in this Public Notice.

The Bureau recognizes that proponents of models may need to make certain changes to their models to bring them into conformity with the guidance provided in this public notice. Within four weeks from the release date of this public notice, any proponents of models should submit their models for consideration by the Commission. To facilitate that process and the Commission's review, models should be accompanied by a cover letter providing: (1) A list of the items discussed above with which their model already is in conformity and a description of how their model is in conformity with those items, and; (2) a listing of the items with which their model is not yet in conformity. The Bureau anticipates that the models submitted at that time will be evaluated by the Commission in selecting the platform for the federal mechanism.

IV. Procedural Matters

Within four weeks of the release date of this Public Notice, proponents of a model should file an original and three (3) copies of their submission, referencing CC Dockets Nos. 96–45 and 97–160, with the Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, DC 20554. Proponents should also provide four (4) copies of their submission to Chuck Keller of the Universal Service Branch, 2100 M Street, N.W., Room 8918, Washington, D.C. 20554.

Federal Communications Commission.

Timothy A. Peterson,

Deputy Division Chief, Common Carrier Bureau.

[FR Doc. 97–31117 Filed 12–11–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 97–234; GC Docket No. 92–52; GEN Docket No. 90–264, FCC 97–397]

Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses; Comparative Broadcast Hearings

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission (FCC) seeks comment on proposed competitive bidding procedures that will apply to mutually exclusive applications for licenses to provide commercial AM radio, FM radio, analog television, low power television, and FM or TV translator service. The proposed auction procedures implement the Balanced Budget Act of 1997, which expanded the FCC's auction authority to require that it use auctions to award virtually all licenses. The FCC also proposes to use auctions to resolve certain pending commercial broadcast applications filed before July 1, 1997, which under the statute may be resolved by either auction or comparative hearings. Auctions allow the FCC to award licenses more efficiently than comparative hearings, and using auctions to decide the pre-July 1, 1997 applications for new commercial radio or television broadcast stations allows the FCC to end the stay in effect since 1994 on comparative broadcast initial licensing cases. But the FCC seeks comment on whether there are special equitable considerations that warrant using comparative hearings to decide some of the pre-July 1 applications. Comment is also sought on whether the FCC must or should use auctions to award licenses in the Instructional Television Fixed Service, and on how to resolve pending comparative renewal cases, which are beyond the FCC's auction authority.

DATES: Comments are due January 26, 1998; Reply Comments are due February 17, 1998. Written comments by the public on the proposed and/or modified information collections are due January 26, 1998. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before February 10, 1998.

ADDRESSES: Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554. Copies of these pleadings should also be sent to the Mass Media Bureau, Video Services Division (Room 702) and Audio Services Division (Room 302), 1919 M St., N.W., Washington, D.C. 20554, and the Office of General Counsel, Room 610, 1919 M St., N.W., Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: John Riffer and S. Lee Martin, Office of General Counsel, (202) 418–1720, Jerianne Timmerman, Video Services Division, Mass Media Bureau, (202) 418–1643, and Lisa Scanlan, Audio Services Division, Mass Media Bureau, (202) 418–2720. For additional information concerning the information collections contained in this Notice contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, in MM Docket No. 97–234, GC Docket No. 92–52, and GEN Docket No. 90–264, adopted November 25, 1997 and released November 26, 1997. The complete text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., N.W., Washington, D.C. 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800 (phone), (202) 857–3805 (facsimile), 1231 20th Street, N.W., Washington, D.C. 20036.

Paperwork Reduction Act

This Notice contains either a proposed or modified information collection, subject to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding. Public and agency comments are due at the same time as other comments on this Notice; OMB comments are due February 10, 1998. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: New.

Title: Notice of Proposed Rulemaking, Implementation of Section 309(j) of the Communications Act of 1934 (Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses) (MM Docket No. 97–234).

Form No.: FCC Form 175, FCC Form 301, FCC Form 346, FCC Form 349.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 7,289.

Estimated Time Per Response: Ranges from 45 minutes to 95 hours depending on the type of application filed.

Total Annual Burden: 20,051 hours.

Needs and Uses: The information contained on FCC Form 175, as well as any supplemental engineering information from FCC Forms 301, 346, or 349 required for various non-Table services (including new AM stations), will be used to determine mutual exclusivity for purposes of using competitive bidding procedures to award commercial broadcast licenses. And, in the event the Commission adopts bidding preferences or other measures to foster participation by small businesses, rural telephone companies, businesses owned by minority group members or women, and non-group owners, the proposed annual certification of continuing eligibility for such special measures will be used to prevent unjust enrichment resulting from the use of competitive bidding to award licenses.

Synopsis of Notice of Proposed Rulemaking

Background

1. The Commission has traditionally used comparative hearings to resolve mutually exclusive applications for new commercial full service broadcast stations. In 1992, the Commission initiated a rulemaking to reexamine the comparative criteria for resolving such applications, and two further notices of proposed rulemaking were adopted after the court in *Bechtel* v. *FCC,* 10 F.3d 875 (D.C. Cir. 1993) (*Bechtel II*), invalidated the central criterion used to decide such cases.

2. As part of the Balanced Budget Act of 1997, Congress: (1) amended section 309(j) of the Communications Act (Act) to require that the Commission award virtually all spectrum licenses, including commercial broadcast licenses, by competitive bidding proceedings if mutually exclusive applications are accepted; (2) amended section 309(i) of the Act to terminate Commission's authority to award commercial broadcast licenses by random selection after July 1, 1997; and (3) adopted new section 309(l) which authorizes (but does not require) the Commission to use auctions to resolve pending comparative licensing cases involving applications for new commercial radio or television stations filed before July 1, 1997.

Proposals to Resolve Comparative Initial Licensing Cases

3. Citing the advantages of using auctions to award spectrum licenses in terms of expediting service to the public, the Commission tentatively found that using auctions to resolve the narrow group of pending cases in which auctions are not statutorily required would better serve the public interest than comparative hearings. It asked commenters advocating continued use of comparative hearings for these cases to explain how their proposed criteria would be implemented in an administratively workable and judicially sustainable manner and how the proposed criteria would predict good or better service or serve some independent public interest goal. The Commission also sought comment on whether, even if auctions are used to resolve mutual exclusivity among most pre-July 1, 1997 applications, equitable concerns warrant comparative hearings in the few cases that had progressed to either a decision by an Administrative Law Judge, the former Review Board or the Commission before the court in *Bechtel II* found that the integration criterion was unlawful. Commenters should describe the equitable considerations that they believe would support the use of comparative hearings and the specific criteria they believe should be used, and explain how these criteria would further the equitable interests they have identified.

4. The Commission proposes to refund, upon request, hearing fees actually paid by applicants for applications that are ultimately decided by competitive bidding; and, as a matter of fairness, it proposes to refund, upon request, filing fees paid by applicants that do not participate in the auction.

Auction Procedures for Pending Applications Subject to Section 309(l)

5. Section 309(l) provides that, if the Commission decides to use auctions to resolve competing applications for commercial radio or television stations filed before July 1, 1997, it shall treat such persons as the only eligible bidders qualified to participate in the auction. The Commission tentatively found that this provision applies only if two or more mutually exclusive applications were filed before July 1, 1997. Thus, auctions are mandated by section 309(j) if all pending applications were filed after June 30, 1997, or if only one of a group of mutually exclusive applications was filed before July 1, 1997. Where two or more competing applications are filed before July 1, 1997, however, the Commission tentatively interpreted the provision to prohibit the opening of an additional filing window for new mutually exclusive applications or including, as eligible bidders, applicants who filed mutually exclusive applications after June 30, 1997. Recognizing that this could lead to a harsh result, particularly if it requires the dismissal of timely filed applications, the Commission asked for comment on whether there is any other legally permissible interpretation of the statute.

6. The Commission also concluded that only pre-July 1, 1997 applicants could take advantage of the provision requiring waiver of certain regulations for settlements filed within 180 days after enactment of the statute (i.e., by February 1, 1998). It indicated that it was also inclined to waive certain settlement policies, such as the prohibition against third party settlements set forth in *Rebecca Radio of Marco,* 5 FCC Rcd 937 (1990).

7. Following the expiration of the settlement period on February 1, 1998 and once the auction rules are effective, the Commission tentatively proposed to

announce those competing pre-July 1 applications eligible for resolution by competitive bidding procedures under section 309(l). It tentatively proposed to terminate the hearing proceeding if there are unresolved basic qualifying issues against any applicant. It further proposed to allow pending applicants to participate in the auction despite any unresolved qualifying issues, and to do so by filing a short-form application. But it asked whether it would be more efficient to decide basic qualifying issues before the auction for the small number of hearing cases. Also, the Commission would accept amendments to the long-form applications after the auction and then only if filed by the winning bidders. It proposed to accept petitions raising new issues only after a Public Notice announced any amendments to the winning bidder's application. It tentatively proposed to afford the winning bidder 30 days to file any amendments to its long-form application and 15 days to respond to any new petitions raising new issues.

8. After submission of the required down payment by the winning bidder in accordance with the general auction procedures and any special rules adopted for broadcast auctions in this proceeding, the ALJ or the Commission (in cases pending before the Commission) would resolve any unresolved issues in hearing cases, and if appropriate, grant the application and dismiss the long-form applications filed by the unsuccessful bidders. Where the hearing proceeding has terminated (because there are no outstanding hearing issues against any pending applicant), the Mass Media Bureau would rule on any new issues raised in petitions filed after termination of the hearing proceeding and either grant the application or designate it for hearing.

9. In non-hearing cases, the Commission proposed that all questions as to a pending applicant's basic qualifications, including questions involving the acceptability and tenderability of the application, would be resolved after the auction and only with respect to the winning bidder. If pending applicants fail to file short-form applications, the Commission proposed to dismiss their previously filed long-form applications. It proposed to accept petitions to deny or amendments to the long-form application after the auction, and asked for comment on affording the winning bidder 30 days to file any amendment to its long-form application. After the amendment period, it proposed to place the winning bidders' long-form applications on public notice, which would trigger the filing window for petitions to deny and to dismiss the previously filed long-form applications of the unsuccessful competing bidders following the grant of the winning bidder's construction permit. And, for these non-hearing comparative initial licensing proceedings it proposed to follow all other post-auction rules and procedures set forth in part 1 of the Commission's Rules and any service-specific rules adopted in this proceeding.

Auction Procedures for Other Pending Applications

10. Based upon the broad language of section 309(j) requiring the use of competitive bidding procedures to award initial licenses whenever mutually exclusive applications are accepted, the Commission tentatively found that section 309(l) is limited to mutually exclusive applications for new commercial full service radio or television stations filed before July 1, 1997. Thus, it tentatively concluded that auctions were required under section 309(j) for pending mutually exclusive applications for various secondary commercial broadcast services, even if filed before July 1, 1997, and for mutually exclusive applications for full service commercial radio and television stations filed after June 30, 1997.

11. Under this tentative interpretation, none of these pending applicants may take advantage of the provision requiring waiver of regulations for settlements filed before February 1, 1998. The Commission noted that these pending applicants could enter into settlements that comply with the statute and all applicable Commission rules, but it tentatively concluded that such agreements must predate the filing of any short-form applications because of the anti-collusion rules (which restrict communications among auction participants). The Commission asked for comment on whether it should further restrict settlement agreements, given that Congress, through the Balanced Budget Act, may have established auctions as the preferred method of awarding licenses where mutually exclusive applications are filed.

12. The Commission tentatively concluded that it was not required to restrict the class of bidders qualified to participate in auctions involving these other pending commercial broadcast applicants that are not subject to section 309(l). It asked for comment on how it should exercise its discretion under the statute, i.e., whether it should open a new filing window for additional applications that could be mutually exclusive with pending applications or whether it should keep the window closed.

13. The Commission proposed to conduct auctions in accordance with its general auction procedures and any service-specific procedures adopted in this proceeding. It proposed to announce by Public Notice the groups of pending mutually exclusive (long-form) broadcast applications eligible for resolution by competitive bidding, and the date by which those applicants must file short-form applications in order to participate in the auction. It proposed to dismiss the previously-filed, long-form application of any pending applicant who fails to file a short-form application. In the interest of efficiency, it tentatively proposed to conduct a single auction of all pending mutually exclusive broadcast applications that are not subject to the special provisions of new section 309(l) (and any application for any of these services filed in response to the Public Notice that is mutually exclusive with previously filed long-form applications). It asked for comment on this proposal, and on whether any changes are warranted in the proposed post-auction procedures for these applicants.

General Auction Procedures

14. The Commission did not propose to modify its existing licensing procedures, under which it grants a construction permit and the permittee subsequently applies for a license after constructing the broadcast facility. It cautioned that a permittee, who obtains a construction permit through an auction, must still satisfy the requirements for a license. Prospective bidders for various secondary broadcast services (i.e., low power television stations, television translators, FM translators) were also warned that a licensee does not have increased rights vis-a-vis any full service broadcaster because it received its authorization through an auction.

15. It asked for comments on whether to treat applications for modifications of existing broadcast facilities as ''initial'' applications that are subject to auction if mutually exclusive applications are filed, and on whether there are any legal, equitable or other considerations that would militate against using competitive bidding procedures for certain types of modification applications. Comment is also sought on whether to adopt any special procedures, such as bidding credits, for applicants proposing significant service to unserved or underserved areas, to accommodate section 307(b), 47 U.S.C. 307(b), of the Communications Act.

16. The Commission tentatively proposed to conduct broadcast auctions in conformity with the general competitive bidding rules set forth in part 1, subpart Q of the Commission's rules, subject to any changes that it ultimately makes in those rules in the ongoing part 1 rulemaking (or this proceeding), and substantially consistent with the bidding procedures used in previous Commission auctions. It proposed that such general competitive bidding rules should govern all future auctions. *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding (Notice of Proposed Rulemaking*), 62 FR 13570, 13570–71, March 21, 1997, 12 FCC Rcd 5686, 5698 ¶ 18 (1997). Commenters should review the proposed rules changes, as well as the issues raised there, and propose alternatives to any rules or proposed rules they believe to be inappropriate in the context of broadcast auctions. Comment is specifically sought on the advisability in the broadcast context of applying the Commission's anti-collusion rule, which strictly limits communications between competing bidders once a short-form application is filed, *see* 47 CFR 1.2105(c), and the bid withdrawal/default payment rules, which penalize the post-auction withdrawal of a high bid and the failure to submit a long form application or to pay a winning bid. *See* 47 CFR 1.2104(g); 1.2109.

17. The Commission tentatively proposed to use the simultaneous multiple-round competitive bidding design for broadcast auctions successfully used in previous auctions. But it seeks comment on alternate bidding designs that might be appropriate in the broadcast context, such as (1) sequential multiple-round auctions, using either oral ascending, remote or on-site electronic bidding; and (2) sequential or simultaneous single round auctions, using either remote and/or on site electronic bidding, or sealed bids. *See generally* 47 CFR 1.2103, as amended by *Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding (Order)*, 62 FR 13540, March 21, 1997, 12 FCC Rcd 5686, 5691 ¶ 6 & nn.9–12 (1997). It also noted the possibility of using combinatorial bidding, which permits bidders to bid on combinations or groups of licenses in a single bid and to enter multiple alternative bids within a single bidding round. Comment is also sought on whether different bidding methodologies are warranted for auctions that, pursuant to section 309(l), must be restricted to pre-July 1 applications, than for auctions that may be open to all qualified bidders, and whether the type of auction should vary depending on the type of service involved, the number of licenses at stake, how many bidders are likely to participate, and the degree to which interdependence may be important to qualified bidders. The Commission does not propose on-site bidding, and it seeks comment on whether to require bidders to bid electronically via computer, on whether this would be a hardship for certain bidders, and on whether bidders should have the option of bidding by telephone.

18. The Commission proposed that the Mass Media Bureau work in conjunction with the Wireless Telecommunications Bureau in setting the upfront payment, which will be announced by Public Notice before the time for filing short-form applications. It proposed to adhere to the part 1 rules on upfront payments, but sought comment on the appropriate amount, and method for determining the appropriate amount, of the upfront payment for bidders in broadcast auctions. It also proposed that the Mass Media Bureau work in conjunction with the Wireless Telecommunications Bureau to consider the use of reserve prices or minimum opening bids to be announced prior to the time for filing short-form applications for auctionable commercial broadcast services, unless it is determined, based on comments filed in this proceeding, that reserve prices or minimum opening bids would not serve the public interest. The Commission also sought comment on the appropriate methodology for establishing each of these mechanisms, and on alternative methods for estimating the value of the license, such as (1) using data on station transactions that are comparable in terms of station class and market characteristics, and (2) utilizing a financial model derived from data on the performance of operating stations (a) in the market that an applicant hopes to serve or (b) from a relevant comparable market.

19. The Commission also seeks comment on how it should deal with any ''daisy chains'' presented in auctions of AM radio, LPTV, or television or FM translator applications. Daisy chains occur when an application is mutually exclusive (*i.e.*, would cause interference) with a second application, which is mutually exclusive with a third application in the same or adjacent community, and so on, even though the first application may not be directly mutually exclusive with any application except the second. Depending on which applicant is the winning bidder among a mutually exclusive group, another application (in addition to the auction winner) may become grantable, or another smaller mutually exclusive group may still exist and need to be resolved. Comment is requested on the appropriate methods, such as combinatorial bidding, to resolve any daisy chains in the auction context.

20. To promote the orderly filing of applications for different services and to facilitate the determination of mutually exclusive groups for auction purposes, the Commission tentatively proposes to establish a specific time period or auction window during which applicants for AM, FM, television, LPTV, and television or FM translators must file applications in order to participate in an upcoming auction. Comment is sought on this more uniform window filing approach, which would replace the current disparate filing procedures for applications in all of these services.

21. Under the proposed auction procedures, prior to the auction applicants would file short-form applications (FCC Form 175), supplemented by any engineering data necessary to determine mutual exclusivity in non-table services, and only winning bidders would file long-form applications. To relieve prospective applicants of the time and expense associated with filing long-form applications (which would be reviewed only if an applicant were the high bidder), the Commission announced a temporary freeze, effective November 26, 1997, on the filing of all commercial broadcast and secondary broadcast applications pursuant to our existing procedures. Applications timely filed in response to an outstanding AM (or FM translator) cut-off list or an open FM window are exempt from the freeze. During the freeze, the Commission would continue to accept and process petitions for rulemaking requesting the allotment of new FM channels to the FM Table of Allotments, and applicants could apply for any such allotments during subsequently announced FM auction filing windows. Minor modification applications, and all applications for the reserved portion of the FM broadcasting band (Channels 200–220) are not subject to the freeze.

22. The Commission tentatively proposes to announce the auction and the window for filing short-form applications in a Public Notice. It also proposes to announce the window at least 30 days in advance, and to keep it open for at least five business days. Comment is sought on this proposal and on whether to have a combined filing window or separate filing windows for each type of broadcast or secondary

broadcast service. Except for the FM service, where applicants may only file for vacant FM channels reflected in the Commission's Table of Allotments, the Commission does not propose to limit filing windows on a geographic basis. It proposes to open filing windows for applications for commercial broadcast and secondary broadcast services as often as its resources allow, and may include certain auctions of construction permits for commercial broadcast facilities in the Commission's proposed quarterly auctions process. *See Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding (Order*), 62 FR 13540, March 21, 1997, 12 FCC Rcd 5686, 5691–92 ¶ 7 (1997). But it did not make a commitment to include auctionable broadcast licenses in every quarterly auction.

23. Under the proposed window filing approach, applicants would file short-form applications (FCC Form 175), along with any engineering data necessary to determine mutual exclusivity in a particular service, only during an announced filing window. This procedure would apply to all applications for AM, FM, television, low power television, and FM or television translator stations, except for minor change applications. Thus, prospective applicants could no longer tender new FM applications on a ''first come/first serve'' basis, as they may do under current procedures. Minor modification applicants in these services would not be subject to the window filing requirement even if the Commission ultimately decides to use auctions to resolve mutually exclusivity among major change applications. But two or more FM, AM, television or LPTV minor modification applications can be mutually exclusive under current rules. The Commission seeks comment on how to resolve such applications.

24. The Commission proposes that FM applicants would apply by submitting during the announced filing window an FCC Form 175 application for any vacant allotment specified in the public notice announcing the opening of the window. Applications specifying the same vacant FM allotment(s) would be mutually exclusive, and no supplemental engineering data would be necessary to make this determination. Applicants for new AM stations, LPTV stations, and television and FM translators would file short-form applications specifying a frequency or channel upon which the applicant could operate in accordance with the Commission's existing interference standards for these services, *see* 47 CFR 73.37, 73.182 and 73.187 (AM interference rules); 47 CFR 74.703, 74.705, 74.707 and 74.709 (LPTV and television translator interference rules); and 47 CFR 74.1203 and 74.1204 (FM translator interference rules). The Commission does not propose to change these interference standards. To determine which AM, LPTV, and television and FM translator applications are mutually exclusive for auction purposes, the Commission expects to require applicants for these services to file, in addition to their short-form applications, the engineering data contained in the pertinent FCC Form (*i.e.*, FCC Form 301, FCC Form 346 or FCC Form 349). And, if the Commission ultimately decides to auction mutually exclusive applications for major modifications of existing facilities, analog television licensees filing such applications would be required to file both an FCC Form 175 and the engineering data contained in an FCC Form 301.

25. The Commission proposes to require that all FCC Form 175 applications for broadcast auctions be filed electronically, and asks for comment on whether this would be burdensome for applicants for the secondary broadcast services. It also seeks comment on its proposal to require, as necessary to determine mutual exclusivity in non-table services, the filing of the engineering data contained in the FCC Form 301, FCC Form 346 or FCC Form 349, at the same time that the short-form is filed.

26. *Pre-Auction Processing:* The Commission seeks comment on whether to limit its pre-acceptance review of any engineering data submitted with the FCC Form 175 to only what is necessary to determine which applications are mutually exclusive with each other, or whether to engage in more extensive pre-auction processing, whereby it would return as unacceptable applications with technical problems that cannot be resolved by amendment. It noted that the first approach would save considerable Commission resources, but had a significant downside in that it may result in technically unacceptable applicants participating and perhaps prevailing in the auction. This, in turn, could require that the Commission reauction the license and afford new parties an opportunity to file applications. It noted that a more extensive pre-auction review could slow the auction, but that the auction could proceed with the understanding that the rights of any winning bidders would be subject to the outcome of any petitions for reconsideration of the return of unacceptable applications.

27. Once it determines mutual exclusivity among the short-form applications filed in response to a window, the Commission would identify by public notice(s) the applicants in each group of mutually exclusive applications who are eligible to bid on construction permits for the allotments or channels identified in their short-form applications. Such public notices would provide more detail on the time, place and method of competitive bidding to be used, as well as applicable bid submission and payment procedures, the deadline for submitting the upfront payments, the amounts of the upfront payments and any minimum opening bid or reserve price, all pursuant to the auction rules then in place. A Public Notice would also identify any applications submitted in response to an announced window not subject to auction (because such applications were not mutually exclusive with any other application in the same service), and the date by which such applicants must file their long-form applications (FCC Form 301, FCC Form 346 or FCC Form 349). The Commission tentatively proposes to afford such applicants 30 days to file their complete long-form applications, and seeks comment on that proposal.

28. *Post-Auction Procedures:* The Commission proposes to follow as closely as possible its general post-auction procedures and payment requirements set forth in part 1 of the rules, and seeks comment on their applicability to auctions of mutually exclusive broadcast applications. Specifically, it would announce the high bidder by Public Notice and afford it 10 business days to make the required down payment and 30 days to file a complete FCC Form 301, FCC Form 346 or FCC Form 349 long-form application for each construction permit for which it was the high bidder. Comment is sought on these proposals and on whether it should follow 47 CFR 1.1207, which requires that the down payment (plus the upfront payment) must be at least 20% of the winning bid. The Commission also seeks comment on whether it would be appropriate to establish a period, such as 5 days, for the filing of petitions to deny against the winning bidder's long-form application, as is permitted by section 3008 of the Balanced Budget Act of 1997. It also proposes to require full payment of the balance of the winning bid within 10 business days of the Public Notice announcing the grant of the construction permit. It seeks comment on this proposal and on whether to modify any existing service-specific

rules relating to the processing and reviewing of FCC Form 301, FCC Form 346 and FCC Form 349 applications.

29. To facilitate the auction process, the Commission proposes to relax certain rules limiting the number and the timing of filing of curative amendments to long-form applications, *see* 47 CFR 73.3522, 73.3564, but it does not propose to change the definition of ''major amendment'' in the various services. *See* 47 CFR 73.3571 (AM radio), 47 CFR 73.3572 (television, LPTV, television translators), 47 CFR 73.3573 (FM radio), or propose that deficiencies in long-form applications would be curable by major amendment. Thus, it proposes that winning bidders must file major amendments to long-form applications within an announced filing window.

30. To avoid new instances of mutually exclusivity, which may arise if a long-form FM application proposes a site other than one protected pursuant to the Table of Allotments, the Commission proposes that applicants not be allowed to file FM long-form applications in conflict with any previously filed commercial or non-commercial application. It proposes further that long-form FM applications would have ''cut-off'' protection as of the date they are filed with the Commission, and that commercial FM modification applications must protect any previously or simultaneously filed application in the reserved band, in order to eliminate the possibility of creating a cross-band mutually exclusive situation. In addition, the Commission seeks comment on how the auction process for FM translators would work in relation to the specific provisions of 47 CFR 74.1203(a) & (b) and 74.1232(h), and other rules providing for the cancellation of a construction permit under certain circumstances and affording FM broadcasters the right to object to proposed FM translators likely to interfere with the reception of a regularly received existing service, even if there is no prohibited contour overlap.

31. The Commission requests comment on whether any existing requirements contained in the FCC Form 301, FCC Form 346 and FCC Form 349 applications may be eliminated. It proposes to delete the ''reasonable assurance'' of site certification from the FCC Forms 301, 346 and 349, and to rely on strict enforcement of the existing construction requirements to ensure that winning bidders in future broadcast auctions construct their facilities in a timely manner, *see* 47 CFR 73.3598 (establishing two-year construction period for television stations and 18-month construction period for AM, FM and LPTV stations, as well as television and FM translators).

Designated Entities

32. *Small Businesses/Rural Telephone Companies.* To fulfill its statutory responsibilities under section 309(j)(4)(D), the Commission seeks comments on whether it should adopt bidding credits or other tools to ensure the participation of small businesses and rural telephone companies in the provision of these services, and on how we should define small business for any special provisions we may adopt. It specifically seeks comment on which of the small business size standards based on gross revenue ceilings of $3 million, $15 million, or $40 million used in other services is most applicable to auctions of commercial broadcast licenses, or whether an alternative size standard would be more appropriate.

33. *Minority Ownership.* The Commission is concerned about the underepresentation of minorities as owners of broadcast stations and the implications for program diversity, and tentatively concludes that, to the extent that it complies with applicable constitutional standards, it should take steps to further the longstanding goal of increasing minority ownership of broadcast stations, as well as implementing the designated entity provisions of section 309(j)(4) of the Act. *See Metro Broadcasting, Inc.* v. *FCC,* 497 U.S. 547 (1990), finding that broadcast diversity is an important governmental objective and upholding our treatment of minority ownership in comparative proceedings under an intermediate scrutiny standard. It asks for comment on how to do this, consistent with the standards set forth in *Adarand Constructors, Inc.* v. *Pena,* 515 U.S. 200 (1995), a subsequent Supreme Court decision establishing that policies that take race into account are reviewed under a strict (as opposed to intermediate) scrutiny standard.

34. In the event special provisions are adopted for businesses owned by minorities, the Commission must develop eligibility standards to ensure that the scope of its program is appropriate. It thus seeks comment on appropriate eligibility standards to further its goal specifically. The alternatives include (1) requiring that minorities have *de facto* and *de jure* control of the applicant, own more than 50 percent of the equity on a fully diluted basis, and meet the eligibility standards set forth in 47 CFR 1.2110(b)(2); and (2) a standard similar to what was adopted but never implemented for the broadband PCS auctions (i.e., minorities must have the right to receive at least 50.1 percent of the annual distribution of any dividends paid on the voting stock and the right to receive dividends, profits and other distributions from the business in proportion to their equity interests). The Commission also seeks comment on whether, to determine eligibility, it should attribute fully (a) options or conversion rights held by non-minorities unless the decision to exercise the option or conversion rights is beyond the control of the ostensibly passive non-minority owner; (b) the interests of any individual or entity that played a significant role as a promoter in forming the applicant; and (c) any non-voting stockholder unless the corporate documents unequivocally require insulation of the non-voting stockholder from participation in the licensee's affairs to the same extent that a limited partner must be insulated.

35. *Female Ownership:* The Commission also asks for comments on whether special policies are warranted for female-owned applicants, and whether there is sufficient evidence to justify special provisions for women-owned businesses under applicable constitutional standards. *See United States* v. *Virginia Military Institute,* 116 S.Ct 2264, 2274–76 (1996) requiring an ''exceedingly persuasive justification'' to support a state program that made distinctions based upon gender.

36. *Diversification of Ownership.* Diversification of ownership is one of the two primary objectives of the Commission's current licensing system and remains a viable public interest consideration. Given the significant advantage that group owners are likely to have over newcomers in auctions, the Commission seeks comment on whether to adopt some measure in the competitive bidding process that is specifically designed to promote diversification of ownership.

37. To the extent bidding credits are adopted for small businesses, minorities, women, non-group owners or others, the Commission asks for comment on what those credits should be and whether, and to what extent, any such bidding credits should be tiered, as it has done in other auction contexts.

38. To fulfill its statutory obligation to prescribe rules to ''prevent unjust enrichment as a result of the methods employed to issue licenses and permits,'' 47 U.S.C. 309(j)(4)(E), the Commission tentatively proposes to require that, for a period of five years following Program Test Authority, broadcast licensees granted a new license through any designated entity or

diversification bidding credits or other special provision must certify annually their continuing eligibility for such credit or provision, under the rules in effect at the time the license was awarded, and report within 30 days any change affecting such eligibility. It seeks comment on this proposal. Alternatively, the Commission seeks comment on granting a one-time bidding credit, requiring the licensee to hold the station for five years but allowing licensees to bid for additional licenses during the five-year period.

39. And, as a condition for Commission approval for the transfer or assignment of the license to an entity ineligible for the bidding credit or other special provision obtained by the licensee, or for other ownership changes rendering the licensee ineligible for a previously awarded bidding credit or other provision during that five-year period, the Commission tentatively proposes to require a monetary reimbursement to the Treasury for the previously awarded bidding credit. It seeks comment on how to calculate the unjust enrichment payment, on whether there are any mitigating circumstances that would justify excusing altogether or reducing the unjust enrichment payment, and on whether measures other than monetary penalties and reporting requirements are necessary.

Auction Authority for Instructional Television Fixed Service

40. The Instructional Television Fixed Service (ITFS) is a point-to-point microwave service whose licensees have certain characteristics in common with the noncommercial educational and public broadcast stations which are specifically exempted from our section 309(j) auction authority. There is, however, no express exemption for ITFS licenses from the requirement that the Commission must use competitive bidding procedures to award licenses if mutually exclusive applications are filed, and the Commission seeks comment on whether it must, and if not, whether it should, apply competitive bidding to mutually exclusive ITFS applications. If it concludes that it must, or should, auction mutually exclusive ITFS applications, the Commission tentatively proposes to apply the general auction rules adopted in this proceeding for broadcast applications to ITFS applications as well. Comment is sought on this proposal.

Proposals for Pending Broadcast Comparative Renewal Proceedings

41. The Commission does not believe that auctions are a legally available option in pending comparative renewal proceedings, and it seeks comment on how to resolve pending comparative renewal cases. It tentatively proposes that, if it decides to use auctions to resolve the pending comparative initial licensing cases and if the few remaining comparative licensing cases do not settle, it will adopt the two-step renewal procedure previously developed for comparative cellular renewal proceedings. Commenters should address whether this approach, which would be analogous to the procedures for new renewal cases set forth in section 309(k), which eliminates comparative renewal proceedings for renewal applications filed after May 1995, is judicially sustainable. The Commission also asks for comment on whether, as an alternative to the two-step procedure, or in conjunction with the two-step hearing that reaches the second stage, it should consider any comparative factors raised by the applicants on a case-by-case basis.

Procedural Matters

42. This is a permit-but-disclose notice and comment rulemaking. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed, as specified in the Commission's rules.

43. Authority for this rulemaking is contained in 47 U.S.C. 154(i), 154(j), 303(r), 309(g), 309(i), 309(j), 309(l), 403.

Initial Regulatory Flexibility Analysis

44. As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and procedures proposed in this Notice of Proposed Rulemaking. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Secretary shall send a copy of the Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**. *See id.*

I. Need for and Objectives of the Proposed Rules

45. This rulemaking is initiated to implement the Balanced Budget Act of 1997, Pub. L. 105–33, 111 Stat. 251 (1997), which amended section 309(j) and adopted new section 309(l) of the Communications Act. Comments are sought on: (1) proposed auction procedures to award initial licenses in the broadcast services and secondary broadcast services; (2) whether the Commission should use auctions or comparative hearings to resolve pending comparative initial licensing proceedings involving competing applications for commercial radio and television stations filed before July 1, 1997, as authorized by new section 309(l); (3) whether amended section 309(j) requires the use of auctions to award initial licenses for Instructional Television Fixed Services; and (4) how to resolve pending comparative renewal proceedings, which cannot be resolved by auction pursuant to amended section 309(j).

II. Legal Basis

46. This Notice is authorized under the Balanced Budget Act of 1997, Pub. L. 105–33, 111 Stat. 251, Title III, Section 3002, and Sections 4(i), 4(j), 303 (r), 309(g), 309(i), 309(j), 309(l), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 309(g), 309(i), 309(j) 309(l), and 403.

III. Description and Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply

47. Under the RFA, small entities include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' [2]

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Act of 1996 (SBREFA).

[2] We tentatively believe that the SBA's definition of ''small business'' greatly overstates the number of radio and television broadcast stations that are small businesses and is not particularly suitable for our purposes, and we specifically seek comment on how we should define small business for this

48. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business.[3] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[4] Included in this industry are commercial, religious, educational, and other radio stations.[5] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[6] The 1992 Census indicates that 96 percent of radio station establishments (5,861 of 6,127) produced less than $5 million in revenue in 1992.[7] Official Commission records indicate that 11,334 individual radio stations were operating in 1992.[8] As of September 30, 1997, official Commission records indicate that 12,227 radio stations and 2836 FM translator/booster stations were licensed.[9]

49. Additionally, the Small Business Administration defines a television broadcasting station that is independently owned and operated, is not dominant in its field of operation, and has no more than $10.5 million in annual receipts as a small business.[10] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[11] Included in this industry are commercial, religious, educational, and other television stations.[12] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[13] There were 1,509 television stations operating in the nation in 1992.[14] That number has remained fairly constant, as indicated by the approximately 1,563 full power television stations, 2027 low power television stations, and 4994 television translator stations licensed as of September 30, 1997.[15] In 1992,[16] there were 1,155 television station establishments that produced less than $10.0 million in revenue.[17]

50. In addition, there are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions may be included in the definition of a small entity. ITFS is a non-pay, non-commercial educational microwave service that, depending on SBA categorization, has, as small entities, entities generating either $10.5 million or less, or $11.0 million or less, in annual receipts. However, we do not collect, nor are we aware of other collections of, annual revenue data for ITFS licensees. Thus, we tentatively conclude that up to 1932 of these licensees are small entities. We seek comment on this conclusion.

51. In the event the Commission decides, for equitable considerations or other reasons, to hold comparative hearings to resolve certain mutually exclusive pending applications for new commercial radio and television stations filed before July 1, 1997 or for a subset of such pending cases, any new comparative criteria developed in this proceeding will apply to these pending pre-July 1, 1997 applications. We estimate that there are approximately 1475 pending applicants for a new commercial radio or full power television station filed before July 1, 1997 that might be decided by comparative hearing rather than by auctions.

52. Any auction procedures developed in this proceeding for all licenses to provide commercial broadcast service or secondary broadcast service that are presently subject to auction will affect: (1) any entity with a pending application for a construction permit for a new commercial radio or full power television broadcast station, if all mutually exclusive applications were filed after June 30, 1997; (2) any entity with a pending application for a construction permit for a new commercial radio or full power television station filed before July 1, 1997, if mutually exclusive applications were filed and none of the competing applications is a renewal application and if the Commission decides that such initial license applications should be subject to auction; (3) any entity that files an application in the future for a new commercial radio or full power analog television station if mutually exclusive applications are accepted; (4) any entity having a pending application on file, or filing an application in the future, for a new low power television station, or a television or FM translator station, if mutually exclusive applications are accepted; (5) any entity that has a pending or future application to make a major change in an existing facility in any commercial broadcast or secondary broadcast service, if mutually exclusive applications are accepted and if the Commission decides to auction such major change applications; and (6) any entity that has a pending or future ITFS application, if mutually exclusive applications are accepted and if the Commission decides that it must, or should, auction mutually exclusive ITFS applications.

53. If auction procedures are adopted in this proceeding, all entities that file applications for construction permits to provide commercial broadcast service before the effective date of any such auction procedures must submit a completed short-form application (FCC Form 175) and any engineering information necessary to determine mutual exclusivity, if resolution of their applications is subject to competitive

---

purpose. However, for purposes of this Notice we are utilizing the SBA's definition in determining the number of small businesses to which any auction procedures or revised comparative criteria would apply. In this regard, we reserve the right to adopt a more suitable definition of ''small business'' as applied to radio and television broadcast stations. *See Fifth Report and Order* in MM Docket No. 87–268 (*Advanced Television Systems and their Impact upon the Existing Television Broadcast Service*), FCC 97–116 at 62 (April 27, 1997), 62 FR 26996, May 16, 1997 ; *Report and Order* in MM Docket No. 93–48 (*Children's Educational and Informational Programming*), 61 FR 43981, 43992 (August 27, 1996), citing 5 U.S.C. 601 (3). *See also Order and Notice of Proposed Rulemaking* in MM Docket No. 96–16 (*Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines*), 61 FR 9964, March 12, 1996, 11 FCC Rcd 5154 (1996), requesting comment as to whether relief should be afforded to the stations: (1) based on staff size and what size should be considered sufficient for relief (e.g., 10 or fewer full-time employees); (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force.

[3] 13 CFR 121.201, Standard Industrial Code (SIC) 4832 (1996).

[4] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *supra* note 78, Appendix A–9.

[5] *Id.*

[6] *Id.*

[7] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[8] FCC News Release No. 31327, Jan. 13, 1993.

[9] FCC News Release No. 80286, Nov. 6, 1997.

[10] 13 CFR 121.201, SIC 4833.

[11] Economics and Statistics Administration, Bureau of Census, U.S. Dep't of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, Appendix A–9 (1995).

[12] *Id.*

[13] *Id.*

[14] FCC News Release No. 31327, Jan. 13, 1993; Economics and Statistics Administration, Bureau of Census, U.S. Dep't of Commerce, supra note , Appendix A–9.

[15] FCC News Release 80286, Nov. 6, 1997.

[16] Census for communications establishments are performed every five years, during years that end with a ''2'' or ''7''. *See* Economics and Statistics Administration, Bureau of Census, U.S. Dep't of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1, Appendix A–9, III (1995).

[17] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

bidding procedures. This requirement would also apply to entities that file applications for construction permits to make major changes in existing commercial broadcast stations during this period if the Commission ultimately decides to resolve mutual exclusivity among competing major change applications by competitive bidding. In the event that an applicant is the winning bidder, it must submit a long-form application that would then be reviewed by the agency. We estimate that, as of October 31, 1997 there are approximately 1475 pending applicants for a new commercial radio or full power television station filed before July 1, 1997; approximately 315 pending applications for new radio and full power television stations filed after June 30, 1997 that are mutually exclusive with permit applications filed after that date; approximately 100 pending applications for new low power television stations/television translator stations; and approximately 24 pending applications for translator stations. All of these pending mutually exclusive applications will be subject to any auction procedures for analog broadcast service adopted in this proceeding.

54. Applicants for construction permits are required to demonstrate sufficient financing to construct and initially operate the proposed station. However, we do not require the filing of financial information concerning the entity seeking a construction permit. Thus, except for those applicants already owning a broadcast station that seek a permit to construct additional stations, we have no data on file as to whether entities with pending permit applications, which are subject to the new auction rules for analog broadcast service, meet the Small Business Administration's definition of small business concern. We assume for the purposes of this IRFA that most of the entities formed for the purpose of applying for a permit to construct a new radio broadcast station or a television station are small entities, as defined by the SBA rules.

55. In addition to the pending applicants that may be affected by the proposed auction procedures for analog broadcast service, any entity that applies for a construction permit for a new radio or television station in the future will be subject to the proposed auction procedures if mutually exclusive applications are filed. The number of entities that in the future may seek a construction permit for a new analog broadcast station is unknown. We anticipate, however, that due to the passage of the Telecommunications Act of 1996 and corresponding changes in our multiple ownership and attribution rules, the characteristics of future broadcast applicants may be somewhat different from those of pending applicants. We invite comment as to the number and characteristics of future applicants for new commercial analog broadcast stations, and for commercial facilities in the various secondary broadcast services.

56. The new auction procedures would not apply to entities that filed applications for construction permits after June 30, 1997 for new commercial radio and full power television stations that are mutually exclusive with two or more pending initial license applications filed before July 1, 1997. We estimate that as of October 31, 1997, there were approximately 7 such applications (5 radio and 2 TV) that will be ineligible to participate in an auction to choose among mutually exclusive pre-July 1 applications for new commercial broadcast stations.

57. In addition, any competitive bidding procedures developed for analog broadcast service will not apply to the few pending comparative renewal cases. Resolution of these cases will depend on any comparative criteria, two-step renewal process or other basis adopted in this proceeding for deciding these comparative renewal cases. This will affect broadcast station licensees that filed their applications for renewal of license on or before May 1, 1995 and any pending initial license applications that are mutually exclusive with such renewal applications. We estimate that there are approximately 9 initial license applications that are mutually exclusive with 8 pending renewal applications. This includes approximately 15 television applicants and 2 radio applicants.

IV. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

58. Comment is sought on what filing and compliance requirements should be associated with any competitive bidding procedures consistent with the Commission's statutory obligations to require such transfer disclosures and other measures necessary to prevent unjust enrichment and the court's concerns in *Bechtel* regarding reliance on purely ephemeral licensing considerations. The Notice tentatively proposes that, if bidding credits or other special provisions are adopted for any designated entities and/or non-group owners, licensees benefitting from such special provisions must annually certify for five years their continuing eligibility for such bidding credit or special provision under the rules in effect at the time the license was awarded, and report any changes in such eligibility within 30 days. In addition, applications for construction permits, short-form auction applications, and other submissions will be required of those falling within any proposed competitive bidding procedures, as described in Section III of this analysis.

V. Significant Alternatives To Proposed Rule Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives

59. This Notice contains no significant alternatives because amended section 309(j) requires that the Commission use competitive bidding procedures to award virtually all licenses, including construction permits for new commercial broadcast facilities, and this requirement applies to most pending broadcast applications, except for comparative licensing cases that involve applications for new full service radio and television stations filed before July 1, 1997. *See* ¶¶39–82. As to that narrow category of applications, *see* ¶¶23–28, in which the Commission has the authority to resolve mutually exclusivity by comparative hearings rather than by competitive bidding procedures, the Commission's discretion is nevertheless constrained by the court's decision in *Bechtel* v. *FCC,* 10 F.3d 875 (D.C. Cir. 1993), and the potential difficulty of devising judicially sustainable comparative criteria. Although the Notice tentatively concludes that, from a public interest standpoint competitive bidding procedures are preferable in these cases, *see* ¶¶ 13–20, it asks for comment on whether there are equitable reasons to decide these cases, or a subset of these cases, by comparative hearings. Moreover, we believe that the proposed competitive bidding procedures for all future, and, potentially, all pending, applications for construction permits to provide commercial broadcast service that are presently auctionable under the statute will have a minimal impact on small entities who apply for and obtain broadcast licenses. Also, to minimize any possible impact on small businesses, the Notice asks for comment on whether bidding credits or other special provisions are warranted for small businesses, including those owned by members of a minority group or women and for rural telephone companies. The Notice further concludes that, to the extent that it is permissible under applicable constitutional standards, the Commission should take steps to further its longstanding goal of increasing minority ownership of broadcast

stations and implementing the designated entity provisions of section 309(j)(4) of the Act.

VI. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

60. None.

Ordering Clauses

61. *Accordingly, It is Ordered, That Notice is Hereby Given of the proposed regulatory changes described above, and that Comment is Sought* on these proposals.

62. It Is Further Ordered, That pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, comments *Shall Be Filed* on or before January 26, 1998 and reply comments *Shall Be filed* on or before February 17, 1998. To file formally in this proceeding, commenters must file an original and four copies of all comments, reply comments, and supporting documents filed in this proceeding. If commenters want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Room 222, 1919 M Street, N.W., Washington, D.C. 20554. In addition, commenters should file copies of any such pleadings with the Mass Media Bureau, Video Services Division, Room 702, and Audio Services Division, Room 302, 1919 M St., N.W., Washington, D.C. 20554, and with the Office of General Counsel, Room 610, 1919 M St., N.W., Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M St., N.W., Washington, D.C. 20554.

63. It Is Further Ordered, That written comments by the public on the proposed and/or modified information collections are due January 26, 1998. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before February 10, 1998. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain—t@al.eop.gov.

64. It is Further Ordered, That, effective upon the close of business on the date of release of this Notice of Proposed Rulemaking, the Commission *Will Not Accept* applications for construction permits for new stations or for major changes to existing facilities in any commercial broadcast or secondary broadcast service. However, the Commission *Will Accept* applications timely filed in response to an outstanding cut-off list or an open filing window.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–32520 Filed 12–11–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. RST–90–1, Notice No. 7]

RIN 2130–AA75

Track Safety Standards; Miscellaneous Proposed Revisions

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking, request for additional comments.

SUMMARY: This notice contains information about a document entitled, ''Evaluation of Proposed High Speed Track Surface Geometry Specification'' which addresses proposed track safety standards for high speed rail and was submitted to FRA by the Volpe National Transportation Systems Center (VNTSC). The document was submitted after the close of the comment period for the Notice of Proposed Rulemaking to revise the Federal track safety standards, published July 3, 1997 at 62 FR 36138. Because the contents of the submission may affect the outcome of the final rule in this proceeding, this notice solicits comments on the document.

DATES: The deadline for submission of comments to the VNTSC document is December 22, 1997.

ADDRESSES: To view the VNTSC document: The VNTSC document for which FRA is soliciting comments may be reviewed in Room 7051 of FRA headquarters at 1120 Vermont Avenue, N.W., Washington, D.C.

Written comments: Written comments should identify the docket number and the notice number and should be submitted in triplicate to: Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590. Persons desiring to be notified that their written comments have been received by FRA should include with their comments a stamped, self-addressed postcard. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination during regular business hours in Room 7051 of FRA headquarters at 1120 Vermont Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: David W. Jamieson, Office of Safety Enforcement, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 (telephone: 202–632–3341), or Nancy Lummen Lewis, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590 (telephone: 202–632–3174).

SUPPLEMENTARY INFORMATION: This notice summarizes a working paper issued recently by the VNTSC entitled, ''Evaluation of Proposed High Speed Track Surface Geometry Specification,'' dated December 1, 1997. The working paper has been placed in the docket for this proceeding. The working paper evaluates the response of different high speed locomotive designs to track profile geometry variations. It focuses on a comparative analysis of high speed locomotive designs with carbody-mounted traction motors and locomotive designs with truck-mounted traction motors. The minimum amplitudes of track profile variations required to cause excessive vertical accelerations in the operator's cab and to cause suspension bottoming are compared with the maximum amplitudes prescribed in the proposed high speed track safety standards published in a Notice of Proposed Rulemaking on July 3, 1997. The analysis shows that a locomotive designed with truck-mounted traction motors requires an approximately 33 percent smaller track profile variation amplitude to cause excessive vertical accelerations than a locomotive designed with carbody-mounted traction motors.

The analysis contained in the VNTSC working paper may affect the outome of the final rule for this proceeding. Therefore, FRA invites comments relevant to the information included in the working paper.

Issued in Washington, D.C. on December 5, 1997.

Edward R. English,

Director, Office of Safety Enforcement, Federal Railroad Administration.

[FR Doc. 97–32510 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[I.D. 042597B]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Gulf of Maine Harbor Porpoise Take Reduction Plan Regulations

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

ACTION: Reopening of public comment period.

SUMMARY: On August 13, 1997, NMFS published proposed regulations to implement a plan to reduce the bycatch and mortality of harbor porpoises that occur incidental to sink gillnet fishing in the Gulf of Maine. The public comment period for the proposed regulations ended on October 14, 1997. NMFS is hereby reopening the public comment period for an additional 30 days. The comment period will reopen on December 16, 1997, and extend until January 14, 1998.

DATES: Written comments must be received on or before January 14, 1998.

ADDRESSES: Send comments on the proposed regulations to Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, or by calling (301) 713-2322. Copies of the draft Harbor Porpoise Take Reduction Plan (HPTRP) and Environmental Assessment are available upon request from Douglas Beach, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, or from Donna Wieting, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kevin Chu, NMFS, 508–495–2291 or Donna Wieting, NMFS, 301–713–2322.

SUPPLEMENTARY INFORMATION: On August 13, 1997 (62 FR 43302), NMFS published a proposed regulation to implement a plan to reduce the bycatch and mortality of harbor porpoises that occur incidental to sink gillnet fishing in the Gulf of Maine. These regulations were based on a draft HPTRP submitted by the Gulf of Maine Harbor Porpoise Take Reduction Team (HPTRT) pursuant to the Marine Mammal Protection Act. The notice indicated that comments must be received by October 14, 1997.

NMFS has decided to reconvene the HPTRT on December 16 and 17, 1997. NMFS has, therefore, decided to reopen the public comment period on the proposed regulations for an additional 30 days from the first date of the HPTRT meeting.

Dated: December 8, 1997.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–32474 Filed 12–11–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971124274–7274–01; I.D. 110597A]

RIN 0648–AH67

Fisheries of the Exclusive Economic Zone Off Alaska; Forage Fish Species Category

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 36 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 39 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). This action would define a forage fish species category in both FMPs and implement associated management measures. The intended effect of this action is to prevent the development of a commercial directed fishery for forage fish, which are a critical food source for many marine mammal, seabird, and fish species. This action is necessary to conserve and manage the forage fish resource off Alaska and to further the goals and objectives of the FMPs.

DATES: Comments on the proposed rule must be received at the following address by January 26, 1998.

ADDRESSES: Comments must be sent to the Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th. Street, Juneau, AK. Copies of the proposed FMP amendments and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for Amendments 36 and 39 are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228.

SUPPLEMENTARY INFORMATION: The domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and of the Gulf of Alaska (GOA) are managed by NMFS under the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the BSAI and GOA appear at 50 CFR parts 600 and 679.

The Council has submitted Amendments 36 and 39 for Secretarial review and a Notice of Availability (NOA) of the FMP amendments was published on November 12, 1997 (62 FR 60682), with comments on the FMP amendments invited through January 12, 1997. Written comments may address the FMP amendments, the proposed rule, or both, but must be received by January 12, 1997, to be considered in the approval/disapproval decision on the FMP amendments.

Management Background and Need for Action

Forage fish are abundant fishes that are preyed upon by marine mammals, seabirds, and commercially important groundfish species. Forage fish perform a critical role in the complex ecosystem functions of the BSAI and the GOA by providing the transfer of energy from the primary or secondary producers to higher trophic levels.

Significant declines in marine mammals and seabirds in the BSAI and GOA have raised concerns that decreases in the forage fish biomass may contribute to the further decline of marine mammal, seabird, and commercially important fish populations. Forage fish are the principal diet of more than two thirds of Alaskan seabirds. In addition, many seabirds can subsist on a variety of invertebrates and fish during

nonbreeding months but can only raise their nestlings on forage fish. Small forage fish such as capelin, herring, sandlance, and eulachon have also been recognized as important prey items for a variety of marine mammal species including Northern fur seal, Steller sea lion, harbor seal, spotted seal, bearded seal, humpback whale, and fin whale. Additional information on forage fish and their role in the ecosystem is available in the EA/RIR prepared for Amendments 36 and 39 (see **ADDRESSES**).

Members of the fishing industry and public have expressed concern that the current FMP structure may allow unrestricted commercial harvest to occur on forage fish species because these species are currently grouped into the ''other species'' and non-allocated categories of the FMPs. In addition, the International Council for the Exploration at Sea (ICES) has recently recommended that fishery managers develop measures to avoid the commercial targeting of food resources that are important to marine mammals and seabirds. Establishing forage fish as a separate category in the FMPs would provide the mechanism to better manage these species.

Forage Fish Species Category

Amendments 36 and 39 would establish a new species category for forage fish. The forage fish species category would include all species of the following families:

Osmeridae (eulachon, capelin, and other smelts),

Myctophidae (lanternfishes),

Bathylagidae (deep-sea smelts),

Ammodytidae (Pacific sand lance),

Trichodontidae (Pacific sand fish),

Pholidae (gunnels),

Stichaeidae (pricklebacks, warbonnets, eelblennys, cockscombs and shannys),

Gonostomatidae (bristlemouths, lightfishes, and anglemouths), and the Order *Euphausiacea* (krill).

These species have been grouped together because they are considered to be primary food resources for other marine animals and they have the potential to be the targets of a commercial fishery.

Management Measures Proposed for Forage Fish

Affected Vessels and Processors

The following management measures would apply to all vessels fishing for groundfish in the Federal waters of the BSAI or GOA or processing groundfish harvested in the Federal waters of the BSAI or GOA. These management measures do not limit traditional or subsistence harvests of forage fish species from within State waters.

Prohibition on Directed Fishing

Under Amendments 36 and 39, directed fishing for forage fish would be prohibited at all times in the Federal waters of the BSAI and GOA. A maximum retainable bycatch (MRB) percentage of 2 percent would be established for forage fish, meaning that vessels fishing for groundfish could retain a quantity of forage fish equal to no more than 2 percent of the round weight or round-weight equivalent of groundfish species open to directed fishing that are retained on board the vessel during a fishing trip. NMFS data indicate that the aggregate percentage of forage fish incidentally caught in current groundfish fisheries rarely exceeds 2 percent, and many vessels rarely or never encounter catch of forage fish species. Consequently, bycatch of forage fish species is not considered a problem in the groundfish fisheries off Alaska, and the 2-percent MRB is unlikely to result in increased discards of forage fish species.

Harvest Quotas

Insufficient information exists upon which to specify a total allowable catch amount (TAC) for forage fish species. Therefore, Amendments 36 and 39 do not establish procedures for establishing an annual TAC for forage fish species. However, by establishing a new species category for forage fish, NMFS will be able to collect additional data on forage fish from vessel logbooks, weekly production reports, and observer reports. This information may be used to evaluate the need for and appropriateness of other management measures for forage fish species.

Limits on Sale, Barter, Trade or Processing

The sale, barter, trade, or processing of forage fish species would be prohibited for vessels fishing for groundfish in the Federal waters of the BSAI or GOA, or processing groundfish harvested in the BSAI or GOA, except that retained catch of forage fish species not exceeding the 2-percent MRB may be processed into fishmeal and sold. The Council chose to allow processing of forage fish into fishmeal within the 2-percent MRB amount to avoid placing an undue burden on operations that process unsorted processing waste into fishmeal. Industry representatives indicated that separating small quantities of forage fish from the volumes of fish and fish waste entering a fishmeal plant would be nearly impossible. The small volumes of fishmeal production that would be allowed under this rule are not expected to provide an incentive for vessels to target on forage fish through ''topping off'' activity.

These restrictions would not apply to onshore processors due to limitations of the Secretary's authority under the Magnuson-Stevens Act. At the June 1997 Council meeting, the State of Alaska indicated that it intends to proceed with parallel forage fish regulations to restrict the harvest of forage fish within State waters and the processing of forage fish by onshore processors.

Classification

At this time, NMFS has not determined that the amendments that this rule would implement are consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce made the following certification to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This action would affect a substantial number of small entities because the proposed management measures would apply to all vessels fishing for or processing groundfish in the Federal waters off Alaska. However, the impacts of the proposed action would not be ''significant'' the purpose of the Regulatory Flexibility Act (RFA). Compliance costs would not be significant because vessels fishing for groundfish rarely, if ever, incidentally harvest forage fish in quantities that would exceed the proposed 2-percent MRB. While vessel operators would be required to monitor catch and discards of forage fish as part of their normal recordkeeping and reporting requirements, these compliance costs would not reduce annual gross revenues by more than 5 percent, increase total costs of production by more than 5 percent, or result in compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities. The proposed action would affect fishermen who wish to target forage fish. Several vessel operators have expressed interest in pursuing the capelin fishery and have done so in the past. Alaska Department of Fish and Game records indicate that between 1984 and 1994, six vessels harvested a combined total of 1,493 mt of capelin from the Togiak region of Bristol Bay. These six vessels do not represent a substantial number of small entities for purposes of the RFA. Although NMFS does not have data on how great a

percentage of these six vessels' annual incomes derives from the directed capelin fishery, it is unlikely that any of these vessels would experience a greater than 5 percent reduction in gross annual income as a result of this rule given the small amount of capelin taken in the directed fishery. No commercial harvests of other forage fish species have been reported in Alaska.

An informal consultation under the Endangered Species Act was concluded for Amendments 36 and 39 on July 11, 1997. As a result of the informal consultation, the Regional Administrator determined that fishing activities under this rule are not likely to affect adversely endangered or threatened species.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 5, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition of ''forage fish'' is added in alphabetical order as follows:

§ 679.2 Definitions.

* * * * *

Forage fish means all species of the following families:

(1) *Osmeridae* (eulachon, capelin and other smelts),

(2) *Myctophidae* (lanternfishes),

(3) *Bathylagidae* (deep-sea smelts),

(4) *Ammodytidae* (Pacific sand lance),

(5) *Trichodontidae* (Pacific sandfish),

(6) *Pholidae* (gunnels),

(7) *Stichaeidae* (pricklebacks, warbonnets, eelblennys, cockscombs and shannys),

(8) *Gonostomatidae* (bristlemouths, lightfishes, and anglemouths), and the Order

(9) *Euphausiacea* (krill).

3. In § 679.20, a new paragraph (i) is added as follows:

§ 679.20 General limitations.

* * * * *

(i) *Forage fish*—(1) *Definition.* See § 679.2.

(2) *Applicability.* The provisions of § 679.20(i) apply to all vessels fishing for groundfish in the BSAI or GOA and to all vessels processing groundfish harvested in the BSAI and GOA.

(3) *Closure to directed fishing.* Directed fishing for forage fish is prohibited at all times in the BSAI and GOA.

(4) *Limits on sale, barter, trade, and processing.* The sale, barter, trade, or processing of forage fish is prohibited, except as provided in paragraph (i)(5) of this section.

(5) *Allowable fishmeal production.* Retained catch of forage fish not exceeding the maximum retainable bycatch amount may be processed into fishmeal for sale, barter, or trade.

* * * * *

4. In § 679.22, paragraph (c) is revised to read as follows:

§ 679.22 Closures.

* * * * *

(c) *Directed fishing closures.* See § 679.20(d) and § 679.20(i).

* * * * *

5. Table 2 to 50 CFR part 679 is amended by adding species codes 207 Gunnels, 208 Pricklebacks, 210 Pacific sandfish, 772 Lanternfishes, 209 Bristlemouths, lightfishes, and anglemouths (Gonostomatidae), 773 Deep-sea smelt (Bathylagidae), 774 Pacific sand lance, 800 Krill, in numerical order under as follows:

Table 2 to Part 679.—Species Codes

Code	Species
* * * * *	
GROUP CODES	
* * * * *	
207	Gunnels
208	Pricklebacks, warbonnets, eelblennys, cockscombs and shannys (family *Stichaeids*)
209	Bristlemouths, lightfishes, and anglemouths (family *Gonostomatids*)
210	Pacific sandfish
* * * * *	
772	Lanternfishes
773	Deep-sea smelts (family *Bathylagids*)
774	Pacific sand lance
800	Krill (family *Euphausiids*)

* * * * *

6. Tables 10 and 11 to 50 CFR part 679 are amended by adding a column for aggregate forage fish as follows:

In Table 10 to 50 CFR part 679, a column for ''Aggregate Forage Fish'' will be added between columns ''Atka mackerel'' and ''Other species,'' and footnote 5 is added to read ''Forage fish are defined at § 679.20(i)(1).''

In Table 11 to 50 CFR part 679, a column for ''Aggregate Forage Fish'' will be added between columns ''Squid'' and ''Other species,'' and footnote 3 will be redesignated as footnote 4, and a new footnote 3 is added to read ''Forage fish are defined at § 679.20(i)(1).''

The tables, as amended, read as follows:

TABLE 10.—CURRENT GULF OF ALASKA RETAINABLE PERCENTAGES

	Bycatch Species[1]												
	Pollock	Pacific cod	Deep flatfish	Rex sole	Flathead sole	Shallow flatfish	Arrowtooth	Sablefish	Aggregated rockfish[2]	DSR SEEO[4]	Atka mackerel	Aggregate Forage fish[5]	Other species
Basis Species													
Pollock	[3]na	20	20	20	20	20	35	1	5	10	20	2	20
Pacific cod	20	[3]na	20	20	20	20	35	1	5	10	20	2	20
Deep flatfish	20	20	[3]na	20	20	20	35	7	15	1	20	2	20
Rex sole	20	20	20	[3]na	20	20	35	7	15	1	20	2	20
Flathead sole	20	20	20	20	[3]na	20	35	7	15	1	20	2	20
Shallow flatfish	20	20	20	20	20	[3]na	35	1	5	10	20	2	20
Arrowtooth	5	5	0	0	0	0	[3]na	0	0	0	0	2	20
Sablefish	20	20	20	20	20	20	35	[3]na	15	1	20	2	20
Pacific Ocean perch	20	20	20	20	20	20	35	7	15	1	20	2	20
Shortraker/rougheye	20	20	20	20	20	20	35	7	15	1	20	2	20
Other rockfish	20	20	20	20	20	20	35	7	15	1	20	2	20
Northern rockfish	20	20	20	20	20	20	35	7	15	1	20	2	20
Pelagic rockfish	20	20	20	20	20	20	35	7	15	1	20	2	20
DSR-SEEO	20	20	20	20	20	20	35	7	15	[3]na	20	2	20

TABLE 10.—CURRENT GULF OF ALASKA RETAINABLE PERCENTAGES—Continued

	Bycatch Species[1]												
	Pollock	Pacific cod	Deep flatfish	Rex sole	Flathead sole	Shallow flatfish	Arrowtooth	Sablefish	Aggregated rockfish[2]	DSR SEEO[4]	Atka mackerel	Aggregate Forage fish[5]	Other species
Thornyhead	20	20	20	20	20	20	35	7	15	1	20	2	20
Atka mackerel	20	20	20	20	20	20	35	1	5	10	[3]na	2	20
Other species	20	20	20	20	20	20	35	1	5	10	20	2	[3]na
Aggregated amount non-groundfish species	20	20	20	20	20	20	35	1	5	10	20	2	20

[1] For definition of species, see Table 1 of the Gulf of Alaska groundfish specifications.
[2] Aggregated rockfish means rockfish of the genera *Sebastes* and *Sebastolobus* except in the southeast Outside District where demersal shelf rockfish (DSR) is a separate category.
[3] na = not applicable.
[4] SEEO = Southeast Outside District.
[5] Forage fish are defined at § 679.20(i)(1).

TABLE 11.—BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA RETAINABLE PERCENTAGES

	Bycatch species[1]													
	Pollock	Pacific cod	Atka mackerel	Arrowtooth	Yellowfin sole	Other flatfish	Rock sole	Flathead sole	Greenland turbot	Sablefish	Aggregated rockfish[2]	Aggregate Forage fish[3]	Squid	Other species
Basis Species[1]														
Pollock	[4]na	20	20	35	20	20	20	20	1	1	5	20	2	20
Pacific cod	20	na	20	35	20	20	20	20	1	1	5	20	2	20
Atka mackerel	20	20	na	35	20	20	20	20	1	1	5	20	2	20
Arrowtooth	0	0	0	na	0	0	0	0	0	0	0	0	2	0
Yellowfin sole	20	20	20	35	na	35	35	35	1	1	5	20	2	20
Other flatfish	20	20	20	35	35	na	35	35	1	1	5	20	2	20
Rock sole	20	20	20	35	35	35	na	35	1	1	5	20	2	20
Flathead sole	20	20	20	35	35	35	35	na	35	15	15	20	2	20
Greenland turbot	20	20	20	35	20	20	20	20	na	15	15	20	2	20
Sablefish	20	20	20	35	20	20	20	20	35	na	15	20	2	20
Other rockfish	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Other red rockfish-BS	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Pacific Ocean perch	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Sharpchin/ Northern-AI	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Shortraker/ Rougheye-AI	20	20	20	35	20	20	20	20	35	15	15	20	2	20
Squid	20	20	20	35	20	20	20	20	1	1	5	[3]na	2	20
Other species	20	20	20	35	20	20	20	20	1	1	5	20	2	[3]na
Aggregated amount non-groundfish species	20	20	20	35	20	20	20	20	1	1	5	20	2	20

[1] For definition of species, see Table 1 of the Bering Sea and Aleutian Islands groundfish specifications.
[2] Aggregated rockfish of the genera *Sebastes* and *Sebastolobus.*
[3] Forage fish are defined at § 679.20(i)(1).
[4] na = not applicable.

[FR Doc. 97–32473 Filed 12–11–97; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 62, No. 239
Friday, December 12, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Hy-Gene, Inc., of Ventura, California, an exclusive license for certain uses in the field of medical devices to U.S. Patent Application Serial No. 08/233,173, filed April 26, 1994, and U.S. Patent No. 5,676,994, issued October 14, 1997, both entitled ''Non-Separable Starch-Oil Compositions.'' Notice of Availability for U.S. Patent Application Serial No. 08/233,173 was published in the **Federal Register** on October 24, 1994; Patent No. 5,676,994 is a continuation of Serial No. 08/233,173.

DATES: Comments must be received on or before February 10, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of the Director, National Center for Agricultural Utilization Research, Room 2042, 1815 N. University Street, Peoria, Illinois 61604.

FOR FURTHER INFORMATION CONTACT: Andrew Watkins of the National Center for Agricultural Utilization Research at the Peoria address given above; telephone: 309–681–6545.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to these inventions are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as Hy-Gene, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 97–32543 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Bylaws Of Corporation

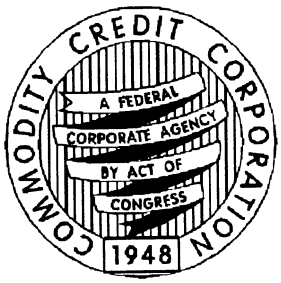
The Bylaws of the Commodity Credit Corporation, amended November 3, 1997, are as follows:

Offices

1. The principal office of the Corporation shall be in the City of Washington, District of Columbia, and the Corporation shall also have offices at such other places as it may deem necessary or desirable in the conduct of its business.

Seal

2. There is impressed below the official seal which is hereby adopted for the Corporation. The seal may be used by causing it or its facsimile to be impressed, affixed, or reproduced.



Meetings Of The Board

3. Meetings of the Board of Directors (Board) shall be held, whenever necessary, at the U.S. Department of Agriculture in the City of Washington, D.C. All meetings of the Board shall be held in accordance with provisions of the Government in the Sunshine Act (5 U.S.C. 552b). Meetings of the Board may be called at any time by the Chairman, the Vice Chairman, or the President. The Executive Vice President may call a meeting at the written request of any five Members. Notice of meetings shall be given either orally or in writing. Any Member may waive in writing any notice of a meeting, whether before or after the time of the meeting, and the presence of a Member at any meeting shall constitute a waiver of notice of such meeting. Any and all business may be transacted at any meeting unless otherwise indicated in the notice thereof.

4. The Secretary of Agriculture shall serve as Chairman of the Board. The Deputy Secretary of Agriculture shall serve as Vice Chairman of the Board and, in the absence or unavailability of the Chairman, shall preside at meetings of the Board. In the absence or unavailability of the Chairman and the Vice Chairman, the President of the Corporation shall preside at meetings of the Board. In the absence or unavailability of the Chairman, the Vice Chairman, and the President, the Members present at the meeting shall designate a Presiding Officer.

5. At any meeting of the Board a quorum shall consist of five Members. The act of a majority of the Members present at any meeting at which there is a quorum shall be the act of the Board.

6. The General Counsel of the Department of Agriculture, whose office shall perform all legal work of the Corporation, and the Associate General Counsel for International Affairs, Commodity Programs and Food Assistance Programs, shall serve as General Counsel and Associate General Counsel of the Corporation, respectively.

Compensation of Board Members

7. The compensation of each Member shall be prescribed by the Secretary of Agriculture. Any Member who holds another office or position within the Federal Government shall receive compensation at the rate provided for such other office or position in lieu of compensation as a Member.

Officers

8. The officers of the Corporation shall be: a President; an Executive Vice President; Vice Presidents; Deputy Vice Presidents; a Secretary; a Deputy Secretary; an Assistant Secretary; a Controller; a Treasurer; a Chief Accountant; and such additional

officers as the Secretary of Agriculture may appoint.

9. The Under Secretary of Agriculture for Farm and Foreign Agricultural Services shall be the ex officio President of the Corporation.

10. The following officials of the Farm Service Agency (FSA), the Foreign Agricultural Service (FAS), the Food and Consumer Service (FCS), the Natural Resources Conservation Service (NRCS), and the Agricultural Marketing Service (AMS) shall be ex officio officers of the Corporation:

Administrator, FSA ..	Executive Vice President.
Administrator, AMS	Vice President.
Administrator, FAS ..	Vice President.
Administrator, FCS ..	Vice President.
Chief, NRCS	Vice President.
General Sales Manager, FAS.	Vice President.
Associate Administrator, FSA.	Vice President.
Deputy Administrator, Commodity Operations, FSA.	Deputy Vice President.
Deputy Administrator, Management, FSA.	Deputy Vice President.
Deputy Administrator, Farm Programs, FSA.	Deputy Vice President.
Director, Economic and Policy Analysis Staff, FSA.	Deputy Vice Pesident.
Associate Chief, NRCS.	Deputy Vice President.
Deputy Chief, Natural Resources Conservation Programs, NRCS.	Deputy Vice President.
Deputy Chief, Management and Strategic Planning, NRCS.	Deputy Vice President.
Executive Assistant to the Administrator, FSA.	Secretary.
Office of the Administrator, FSA.	Deputy Secretary.
Office of the Administrator, FSA.	Assistant Secretary.
Director, Financial Management Division, FSA.	Controller.
Deputy Director, Financial Management Division,FSA.	Treasurer.
Chief, Financial Accounting and Reporting Branch, Financial Management Division, FSA.	Chief Accountant.

The person occupying, in an acting capacity, any position listed in this paragraph shall, during occupancy of such position, act as the corresponding officer of the Corporation.

11. Officers who do not hold office ex officio shall be appointed by the Secretary of Agriculture and shall hold office until their respective appointments shall have been terminated.

The President

12. The President shall have general supervision and direction of the Corporation, its officers and employees.

The Vice Presidents

13. (a) The Executive Vice President shall be the chief executive officer of the Corporation. Except as provided in paragraphs (b), (c), (d), (e), and (f) below, the Executive Vice President shall have general supervision and direction of: the preparation of policies and programs for submission to the Board; the administration of the policies and programs approved by the Board; and the day-to-day conduct of the business of the Corporation and its officers and employees.

(b) The Vice President who is the Administrator, FAS, shall be responsible for preparation for submission by the Executive Vice President to the Board of those policies and programs of the Corporation which are for performance through the facilities and personnel of FAS. This Vice President shall have responsibility for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of FAS, and shall perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(c) The Vice President who is the Administrator, AMS, shall be responsible for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of AMS.

This Vice President shall perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(d) The Vice President who is the General Sales Manager, FAS, shall be responsible for preparation for submission by the Executive Vice President to the Board of those policies and programs of the Corporation which are for performance through the facilities and personnel of FAS. This Vice President shall also have responsibility for the administration of those operations of the Corporation, under the policies and programs approved by the Board, which are carried out through facilities and personnel of FAS, and shall perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(e) The Vice President who is the Administrator, FCS, shall be responsible for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of FCS. This Vice President shall perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(f) The Vice President who is the Chief, NRCS, shall be responsible for preparation for submission by the Executive Vice President to the Board of those policies and programs of the Corporation which are for performance through the facilities and personnel of NRCS. This Vice President shall have responsibility for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of NRCS, and shall perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

14. The Vice President who is the Associate Administrator, FSA, and the Deputy Vice Presidents shall assist the Executive Vice President to such extent as the President or the Executive Vice President shall prescribe, and shall perform such special duties and exercise such powers as may be prescribed, from time-to-time, by the Secretary of Agriculture, the Board, the President of the Corporation, or the Executive Vice President of the Corporation.

The Secretary

15. The Secretary shall: attend and keep the minutes of all meetings of the Board; serve all required notices of meetings of the Board; sign all papers and instruments that require the Secretary's signature; attest the authenticity of and affix the seal of the Corporation upon any instrument requiring such action; and perform such other duties and exercise such other powers as are commonly incidental to the Office of Secretary as well as such other duties as may be prescribed, from time-to-time, by the President or the Executive Vice President.

The Controller

16. The Controller shall: have charge of all fiscal and accounting affairs of the Corporation, including all borrowings and related financial arrangements and claims activities, and perform such other duties as may be prescribed, from time-to-time, by the President or the Executive Vice President.

The Treasurer

17. (a) The Treasurer shall: assist the Controller in the administration of all fiscal and accounting affairs of the Corporation, including all borrowings and related financial arrangements and claims activities, and perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed, from time-to-time, by the Controller, the President, or the Executive Vice President.

(b) The Treasurer, under the general supervision and direction of the Controller, shall: supervise the receipt and disbursement of all funds of the Corporation; designate qualified persons to authorize disbursement of corporate funds; be responsible for documents relating to the general financing operations of the Corporation; and supervise the claims activities of the Corporation.

The Chief Accountant

18. The Chief Accountant, under the general supervision and direction of the Controller, shall: have charge of the general accounting books and accounts of the Corporation and the preparation of financial statements and reports; be responsible for the issuance of policies and practices related to accounting matters and procedures, including those dealing with official inventories and records; and perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed, from time-to-time, by the Controller.

Other Officials

19. Except as otherwise authorized by the Secretary of Agriculture or the Board, the operations of the Corporation shall be carried out through the facilities and personnel of FSA, FAS, FCS, AMS, and NRCS in accordance with any assignment of functions and responsibilities made by the Secretary of Agriculture and, within the respective agency or office, by the Administrator of FSA, FAS, FCS, or AMS, the Chief NRCS, or the General Sales Manager, FAS.

20. The Directors of the divisions of FSA and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of FSA shall be Contracting Officers of the Corporation and executives of the Corporation in general charge of the activities of the Corporation carried out through their respective divisions or offices in accordance with these Bylaws and applicable programs, policies, and procedures.

Contracts of the Corporation

21. Contracts of the Corporation relating to any of its activities may be executed in its name by the Secretary of Agriculture or the President. The Vice Presidents, the Deputy Vice Presidents, the Controller, the Treasurer, and the Directors of the divisions of FSA and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of FSA may execute contracts relating to the activities of the Corporation for which they are respectively responsible.

22. The Executive Vice President and, subject to the written approval by the Executive Vice President of each appointment, the Vice Presidents, the Deputy Vice Presidents, the Controller, and the Directors of the divisions of FSA and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of FSA may appoint, by written instrument, such Contracting Officers as they deem necessary, who may, to the extent authorized by such instrument, execute contracts in the name of the Corporation. A copy of each such instrument shall be filed with the Secretary of the Corporation.

23. Appointments of Contracting Officers may be revoked by written instruction or instrument by the Executive Vice President or the official who made the appointment. A copy of each instrument shall be filed with the Secretary of the Corporation.

24. Employees of FSA, FAS, FCS, AMS and NRCS may execute contracts on behalf of the Corporation as delegated to them in accordance with applicable dockets of the Corporation, program regulations, or delegations approved by the President or Vice Presidents of the Corporation.

Annual report

25. The Executive Vice President shall be responsible for the preparation of an annual report of the activities of the Corporation, which shall be filed with the Secretary of Agriculture and with the Board.

Amendments

26. These Bylaws may be altered, amended, or repealed by the Secretary of Agriculture or the Board.

Approval Of Board Action

27. The actions of the Board shall be subject to the approval of the Secretary of Agriculture.

I, Juanita B. Daniels, Acting Secretary, Commodity Credit Corporation, do hereby certify that the above is a full, true, and correct copy of the Bylaws of Commodity Credit Corporation, as amended November 3, 1997.

In witness whereof I have officially subscribed my name and have caused the corporate seal of the said Corporation to be fixed this third day of November, 1997.

Juanita B. Daniels,

Acting Secretary, Commodity Credit Corporation.

[FR Doc. 97–32544 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 97–071N]

National Advisory Committee on Meat and Poultry Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The National Advisory Committee on Meat and Poultry Inspection will meet on January 13 and 14, 1998, to continue its consideration of three policy issues that it began discussing at its September 9, 10, and 11, 1997, meeting: (1) Interstate shipment of State-inspected product; (2) Hazard Analysis and Critical Control Point (HACCP) inspection models; and (3) inspection resource management in a HACCP environment. The Committee will consider two new issues at the January meeting: (1) Roles of Federal, State, and local governments in farm-to-table food safety; and (2) policy on pathogen testing and product disposition. All interested persons are welcome to attend the meeting and to submit written comments and suggestions concerning issues the Committee plans to consider.

DATES: The meeting will be held on January 13 and 14, 1998, from 8:00 a.m. until 6:00 p.m.

COMMENTS: Please send written comments on topics the Committee will consider at the January meeting to the FSIS Docket Clerk: Docket 97–071N, Room 102 Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700. Comments may also be sent by facsimile to (202) 205–0381. The comments and the official transcript of the meeting, when it becomes available,

may be viewed in the Docket Clerk's office.

ADDRESSES: The meeting will take place in the Capitol Room of the Hyatt Regency On Capitol Hill Hotel, 400 New Jersey Avenue, NW, Washington, DC 20001 at (202) 737–1234.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Michael N. Micchelli at (202) 720–6269 or FAX to (202) 690–1030. Attendees will be required to register at the meeting.

SUPPLEMENTARY INFORMATION:

On February 12, 1997, the Secretary of Agriculture renewed the charter for the Advisory Committee on Meat and Poultry Inspection. The Committee provides advice and recommendations to the Secretary of Agriculture regarding Federal and State meat and poultry inspection programs.

Membership of the Committee is drawn from representatives of consumer groups, producers, processors, and marketers from the meat and poultry industry, and State government officials. The current members of the National Advisory Committee on Meat and Poultry Inspection are:

Dr. Deloran M. Allen, Excel Corporation
Dr. William L. Brown, ABC Research Corporation
Terry Burkhardt, Wisconsin Bureau of Meat Safety and Inspection
Caroline Smith-DeWaal, Center for Science in the Public Interest
Nancy Donley, Safe Tables Our Priority
Carol Tucker Foreman, Safe Food Coalition
Michael J. Gregory, Hudson Foods Inc.
Dr. Cheryl Hall, Foster Farms, Inc.
Dr. Margaret Hardin, National Pork Producers
Alan Janzen, Circle Five Feedyards, Inc.
Dr. Daniel E. LaFontaine, South Carolina Meat-Poultry Inspection Department
Dr. Dale Morse, New York Office of Public Health
Rosemary Mucklow, National Meat Association
William Rosser, Texas Department of Public Health
J. Myron Stoltzfus, Stoltzfus Meats
Dr. David M. Theno, Jr., Foodmaker Inc.

At the public meeting, the Committee will organize into subcommittees to study the issues. The Committee has three standing subcommittees to deliberate on specific issues and make recommendations to the whole Committee.

The five principal topics that the Committee will consider at the meeting are: (1) Interstate shipment of State-inspected product; (2) HACCP inspection models; (3) inspection resource management in a HACCP environment; (4) roles of Federal, State, and local governments in farm-to-table food safety; and (5) policy on pathogen testing and product disposition.

The meeting is open to the public on a space-available basis. Interested persons will have an opportunity to discuss issues relating to the activities of the Committee and may file comments with the Committee in the manner described above in **COMMENTS**.

Done in Washington, DC, on: December 4, 1997.

Thomas J. Billy,

Administrator.

[FR Doc. 97–32489 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee (PAC) will meet on January 8, 1998, in Florence, Oregon, at the Florence Events Center, 715 Quince Street, Florence, OR. The meeting will begin at 9:00 a.m. and continue until 3:30 p.m. Agenda items to be covered include: (1) Reports from PAC Subcommittees (Adapative Management Area, Water Quality/Fish, Media, and Timber); (2) FY 1997 PAC Accomplishments/FY 1998 Outlook; and (3) Water Quality Report (Clean Water Act and Water Quality Mgmt. Plans)/303d Designations. All Oregon Coast Provincial Advisory Committee meetings are open to the public. Two 15-minute open public forums are scheduled for 10:00 a.m. and 2:45 p.m. Interested citizens are encouraged to attend. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT:

Direct questions regarding this meeting to Trish Hogervorst, Public Affairs Officer, Bureau of Land Management, at (503) 375–5657, or write to Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: December 4, 1997.

James R. Furnish,

Forest Supervisor.

[FR Doc. 97–32537 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Fritchie Marsh Hydrologic Restoration Project (PO–6), St. Tammany Parish, LA

AGENCY: Natural Resources Conservation Service

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR Part 1500), and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the U.S. Department of Agriculture Natural Resources Conservation Service, gives notice that an environmental impact statement is not being prepared for the Fritchie Marsh Hydrologic Restoration Project, St. Tammany Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

This plan proposes to reduce wetland loss an approximately 5.024 acres of intermediate marsh in St. Tammany Parish, Louisiana. Project measures include 5,700 linear feet of channel enlargement, installation of a steel sheetpile weir with boat bay and installation of a reinforced concrete conduit.

The Notice of a Finding of No Significant Impact (FONSI) as been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Dated: December 4, 1997.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 97–32494 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Whitewater River Watershed, Olmsted, Wabasha and Winona Counties, MN

AGENCY: USDA Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Whitewater River Watershed, Olmsted, Wabasha and Winona Counties, Minnesota.

FOR FURTHER INFORMATION CONTACT: William Hunt, State Conservationist, NRCS, 375 Jackson Street Suite 600, St. Paul, MN 55101.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, William Hunt, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are watershed protection and water quality. The planned works of improvement include conservation land treatment measures, accelerated technical assistance and project administration for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting William Stokes Jr. at (612) 602–7886.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Dated: December 2, 1997.

William Hunt,

State Conservationist.

[FR Doc. 97–32482 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Submission for OMB Review; Comment Request for Nonprofit Agency Surveys in the Benefit/Cost Analysis of the Javits-Wagner-O'Day Program

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Submission for OMB Review; comment request.

SUMMARY: The Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee) is inviting public comment on surveys submitted for review by the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The Committee is seeking public comment on surveys being conducted as part of a comprehensive Benefit/Cost Analysis of the JWOD Program. This request is for two new collections of information with a survey of nonprofit agencies (NPAs) participating in the JWOD Program and a survey of nonprofit agencies affiliated with National Industries for the Blind (NIB) or NISH that are not participating in the JWOD Program. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on August 8, 1997 (62 FR 42743).

DATES: Submit comments to OMB on or before January 12, 1998.

ADDRESSES: Written comments should be addressed to: Daniel Werfel, Desk Officer for the Committee for Purchase, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the OMB submission and the proposed information collections should be submitted to Sheryl Kennerly, Committee for Purchase from People Who Are Blind or Severely Disabled, 1215 Jefferson Davis Highway, Suite 310, Arlington, VA 22202–4302.

FOR FURTHER INFORMATION CONTACT: Sheryl Kennerly, Committee for Purchase from People Who Are Blind or Severely Disabled, 1215 Jefferson Davis Highway, Suite 310, Arlington, VA 22202–4302, telephone: 703–603–7747, fax: 703–603–0655, email: skennerl@jwod.gov.

SUPPLEMENTARY INFORMATION: The enabling regulations for the JWOD Act prescribe that the Committee: ''Conduct a continuing study and evaluation of its activities under the JWOD Act for the purpose of assuring the effective and efficient administration of the JWOD Act. The Committee may study, independently, or in cooperation with other public or nonprofit private agencies, problems relating to: (1) The employment of the blind or individuals with other severe disabilities * * *.'' (41 CFR Ch. 51–2.2(g))

As part of the effort to evaluate its activities and study the employment of individuals who are blind or severely disabled, the Committee has initiated a comprehensive analysis of benefits and costs of the JWOD Program. The following survey instruments included in the submission for OMB approval are required to collect data for determining the benefits and costs of the JWOD Program on nonprofit agencies that participate in the JWOD Program, commercial contractors, and society or taxpayers in general. The data from the following surveys will be used in conjunction with external environmental data to conduct analysis of before and after JWOD participation and to make comparisons between JWOD participating and nonparticipating nonprofit agencies. Comments should reference the title of the collection of information to which they apply.

Title: Survey of JWOD Participating Agencies.

Type of Review: New collection.

Frequency: One-time.

Affected Public: State, local and private nonprofit agencies that were participating in the JWOD Program at the end of Fiscal Year 1996.

Burden Estimate:

Responses: 562.

Total Burden Hours: 1,124 hours.

Average Burden per respondent: 2 hours.

Abstract: The burden estimate above is based on an estimated number of responses to a survey of all 624 NPAs participating in the JWOD Program at

the end of Fiscal Year 1996. The average burden per respondent was determined from a pretest with a small number of NPAs chosen to represent a variety of respondents in terms of JWOD sales and length of time participating in the program. The mail survey will collect data to measure direct and indirect financial impacts in terms of increased or reduced non-JWOD sales, induced or suppressed charitable donations, and shortfall or excess of JWOD revenues. Other potential impacts to be measured include effects on non-JWOD production capacity, effects on workplace conditions, and effects on the agencies' abilities to fulfill their overall missions. Data is being collected for the two years prior to participation in JWOD and for the five most recent years of participation.

Title: Survey of Organizations Associated with NIB or NISH.

Type of Review: New Collection.

Frequency: One-time.

Affected Public: A sample of State, local and private nonprofit agencies that are affiliated with NIB or with NISH that are not participating in the JWOD Program.

Burden Estimate:

Responses: 275.

Total Burden Hours: 275 hours.

Average Burden per respondent: 1 hour.

Abstract: The burden estimate above is based on an estimated number of responses to a survey of 300 NPAs affiliated with NISH and 5 NPAs affiliated with NIB that are not participating in the JWOD Program. The average burden per respondent was determined from a pretest with a small number of NPAs chosen to represent a variety of respondents in terms of size. The mail survey collects data from NPAs not participating in the JWOD Program in order to make comparisons with participating NPAs in the ''after'' time periods and to assess any differences due to JWOD participation, while accounting for geographic and macro-economic factors using environmental data obtained from external sources. This survey also collects financial and non-financial information comparable to the information in the above survey.

Dated: December 9, 1997.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–32558 Filed 12–11–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: January 12, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Commodities

Gloves, Chemical & Oil Protective

8415–01–012–9294
8415–01–013–7382
8415–01–013–7384
8415–01–147–6362
8415–01–147–9540
NPA: Bestwork Industries for the Blind, Inc., Westmont, New Jersey.

Services

Janitorial/Custodial

U.S. Army Reserve Center, 443 Route 119 N, Indiana, Pennsylvania.
NPA: ICW Vocational Services, Inc., Indiana, Pennsylvania.

Janitorial/Custodial

Johnstown Aviation Support Facility, Airport Road #2, Johnstown, Pennsylvania.
NPA: Goodwill Industries of the Connemaugh Valley, Johnstown, Pennsylvania.

Mailroom Operation

U.S. Army Corps of Engineers, Humphreys Engineer Center Support Activity, Kingman Building, Telegraph and Leaf Road, Fort Belvoir, Virginia.
NPA: Sheltered Occupational Center of Northern Virginia, Arlington, Virginia.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–32559 Filed 12–11–97; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: January 12, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On June 27 and October 24, 1997, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (62 FR 34686 and 55390) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Pad, Floor Polishing

7910–01–363–6975

Box, Shipping

8115–00–050–5237

8115–01–015–1314

8115–01–015–1313

Services

Janitorial/Custodial

Federal Building, 1301 Clay Street, Oakland, California

Janitorial/Custodial

Libby USARC, New Haven, Connecticut

Janitorial/Custodial

Paul J. Sutcovoy USARC, Waterbury, Connecticut

Mailroom Operation

Department of the Interior, 1849 C Street, NW, Washington, DC

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 97–32560 Filed 12–11–97; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

[Docket No. 970827207–7207–01]

Financial Assistance for Internship Program for Postsecondary Students

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (DoC) is establishing a postsecondary internship program to aid and promote experiential training activities which foster future employment in DoC or the Federal Government in general. U.S. citizens enrolled as students in two-and four-year accredited educational institutions will participate in on-site work experiences in DoC bureaus and offices in order to integrate academic theory and workplace requirements; gain relevant skills and knowledge; explore Federal career options; develop professional networks; and develop a greater awareness of the role of Federal agencies. The program will be administered through a partnership between the DoC and non-profit and/or educational institution(s) and funded by cooperative agreement(s). This notice solicits proposals from eligible institutions that desire to collaborate with the DoC on this initiative.

Student opportunities will be primarily in the Washington, D.C. metropolitan area, but will include field locations outside the area. Summer internship sessions will be for a ten-week period. Academic semester or quarter internship sessions will be structured to coincide with the academic calendar of the students' institutions. Institutions that are selected as training partners will develop and administer a comprehensive internship program. The DoC will serve as hosts for the student interns and provide program support through the financial assistance award; however, students may be assigned to work in Federal agencies other than DoC. When interns are assigned to other Federal agencies, those agencies will reimburse DoC for costs associated with the interns. There will be no employer-employee relationship between the DoC and its hosted interns. Interns will receive stipends. Round-trip air or ground transportation between the metropolitan D.C. area (or field job location) and the students' residence or school site will also be provided to interns as needed. The number of available internships will vary depending upon the financial position of the potential host offices and bureaus, but for the purposes of this notice, the following will be used for projections: twenty-five student interns for the summer session, and five students for each academic year session.

Selected institution(s) will perform the following functions: Outreach and recruitment; application processing and referral; selection notification and follow up; logistics, including temporary housing and accommodations; orientation and communication; enrichment activities program; intern personnel and pay administration; intern monitoring; intern evaluation; program evaluation; and evaluation reporting.

DATES: Applications must be received no later than 5:00 p.m., Eastern Standard Time, February 10, 1998.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the application, including all information required by the application kit. Applications must be mailed to: U.S. Department of Commerce, Office of Executive Assistance Management, Attn.: Carol A. Hayashida, Room H6020, 14th & Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Hayashida, (202) 482–3288.

SUPPLEMENTARY INFORMATION:

Authority

5 U.S.C. 7201 requires that each Executive agency conduct a continuing program for the recruitment of members of minorities to address underrepresentation of minorities in various categories of Federal employment. The DoC uses this authority as a recruitment mechanism in order to increase the applicant pool of

candidates for its jobs. However, applications will be accepted from any eligible institution, and applications for internships shall be accepted from all students meeting program eligibility criteria and will not be limited only to minority students. Application, referral and selection processes shall be conducted without any consideration of race, ethnicity, gender, or other personal factors. Executive Order 12876 provides for Executive departments to enter into, among other things, cooperative agreements with Historically Black Colleges and Universities (HBCUs) to further the goals of the Executive Order, principally that of strengthening the capacity of HBCUs to provide quality education, and to increase opportunities to participate in and benefit from Federal programs. Executive Order 12900 calls for Executive departments to develop plans to increase opportunities for Hispanic Americans to participate in and benefit from Federal education programs.

Program Description

A number of potent forces have come together recently to significantly curtail Federal hiring of college students. Downsizing initiatives have influenced the budgets of virtually all agencies and the possibility of reductions in force loom for many. Additionally, and related to downsizing, changes in the manner in which students are included in organizations' employee ceiling counts have drastically reduced the number of work-study opportunities they offer. One approach to ensuring that the Government can maintain some level of visibility and attractiveness to the ''best and brightest'' college students is to develop partnerships between Federal departments and nonprofit or educational institutions; the DoC has experimented successfully with these types of collaborations over the last several years. The DoC is now prepared to launch a three-year program that will serve to improve opportunities for college students to prepare for their transition to the workplace and foster human resource diversity in DoC. Depending upon the responsiveness of the institutions which submit applications, more than one institution may be selected to participate in this program.

There will be two components to the program: A ten-week summer session and an academic year program that consists of two sessions. The length of each academic year session will be structured to coincide with the academic calendar of the students' institutions, e.g., semester or quarter hour system; applicants who wish to administer an academic year program must indicate the proposed duration of the academic year sessions. The first session under this program will begin summer 1998. The first academic session will begin in fall 1998, followed by a session in the spring of 1999. This cycle is expected to be repeated until three years after the initial grant is awarded. It is anticipated that intern opportunities will be greater during the summer sessions than the academic year sessions.

In addition to including the mandatory activities described below, an organization should propose an intern program design that represents a comprehensive approach to a work-study experience and its own philosophy about workforce preparedness. For the purposes of the proposal, plans and budgets should be presented separately for the summer and academic year sessions. An organization may wish to collaborate with DoC on a summer program only, on an academic year program only, or on both a summer program and an academic year program; it is not required that both components be included in an application in order to be selected as a recipient.

The recipient(s) selected to administer the intern program must conduct the following activities:

Outreach and recruitment. Design, prepare, duplicate and distribute application materials to students. Collect information about potential internship openings from host offices to assist in identifying student applicants who are the best matches for the offices' needs. Prepare publicity to inform academic institutions and students about upcoming program opportunities and to solicit applications from a broad range of students who meet defined program criteria such as GPA and academic standing. Process applications, including evaluating candidates' eligibility and qualifications, and referring candidates to host Federal officials for consideration and selection. Outreach and publicity must be conducted so that women and minorities that are underrepresented in the DoC are included in the target groups. Participation in the program must be open to all eligible students without regard to race, ethnicity, or gender. In cases of jobs requiring technical skills or for other related reasons, Federal mangers, liaisons, or other program officials may elect to participate in the evaluation of applicant packages.

Selection notification and follow up. Receive selection decisions from host offices, convey internship offers to selectees, explain logistical and administrative processes to selectees. Distribute written information to students that will help them adequately prepare for their professional and personal needs during their internship; material must be sent to students before their departure for their internship sites. Communicate with DoC program representatives or liaisons on the status of offers of selection, acceptances and declinations.

Logistical arrangements. Locate suitable housing for students, make all prior arrangements to allow students to move into housing upon their arrival at the internship site. Make round trip airline reservations for students between home/school city and host office location; arrange for students to receive their tickets. Arrange for ground transportation to pick up arriving students at airport and take to housing site. At the end of the internship period, arrange for transportation between the housing site and the airport. Explain housing, air transportation, ground transportation, and other logistical arrangements to students so that there is a clear expectation of what costs, if any, are involved and what the responsibilities of both the student and the recipient institution/organization are. Housing must be convenient to public transportation and affordable. The DoC must be consulted in the process to select student housing facilities, but the final decision and negotiations with the housing provider will be left wholly to the recipient institution.

Orientation and communication. Design and provide orientation program to familiarize students with local area in which they will live and work, services, safety and security, public transportation systems, and educational and administrative program requirements.

Enrichment activities. Design and implement a comprehensive enrichment program; ideally the program should require a minimum of time away from the work site during duty hours. The activities should focus on students' personal and professional growth, and provide insights into ways to reach their academic and personal goals. They may also be designed to teach students how the different branches of the Federal Government operate, to improve interns' communication skills, or to foster an understanding of cultural or ethnic issues.

Personnel administration. Maintain interns' personnel records; pay stipends; deduct applicable payroll taxes; provide worker compensation insurance, unemployment insurance, and short-

term accident insurance; provide state, Federal and local tax information and report of earnings forms to students.

Intern monitoring. Communicate on a regular basis, both by telephone and in person , with the students, their supervisors, and DoC and bureau coordinators to assure that the experience is progressing as intended and that problems or questions are resolved.

Intern performance evaluation. Selected recipients must develop and design an effective evaluation program that will assess the interns' performance and progress. Ideally all aspects of intern performance and the overall work experience from the perspective of both the intern and his or her supervisor will be included in the assessment. Student performance should be evaluated at the mid-point and at the end of each session. Evaluations will be submitted to the DoC Federal Program manager within one month of the assessment date.

Program Performance. In accordance with OMB Circular A–110, selected recipients must manage and monitor functions and activities supported by the financial award and should have a plan to do so. Performance reports are required at mid-term and at the end of each session. The reports should focus on program accomplishments against the goals and objectives of the program, and include other pertinent information. Of interest would be overall demographic information about program participants such as name of educational institutions and or regional area represented, academic majors represented, academic standing, average GPA . Additionally, lessons learned about the design and implementation of the program and identification of areas requiring improvement are particularly useful.

Funding Availability

Applicants must submit project plans and budgets for three years. Project(s) will be funded for no more than one year at a time. Funding for each subsequent year will be at the sole discretion of the DoC and will depend on satisfactory performance by the recipient and the availability of funds to support the continuation of the project(s). Funds available under this program are expected to be awarded in November of each year. Funds for the first year are expected to be awarded in February 1998. Projections based upon previous experience indicate availability of between $150,000-$730,000 to support from 25 up to about 100 interns. However the exact level of funding available is not yet known. Proposals should be based upon the cost of administering a summer program for 25 student interns and also include a per capita cost for additional students; proposals for a semester or quarter session should be projected on the basis of 5 students.

Matching Requirements

Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost-sharing is not required for the internship program; however, cost-sharing is encouraged. The appropriateness of all cost-sharing will be determined on the basis of guidance provided in applicable Federal cost principles. If an applicant chooses to cost-share, and if that application is selected for funding, the applicant will be bound by the percentage of the cost-share reflected in the cooperative agreement award. The non-Federal share may include the value of in-kind contributions by the applicant or third parties or funds received from private sources or from state or local governments. Federal funds may not be used to meet the non-Federal share of matching funds, except as provided by Federal statute. Third party in-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to the project and use of real or personal property owned by others (for which consideration is not required) in carrying out the projects. The total cost of a project begins on the effective award date of an authorized cooperative agreement between the applicant and the DoC Grants Officer and ends on the date specified in the award. Accordingly, time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to the award, are neither reimbursable nor recognizable as part of the recipient's cost share.

Type of Funding Instrument

Financial assistance awards in the form of cooperative agreements will be used to fund this program. The DoC and its participating bureaus will have substantive involvement in the following program activities: provide liaisons to institutions who will assist in coordinating program activities; provide description of available intern assignments and required academic backgrounds and job skills; participate in review and rating panels; and interview and make final selections from lists of eligible students that are provided by the institutions.

Eligibility Criteria

Accredited universities and colleges (2-year and 4-year) and non-profit organizations are eligible to apply. Eligible institutions may form joint ventures to submit a joint application to share costs and administration roles and responsibilities. In such cases, one of the institutions must be designated as the lead organization for purposes of receipt and overall accountability for any financial assistance award received under this program.

Award Period

The award period for the internship project will be three years. Funding will be provided annually at the discretion of the DoC and will depend upon satisfactory performance by the recipient and availability of funds for the DoC to continue funding the project. Normally each project budget period may be no more than 12 months in duration. DoC policy limits the total duration of a project to three years. Project proposals accepted for funding for a project period over 1 year that include multiple project components and severable tasks to be funded during each budget period will not compete for funding in subsequent budget periods within the approved project period. Publication of this notice does not obligate DoC to award any specific cooperative agreement or to obligate all or any parts of the available funds.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Application Forms and Kit

An application kit containing all required application forms and certifications is available by calling Lisa Duckett at (202) 482–4115.

Evaluation Criteria

Quality of Program Plan (30%). Includes but is not limited to strategy for outreach and publicity, procedures for collecting and evaluating applications, comprehensiveness of program design, and practicality of approach.

Proposed Costs (30%). The proposed budget must be comprehensive and should include all costs for program personnel, fringe benefits, travel, equipment, supplies, and other associated items. The stipend level

proposed for students should be stated in the budget.

Key Personnel Qualifications (20%). Includes an assessment of the number, qualifications and proposed roles of staff who will administer the internship program. Resumes of proposed personnel will facilitate the evaluation of the competency and experience of the proposed staff.

Capabilities of the Applicant Organization (20%). Considers, among other things, previous experience and success administering similar programs, and staff and resources to assure adequate development, supervision and execution of the proposed program. Additionally, an organization's commitment to educate/advance the education of women, minorities, and people with disabilities will be a consideration in evaluating this factor.

Selection Procedures

Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. The Independent Review Panel, consisting of at least three individuals, will review all applications based on the criteria stated above. The Independent Review Panel will evaluate and rank the proposals. The final decision on awards will be based upon the numerical review panel ranking, availability of funding, and the Selecting Official's (DoC Federal Program Officer) determination of which proposals best meet the objectives of the program. The amount of funds awarded to each recipient will be determined in preaward negotiations between the applicant, the Grants Officer, and the DoC Program Officer.

Federal Policies and Procedures

Recipients and subrecipients are subject to all Federal laws and Federal and DoC policies, regulations, and procedures applicable to Federal financial assistance awards.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Preaward Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DoC to cover preaward costs.

No Obligation for Future Funding

If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DoC.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

The delinquent account is paid in full, negotiated repayment schedule is established and at least one payment is received, or Other arrangements satisfactory to DoC are made.

Name Check Review

All nonprofit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided:

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

Drug-Free Workplace

Recipients (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies;

Anti-Lobbying

Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

Lower Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DoC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DoC in accordance with the instructions contained in the award document.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Purchase of American-Made Equipment and Products

Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent.

Fly America Act

The Fly America Act requires that Federal travelers and others performing U.S. Government-financed foreign air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.

Classification

This document involves collections of information subject to the Paperwork Reduction Act, which have been approved by OMB under OMB control numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. This document has been determined to be ''not significant'' for purposes of Executive Order 12866.

Sonya G. Stewart,

Director for Executive Budgeting and Assistance Management.

[FR Doc. 97–32540 Filed 12–11–97; 8:45 am]

BILLING CODE 3510–FA–U

DEPARTMENT OF COMMERCE

Bureau of the Census

1998 American Community Survey—Group Quarters Screening Operation

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 10, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to John Paletta, Bureau of the Census, Room 3715–3, Washington, DC 20230, (301) 457–4269.

SUPPLEMENTARY INFORMATION:

I. Abstract

The 1998 American Community Survey (ACS) is currently underway. ACS data are being collected under OMB approval number 0607–0810. Data from the ACS will determine the feasibility of a continuous measurement system that provides socioeconomic data on a continual basis throughout the decade. The Census Bureau must provide a sample of persons residing in Group Quarters (GQs) the opportunity to be interviewed for the ACS. GQs include places such as student dorms, correctional facilities, hospitals, nursing homes, shelters, and military quarters. Obtaining information from the GQ will ensure that we include the necessary people residing at the GQ in the 1998 ACS.

A GQ screening operation was conducted in conjunction with 1997 ACS activities. This request revises the existing GQ clearance for use in the 1998 ACS. Major changes include the following. In 1997 we screened a sample of the GQs in only one ACS test site. In 1998 we will screen a sample of the GQs in eight of the ACS test sites. In 1997 we tested three versions of the questionnaire, Form ACS–2 (GQ), 1997 ACS GQ Facility Questionnaire, and allocated them among the sample GQs according to whether the GQ was to be enumerated by personal visit only, a combination of personal visit and mail, or by mail only. In 1998 we will use only one version of the questionnaire, Form ACS–2 (GQ), 1998 ACS GQ Screening.

We will telephone a sample of GQs in the 1998 ACS test sites. We will verify/update information such as GQ name, address, phone number, and type. We will screen to determine if the residents stay for less than 30 days and have another place to live. If so, the GQ will be classified as out-of-scope for ACS interviewing. If the GQ is in-scope, we will screen to determine if we can complete ACS interviews of the GQ residents by mail, thus saving the expense of personal visits. We will obtain a list of rooms and/or residents from which we can select a sample. All ACS interviewing will be conducted under OMB clearance number 0607–0810.

II. Method of Collection

Telephone interviews will be conducted from Census Bureau's processing center in Jeffersonville, Indiana.

III. Data

OMB Number: 0607–0836.

Form Number: ACS–2 (GQ).

Type of Review: Regular submission.

Affected Public: Individuals, Businesses or other for-profit organizations, non-profit institutions and small businesses or organizations.

Estimated Number of Respondents: 500 GQs in the 1998 ACS test sites.

Estimated Time Per Response: 10 minutes (.167 hours).

Estimated Total Annual Burden Hours: 84 hours.

Estimated Total Annual Cost: The group quarters screening is part of the 1998 American Community Survey, the cost of which is estimated to be 16.6 million dollars. There is no cost to respondents, other than that of their time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, U.S. Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

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

Dated: December 8, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–32532 Filed 12-11-97; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Survey of Income and Program Participation Wave 8 of the 1996 Panel

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 10, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michael McMahon, Bureau of the Census, FOB 3, Room 3387, Washington, DC 20233–8400, (301) 457–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the Survey of Income and Program Participation (SIPP) which is a household-based survey designed as a continuous series of national panels, each lasting four years. Respondents are interviewed once every four months, in monthly rotations. Approximately 37,000 households are in the current panel.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified data base so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits, and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central ''core'' of labor force and income questions that will remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs, such as obtaining information about the terms of child support agreements and whether they are being fulfilled by the absent parent, examining the program participation status of persons with specific health and disability statuses, and obtaining detailed information needed to understand the current status of the employment-based health care system and changes that have occurred. These supplemental questions are included with the core and are referred to as ''topical modules.''

The topical modules for the 1996 Panel Wave 8 collect information about: (1) Adult Well-being; and (2) Welfare Expenses. Wave 8 interviews will be conducted from August 1998 through November 1998.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every 4 years, with each panel having a duration of 4 years in the survey. All household members 15 years old or over are interviewed using regular proxy-respondent rules. They are interviewed a total of 12 times (12 waves) at 4-month intervals, making the SIPP a longitudinal survey. Interviewers personally visit all households at least once a year and conduct the other 2 interviews by phone if the respondent agrees. Sample persons (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP Primary Sampling Unit will be followed and interviewed at their new address.

Persons 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these persons move, they are not followed unless they happen to move along with a Wave 1 sample person.

The survey is administered using Computer-Assisted Personal Interviewing (CAPI) methodologies. Census Bureau field representatives collect the data from respondents using laptop computers, and the data are transmitted to Census Bureau headquarters via high-speed modems.

III. Data

OMB Number: 0607–0813.

Form Number: SIPP/CAPI Automated Instrument.

Type of Review: Regular.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 77,700 (We will obtain interviews from approximately 37,000 households, yielding about 77,700 person-interviews (2.1 persons 15 years old or over per household). The household interviews will be conducted at 4-month intervals.

Estimated Time Per Response: 30 minutes per person.

Estimated Total Annual Burden Hours: 117,800.

Estimated Total Annual Cost: The only costs to respondents is that of their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

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

Dated: December 8, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–32533 Filed 12–11–97: 8:45 a.m.]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112897C]

Vessel Registration and Fisheries Information System

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

ACTION: Notice of availability.

SUMMARY: The Sustainable Fisheries Act, passed in October 1996, added various amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). As a result, Section 401 of the Magnuson-Stevens Act requires the Secretary of Commerce (Secretary) to deliver an implementation plan for a national fishing vessel registration and fisheries information system (System) in a Report to Congress. This notice outlines the approach taken by NMFS and its Federal, regional, state, and industry partners on behalf of the Secretary to develop the implementation plan required in the Report to Congress.

DATES: Notice of Availability (NOA) of the draft version of the Report to Congress will be published in the

Federal Register on or about March 2, 1998. A sixty (60) day public comment period will commence immediately thereafter. The final Report to Congress will be delivered in July 1998.

ADDRESSES: Address all comments concerning this notice to: Section 401, National Marine Fisheries Service, 1315 East West Highway F/ST1, Room 12245, Silver Spring, MD 20910; (301) 713–2328; fax (301) 713–4137. See SUPPLEMENTARY INFORMATION for electronic access instructions.

FOR FURTHER INFORMATION CONTACT: Mark Holliday, (301) 713–2328.

SUPPLEMENTARY INFORMATION: Because it is one of the major legislative Acts that directs the activities of the National Marine Fisheries Service (NMFS), the Magnuson-Stevens Act specifies various programs and initiatives for the conservation and stewardship of the nation's marine fisheries. Section 401 of the Magnuson-Stevens Act, amended in 1996, directs the Secretary to deliver a Report to Congress on the implementation of a national vessel registration and fisheries information system.

NMFS, the U.S. Coast Guard, coastal states, the three regional commissions (Pacific States Marine Fisheries Commission, Gulf States Marine Fisheries Commission, and Atlantic States Marine Fisheries Commission), and the eight regional Fishery Management Councils (New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean, Pacific, North Pacific, Western Pacific) play various roles in commercial fishing vessel registration and marine fisheries data collection. Consistent with the Assistant Administrator's previous directions, NMFS has been engaged in a highly collaborative process to develop joint data collection and planning activities with these organizations and the regional fisheries information networks (Atlantic Coast Cooperative Statistics Program (ACCSP), Alaska Fisheries Information Network (AKFIN), Pacific Fisheries Information Network (PACFIN), Southeast Fisheries Information Network FIN(SE) and Western Pacific Fisheries Information Network (WESTPACFIN).

Most, if not all, of these governmental bodies maintain or contribute information to various state, regional, and national information systems. Section 401 of the Magnuson-Stevens Act directs the Secretary, in cooperation with the various constituents and stakeholders, to streamline and integrate these vessel registration and fisheries information systems into a national system.

Section 401 of the Magnuson-Stevens Act sets a number of benchmarks for a national vessel registration and fisheries information system. It also defines several overarching principles that should guide the system's development and result in an integrated vessel registration and fisheries information system. Perhaps the most visible and easily measured requirement is the reduction of information reporting burdens on industry and the use of existing data collection and information management systems to the furthest extent possible.

To better organize the project planning activity, NMFS divided the task into two primary components: the Vessel Registration System (VRS) and the Fisheries Information System (FIS). Within these components, NMFS is addressing information management architecture, integration and harmonization of data collection programs, and the institutional arrangements and accountability. The project team is evaluating these components simultaneously both to determine the optimal system requirements and configuration based on data needs and to leverage current data collection and planning efforts.

Vessel Registration System: Vessel registration, licensing, and permitting systems among the coastal states, territories, tribal entities and the U.S. Coast Guard are currently under project team review. The Magnuson-Stevens Act requests a plan for a national system that contains the following information for each fishing vessel: (1) The name and official number or other identification, together with the address of the owner or operator or both; (2) gross tonnage, vessel capacity, type and quantity of fishing gear, mode of operation, and other such pertinent information with respect to vessel characteristics as the Secretary may require; and (3) identification of the fisheries in which the fishing vessel participates. Currently, no vessel registration system at any level fully satisfies these criteria.

The NMFS is aware of the Coast Guard's Vessel Identification System (VIS). Designed as a national boating information network, it will comprise the Coast Guard's vessel documentation system and, on a voluntary basis, the states/territories vessel information. NMFS has been in consultation with the VIS programmatic personnel to ascertain how and whether the VIS could be utilized to fulfill the requirements of the Magnuson-Stevens Act. Originally scheduled to be tested in the fall of 1997, the VIS program will not begin pilot testing until January 1998. As a consequence of the delay, NMFS is not yet in the position to evaluate the operational capabilities of VIS and how and whether it can be utilized in the VRS.

Fisheries Information System: The project team is studying fisheries data collection programs and information management systems at the regional levels (Pacific, Gulf, Atlantic) as specified in the Magnuson-Stevens Act. State and Federal data collection programs and information management systems have developed independently over time and reflect varying degrees of integration and management efficiency. Through participation in ACCSP, AKFIN, FIN(SE), PACFIN, and WESTPACFIN, NMFS has spent considerable time and money supporting these partners in joint statistics planning and integration efforts. These efforts have definite timeframes and outcomes planned, and NMFS has relied on these processes to support the Section 401 of the Magnuson-Stevens Act activity to avoid duplication of effort and maximize partner participation. During the consultation process, NMFS determined that compliance with the schedule set by section 401 of the Magnuson-Stevens Act will conflict with (and may even be detrimental to) critical path planning stages currently in progress. The fishery information networks are still in the formative stages. For example, ACCSP planning for its coastwide information management system will not produce required inputs for FIS design until February 1998. NMFS is working closely with these groups to develop plans for integration and implementation into a fisheries information system.

Process: NMFS strategy has been to seek the highest level of detail possible in the draft report to produce specific and justifiable estimates of implementation resource requirements. It could be argued that the report NMFS is developing provides more detail than called for in the Magnuson-Stevens Act. However, the stakeholders (particularly the Commissions) have supported this level of analysis and have worked with us to develop this detail so that they fully understand the regional implications of a national umbrella program. Due to the complex nature of this task, NMFS received requests from the Commissions for additional consultation on integration. NMFS agrees that to cut off the consultative process at this time could jeopardize the collaborative process, and result in a report that is short on substance and lacking support from our constituents.

To integrate additional information, NMFS decided that a 6 month delay was appropriate to accomplish the task. The benefit of the delay will be a report that will contain well-described courses of action that will actually improve statistics for NMFS and our partners stewardship responsibilities. In particular, NMFS wants to reach a consensus among stakeholders on a VRS and FIS program which will allow determination of a realistic budget consistent with requirements set forth in section 401(a)(5) of the Magnuson-Stevens Act so that Congress can consider the recommendations during the fiscal year, FY 99, appropriations process. The proposed target date will coincide with Congressional timeframes and allow all constituents an opportunity to seek a common goal. Given the current stage of state and commission planning, delivering a report by the original due date would result in little or no consensus on level and documentation of an FY 99 funding request.

The goal for the next 6 months is to craft an acceptable implementation plan that includes unified VRS/FIS system guidelines, proposed rules and legislation, and budgets. NMFS intends to hold additional meetings in January and February with the Commissions and Councils to resolve integration/implementation requirements. Additionally, the pilot testing of the Coast Guard's VIS will allow NMFS the opportunity to develop the necessary integration requirements. This comprehensive plan will be available for public comment upon publication of the NOA of the draft Report to Congress in March 1998.

Stakeholders: Stakeholders (or constituents) in the implementation of the vessel registration and fisheries information system include the (1) three regional marine fisheries commissions, (2) the eight fishery management councils, (3) 24 coastal states, (4) U.S. territories, (5) U.S. Coast Guard, (6) tribal entities, (7) industry and trade groups, and (8) other interested parties. In addition to directly consulting with the project's stakeholders over the next 6 months, all parties will have the opportunity for input on the proposed implementation plan through the public comment period commencing in March 1998, when the draft report is available.

Comments on this notice may be submitted to the NMFS Division of Fisheries Statistics and Economics by sending electronic mail to: sec401@remora.ssp.nmfs.gov.

Authority: Pub. L. 104–297.

Dated: December 8, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–32475 Filed 12–11–97; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' meeting scheduled for 18 December 1997 has been cancelled. The next meeting is scheduled for 22 January 1998 at 10:00 a.m. in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001, to discuss various projects affecting the appearance of Washington, D.C.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200.

Dated In Washington, D.C., December 3, 1997.

Charles H. Atherton,

Secretary.

[FR Doc. 97–32536 Filed 12–11–97; 8:45 am]

BILLING CODE 6330–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: [Insert FR citation].

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., December 16, 1997.

CHANGES IN MEETING: The meeting concerning options for bunk beds has been deferred. The meeting will be rescheduled.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: December 9, 1997.

Sadye E. Dunn,

Secretary.

[FR Doc. 97–32665 Filed 12–10–97; 1:49 pm]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps: National, Indian Tribes, and U.S. Territories Programs; Correction

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability; correction.

SUMMARY: On November 28, 1997, the Corporation published a notice of availability of funds and 1998 application guidelines for the AmeriCorps National and Indian Tribes and U.S. Territories program grants. This document corrects the dates of the technical assistance conferences.

SUPPLEMENTARY INFORMATION: In notice document 97–31265 beginning on page 63318 in the issue of Friday, November 28, 1997, make the following correction:

On page 63318 in the third column, the dates for the technical assistance conferences for potential applicants seeking AmeriCorps Indian Tribes and U.S. Territories program funds have been changed to: January 8–9, 1998 in Las Vegas and February 5–6, 1998, in Memphis.

For additional information, or to register, please call Pattie Howell, at (202) 606–5000, ext. 188. The Corporation's T.D.D. number is (202) 565–2799.

Dated: December 9, 1997.

Stewart A. Davis,

Acting General Counsel, Corporation for National and Community Service.

[FR Doc. 97–32517 Filed 12–11–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.170]

Jacob K. Javits Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Purpose of Program: To award fellowships to eligible students of superior ability, selected on the basis of demonstrated achievement and exceptional promise, to undertake graduate study leading to a doctoral degree or the Master of Fine Arts (MFA) degree at accredited institutions of higher education in selected fields of the arts, humanities, or social sciences.

Eligible Applicants: Eligibility is limited to students who at the time of application have not yet completed their first year of graduate study or will be entering graduate school in academic year 1998–1999. Eligibility is limited to

students pursuing a doctoral degree or MFA degree in fields selected by the Jacob K. Javits Fellowship Board at accredited institutions of higher education in the U.S. Students must be U.S. citizens, permanent residents of the U.S., certain persons in the process of becoming U.S. citizens or permanent residents, or permanent residents of the Northern Mariana Islands.

Deadline For Transmittal Of Applications: February 17, 1998.

Applications Available: December 15, 1997.

Estimated Available Funds: $1,875,000.

Estimated Range Of Awards: The Secretary has determined that the fellowship stipend for academic year 1998–1999 is $15,000, which is equal to the level of support that the National Science Foundation is providing for its graduate fellowships, or the fellow's financial need, as determined by Part F of Title IV of the Higher Education Act, whichever is less. The institutional payment for academic year 1997–1998 was $10,051. The Secretary will adjust the institutional payment prior to the issuance of grant awards based on the Department of Labor's projection in December 1997 of the Consumer Price Index for 1998.

Estimated Average Size Of The Awards: $25,000.

Estimated Number Of Awards: 75 individual fellowships.

Supplementary Information: Sixty percent of new awards will be available for fellowships to eligible applicants who have earned no credit hours applicable to a graduate degree. The remaining 40 percent of new awards will be available for fellowships to all otherwise eligible applicants. In each of these two categories, 60 percent of these new fellowships will be awarded to applicants in the humanities, 20 percent to applicants in the social sciences, and 20 percent to applicants in the arts.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75 (except as provided in 34 CFR 650.3(b)), 77, 82, 85, and 86; and (b) The regulations for this program in 34 CFR Part 650.

For Applications Or Information Contact: Richard Scarfo, Jacob K. Javits Fellowship Program, U.S. Department of Education, 600 Independence Avenue, SW., Portals 600, Washington, DC 20024–5329. Telephone: (202) 260–3574. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1134, 1134h–k–1.

Dated: December 5, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–32545 Filed 12–11–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM97–2–48–001]

ANR Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

December 8, 1997.

Take notice that on December 4, 1997, ANR Pipeline Company (ANR) tendered for filing, as part of its FERC Gas Tariff, Second Revised Volume No. 1, following revised tariff sheets proposed to become effective January 1, 1998:

Seventh Revised Sheet No. 19
Fourth Revised Sheet No. 68H

ANR states that the above-referenced tariff sheets are being filed to implement revised levels of Transporter's Use (%) as reflected on the fuel matrix in its tariff, as well as the percentages applicable to gathering. ANR will implement these interim fuel matrix percentages effective on the later of January 1, 1998, or the first day of the month following the date that the Commission accepts this filing.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32507 Filed 12–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–346–000]

Equitrans, L.P.; Notice of Informal Settlement Conference

December 8, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on December 12, 1997 at 9:30 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Irene E. Szopo at (202) 208–1602 or Donald Williams at (202) 208–0743.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32504 Filed 12–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR98–2–000]

Magnolia Pipeline Corporation; Notice of Petition for Rate Approval

December 8, 1997.

Take notice that on November 21, 1997, Magnolia Pipeline Corporation (Magnolia), filed a petition for rate approval, pursuant to Section 311 of the Natural Gas Act, Section 284.123(b)(2) of the Commission's Regulations, and the Commission's March 31, 1995 letter order in Docket No. PR95–1–000, requesting that the Commission approve the continued use of Magnolia's current maximum rate of $0.1621 per Dth, plus reimbursement of actual fuel use up to three percent for Section 311 transportation services performed on Magnolia's system.

Magnolia states that it is an intrastate pipeline within the meaning of Section 2(16) of the NGPA and it owns and operates pipeline facilities within the State of Alabama. Magnolia states that its current maximum transportation unit rate is based on a levelized cost of service. Magnolia states that even if it were able to collect its current maximum rate, Magnolia would not recover its total cost of service. Thus Magnolia only seeks approval to continue to be able to charge up to its existing approved maximum rates. Magnolia proposes an effective date on and after November 22, 1997.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before December 23, 1997. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32502 Filed 12–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–83–000]

Texas Eastern Transmission Corporation; Notice of Petition for Declaratory Order

December 8, 1997.

Take notice that on December 3, 1997, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing a petition under Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) requesting that the Commission determine whether Public Service Electric and Gas Company (Public Service) is permitted to employ the Commission's capacity release regulations to abrogate its long-term contractual obligations to Texas Eastern by assigning those contracts to a wholly-owned, shell subsidiary where the assignment is for the express purpose of avoiding Public Service's contractual obligations.

Texas Eastern states that Public Service recently filed a plan with the New Jersey Board of Public Utilities under which Public Service proposes to set up a new shell subsidiary with no assets and then to permanently assign all of its contracts with Texas Eastern to that subsidiary. Public Service will continue to control all of the activities of its new subsidiary and Public Service employees will perform all of the activities of its subsidiary. Texas Eastern quotes Public Service as having stated that the purpose of the new subsidiary is to ''reduce the potential fixed cost responsibility'' of Public Service under the contracts. Texas Eastern submits that Public Service has no contractual right to terminate its obligations to Texas Eastern by assigning them to a shell subsidiary.

Texas Eastern states that Public Service's plan is based entirely upon Public Service's interpretation of the Commission's capacity release regulations, which Public Service alleges limit its obligations to three months worth of demand charges.

Texas Eastern contends that the capacity release by Public Service is a sham transaction to abrogate its Texas Eastern contracts, which still have a total aggregate revenue stream in excess of $750 million during their remaining primary term. Texas Eastern argues that Public Service's plan will have serious consequences, both of Texas and for the interstate pipeline industry. Texas Eastern alleges that, if Public Service is allowed to avoid its existing obligations, other shippers who find a contract burdensome will assign that contract to an under-capitalized subsidiary and allow the subsidiary to default on the contract.

Texas Eastern states that it is not attempting to preclude Public Service form assigning its contracts to the new subsidiary. Texas Eastern says that it is only seeking to assure that Public Service will not be released from liability as a consequence of such an assignment.

Texas Eastern states that this Commission has jurisdiction to grant this relief first because of the Commission's jurisdiction over capacity release as it applies to Texas Eastern and its tariff and second, because the Commission has direct jurisdiction over Public Service's capacity release activities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426 in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. All such motion or protests must be filed on or before January 5, 1998. All protests filed with the Commission will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to this proceeding, must file a motion to intervene. Copies of this filing are on file and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32506 Filed 12–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–146–007]

U–T Offshore System; Notice of Compliance Filing

December 8, 1997.

Take notice that on December 3, 1997, U–T Offshore System (U–TOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to be effective November 1, 1997:

2nd Sub Second Revised Sheet No. 73A

U–TOS asserts that the purpose of this filing is to comply with the Commission's November 25, 1997, letter order in the captioned proceeding regarding the effective version for all Electronic Delivery Mechanism standards (4.X.X). The above mentioned letter order indicated that Sheet No. 73A as filed on November 3, 1997 incorrectly reflected Version 1.1 as the effective version for Standard 4.3.1. The correct version is Version 1.0 as listed on the above mentioned revised tariff sheet.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32503 Filed 12–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–375–004]

Wyoming Interstate Company, Ltd.; Notice of Filing of Tariff Sheets

December 8, 1997.

Take notice that, on December 4, 1997, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet:

Substitute Third Revised Sheet No. 5A

According to WIC, this filing corrects a pagination error in its November 26, 1997 ''Motion to Place Suspended Rates into Effect'', in Docket No. RP97–375–003.

WIC states that a full copy of its filing is being served on each jurisdictional customer, interested state commission, and each party that has requested service as well as upon each party appearing on the Commission's official service list for Docket No. RP97–375.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspections in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32505 Filed 12–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–14–000, et al.]

Electric Rate and Corporate Regulation Filings; Encogen Hawaii, L.P., et al.

December 5, 1997.

Take notice that the following filings have been made with the Commission:

1. Encogen Hawaii, L.P.

[Docket No. EG98–14–000]

Take notice that on December 1, 1997, Encogen Hawaii, L.P. (Encogen), a Delaware limited partnership with its principal office located at 1817 Wood Street, Suite #550—West, Dallas, TX 75201, filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations. Encogen states that it is a Delaware limited partnership. Encogen is engaged directly and exclusively in owning an approximately 62 MW (net) naphtha and fuel oil-fired power plant (the Facility) located in Haina, Hawaii and selling energy at wholesale from the Facility to a Hawaiian electric public utility. In addition, thermal energy produced by the Facility as part of the cogeneration process will be sold to a macadamia nut processing factory and an aquaculture facility.

Comment date: January 6, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Duquesne Light Company

[Docket No. ER98–686–000]

Take notice that on November 17, 1997, Duquesne Light Company (DLC), filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 1, 1997, with DTE CoEnergy, L.L.C., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds DTE CoEnergy, L.L.C., as a customer under the Tariff. DLC requests an effective date of November 1, 1997, for the Service Agreement.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. PP&L, Inc.

[Docket No. ER98–687–000]

Take Notice that on November 17, 1997, PP&L, Inc., (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated November 12, 1997, with South Carolina Electric & Gas (SCE&G) under PP&L's FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds SCE&G as an eligible customer under the Tariff.

PP&L requests an effective date of November 17, 1997, for the Service Agreement.

PP&L states that copies of this filing have been supplied to SCE&G and to the Pennsylvania Public Utility Commission.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER98–688–000]

Take notice that on November 17, 1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and EnerZ Corporation (EnerZ).

Cinergy and EnerZ are requesting an effective date of October 31, 1997.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Zapco Power Marketers, Inc.

[Docket No. ER98–689–000]

Take notice that on November 17, 1997, Zapco Power Marketers, Inc. (Zapco), petitioned the Commission for acceptance of Zapco Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Zapco intends to engage in wholesale electric power and energy purchases and sales as a marketer. Zapco is not in the business of generating or transmitting electric power. Zapco is a wholly-owned subsidiary of Zahren Alternative Power Corporation which, through its affiliates, is engaged in generation and sale of electricity and other energy derived from landfill gas and other fuels.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. The Detroit Edison Company

[Docket No. ER98–690–000]

Take notice that on November 17, 1997, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements for Firm and Non-Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison Transmission Operations and the following Customers:

Customer	Type of serv. agreement	Date of serv. agreement	Date of first transaction
New York State Elec. & Gas Co	Firm	September 17, 1997	None to Date.
New York State Elec. & Gas Co	Non-Firm	September 17, 1997	None to Date.
Pennsylvania Power & Light Co	Non-Firm	September 17, 1997	None to Date.
Public Service Elec. & Gas Co	Non-Firm	September 17, 1997	None to Date.

Detroit Edison requests that the TSAs be made effective as rate schedules as of the dates set forth above.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Duke Energy Corporation

[Docket No. ER98–691–000]

Take notice that on November 17, 1997, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing Transmission Service Agreements between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and the following customers:

Customer	Type of serv. agreement	Date of serv. agreement	Requested effective date
Tennessee Valley Authority	Firm	October 7, 1997	October 17, 1997
Avista Energy, Inc	Non-Firm	November 6, 1997	November 6, 1997

Duke requests that the TSAs be made effective as rate schedules as of the dates set forth above.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER98–692–000]

Take notice that on November 17, 1997, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-To-Point Transmission Service Agreement between Entergy Services, as agent for the Entergy Operating Companies, and The Cincinnati Gas & Electric Company, PSI Energy, Inc., and Cinergy Services, Inc.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Northern Indiana Public Service Company

[Docket No. ER98–693–000]

Take notice that on November 17, 1997, Northern Indiana Public Service Company, tendered for filing an executed Sales Service Agreement and an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Pure Power, Inc.

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Pure Power, Inc., pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission. Under the Sales Service Agreement, Northern Indiana Public Service Company will provide general purpose energy and negotiated capacity to Pure Power, pursuant to the Wholesale Sales Tariff field by Northern Indiana Public Service Company in Docket No. ER95–1222–000 as amended by the Commission's order in Docket No. ER97–458–000 and allowed to become effective by the Commission. Northern Indiana Public Service Company has requested that the Service Agreements be allowed to become effective as of December 1, 1997.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER98–694–000]

Take notice that on November 17,1997, Cinergy Services, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff), entered into between Cinergy and EnerZ Corporation (EnerZ).

Cinergy and EnerZ are requesting an effective date of October 31, 1997.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Atlantic City Electric Company

[Docket No. ER98–695–000]

Take notice that on November 17, 1997, Atlantic City Electric Company (Atlantic Electric), tendered for filing service agreements under which Atlantic Electric will sell capacity and energy to SCANA Energy Marketing, Inc. (SCANA), and South Carolina Electric & Gas Company (SCE&G) under Atlantic Electric's market-based rate sales tariff. Atlantic Electric requests the agreements be accepted to become effective on November 18, 1997.

Atlantic Electric states that a copy of the filing has been served on SCANA and SCE&G.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. New York State Electric & Gas Corporation

[Docket No. ER98–696–000]

Take notice that on November 17, 1997, New York State Electric & Gas Corporation (NYSEG), filed Service Agreements between NYSEG and Electric Clearinghouse, Inc., (Customer). These Service Agreements specify that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed and effective on June 11, 1997, in Docket No. OA97–571–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date of October 23, 1997, for the Service Agreements. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. American Electric Power Service Corporation

[Docket No. ER98–697–000]

Take notice that on November 17, 1997, the American Electric Power Service Corporation (AEPSC), tendered for filing executed service agreements under the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after November 1, 1997.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER98–698–000]

Take notice that on November 17, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (collectively and each doing business as GPU Energy), tendered for filing a Notice of Cancellation of the Service Agreement between GPU Energy and Phibro, Inc. (Phibro), dated August 23, 1995.

GPU Energy requests that this cancellation become effective January 16, 1998.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. Tucson Electric Power Company

[Docket No. ER98–699–000]

Take notice that on November 17, 1997, Tucson Electric Power Company (TEP), tendered for filing the following service agreements for firm point-to-point transmission service, and the following umbrella agreement for short-term firm transmission service under Part II of its Open Access Transmission Tariff filed in Docket No. OA96–140–000. TEP requests waiver of notice to permit the service agreements to become effective as of the earliest date service commenced under the agreements, and to permit the umbrella agreements to become effective as of the date of this filing. The details of the service agreement are as follows:

1. Service Agreement for Firm Point-to-Point Transmission Service with Electric Clearinghouse, Inc., dated October 31, 1997. Service under this agreement commenced on November 1, 1997.

2. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., dated October 31, 1997. Service under this agreement commenced on November 1, 1997.

3. Service Agreement for Firm Point-to-Point Transmission Service with Enron Power Marketing, Inc., dated November 4, 1997. Service under this agreement commenced on November 4, 1997.

The details of the umbrella agreement are as follows:

1. Umbrella Agreement for Short-Term Firm Point-to-Point Transmission Service with Salt River Project dated November 6, 1997. No service has yet occurred under this agreement.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Tucson Electric Power Company

[Docket No. ER98–700–000]

Take notice that on November 17, 1997, Tucson Electric Power Company (TEP), tendered for filing a service agreement and letter agreement for the sale of firm power under Service Schedule C of TEP's Coordination Tariff, Volume No. 1, Docket No. ER94–1437–000.

The details of the agreements are as follows:

1. Service Agreement for Firm Power Sales to Farmington Electric Utility System dated May 16, 1997. Service under this agreement commenced on November 1, 1997.

2. Letter Agreement for Firm Power Sales to Farmington Electric Utility System dated May 16, 1997.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. California Polar Power Brokers LLC

[Docket No. ER98–701–000]

Take notice that on November 17, 1997, California Polar Power Brokers LLC (Calpol), petitioned the Commission for acceptance of Calpol's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Calpol intends to engage in wholesale electric power and energy purchases and sales as a marketer. Calpol is not in the business of generating or transmitting electric power. Calpol is owned by private investors and is in the business of marketing and brokering electricity.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–702–000]

Take notice that on November 17, 1997, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (doing business as GPU Energy) filed an Application for Authorization To Sell Energy and Capacity at Market-based Rates and Market-based Sales Tariff.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Additional Signatories to PJM Interconnection, L.L.C. Operating Agreement

[Docket No. ER98–703–000]

Take notice that on November 17, 1997, the PJM Interconnection, L.L.C. (PJM), filed on behalf of the Members of the LLC, membership applications of Scana Energy Marketing, Inc., and South Jersey Energy Company. PJM requests an effective on the day after received by FERC.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Central Maine Power Company

[Docket No. ER98–704–000]

Take notice that on November 17, 1997, Central Maine Power Company, filed an amendment to its Wholesale Market Tariff, FERC Electric Tariff, Original Volume No. 4. The amendment replaces Sheet No. 4, with First Revised Sheet No. 4.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Pennsylvania Power Company

[Docket No. ER98–705–000]

Take notice that on November 17, 1997, Pennsylvania Power Company (Penn Power), submitted a revised rate schedule for the Borough of Zelienople, Pennsylvania. The revised rate schedule incorporates the energy imbalance deviation band provided for in the Stipulation and Agreement between Ohio Edison Company, Pennsylvania Power Company and the Boroughs of Ellwood City, Grove City and Zelienople which had been submitted for filing to the Federal Energy Regulatory Commission on June 30, 1997, in Docket Nos. OA96–197–000 and ER97–1719–000 and approved by the Commission by letter of October 17, 1997. The proposed effective date for the revised rate schedule is November 17, 1997. Zelienople is the only customer affected by this filing.

Copies of the filing have been provided to the Pennsylvania Public Utility Commission and The Public Utilities Commission of Ohio.

Comment date: December 19, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32531 Filed 12–11–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11546–000 Minnesota]

City of Thief River Falls; Notice of Availability of Draft Environmental Assessment

December 8, 1997.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for an original minor license for the proposed Thief River Falls, Municipal Power Dam Hydroelectric Project located on the Red Lake River in the City of Thief River Falls, Pennington County, Minnesota, and has prepared A Draft Environmental Assessment (DEA) for the proposed project. In the DEA, the Commission's staff has the proposed project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

Comments should filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix Project No. 11546–000 to all comments. For further information, please contact Monte J. TerHaar at (202) 219–2768.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32501 Filed 12–11–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License

December 8, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of License.

b. *Project No.:* 287–006.

c. *Date filed:* December 2, 1997.

d. *Applicants:* Hydro-Op One Associates and Midwest Hydro, Inc.

e. *Name of project:* Dayton.

f. *Location:* On the Fox River in LaSalle County, Illinois.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contacts:* Mr. Robert L. Winship, Hydro-Op One Associates, c/o National Hydro, 745 Atlantic Avenue, 10th Floor, Boston, MA 02111–2735, (617) 357–9029; Mr. David B. Ward, Ward & Anderson, P.C., 1000 Thomas Jefferson Street, N.W., Suite 503, Washington, DC 20007–3805, (202) 298–6910.

i. *FERC Contact:* James Hunter, (202) 219–2839.

j. *Comment Date:* January 6, 1998.

k. *Description of Transfer:* Transfer of the license for this project is being sought in connection with the sale of the project from Hydro-Op One Associates to Midwest Hydro, Inc.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32500 Filed 12–11–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5487–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed December 01, 1997 Through December 05, 1997 Pursuant to 40 CFR 1506.9.

EIS No. 970464, Draft EIS, COE, AZ, Rio Salado Environmental Restoration of two Sites along the Salt River: (1) Phoenix Reach and (2) Tempe Reach, Feasibility Report, in the Cities of Phoenix and Tempe, Maricopa County, AZ, Due: January 26, 1998, Contact: Alex Watt (213) 452–4204.

EIS No. 970465, Revised Draft EIS, AFS, CA, Rock Creek Recreational Trails Management Plan, Implementation, Additional Information, Eldorado National Forest, Georgetown Ranger Director, Eldorado County, CA, Due: January 26, 1998, Contact: Linda Earley (916) 333–4312.

EIS No. 970466, Final EIS, AFS, AK, Helicopter Landings within Wilderness, Implementation, Tongass National Forest, Chatham, Stikine and Ketchikan Area, AK, Due: January 12, 1998, Contact: Larry Roberts (907) 772–3841.

EIS No. 970467, Draft EIS, NPS, OR, Crater Lake National Park, Implementation of New Concession Contract for Visitor Services Plan, OR, Due: January 26, 1998, Contact: Al Kendricks (541) 594–2211.

EIS No. 970468, Draft Supplement, APH, Logs, Lumber and Other Unmanufactured Wood Articles Importation, Additional Updated Information, Improvements to the existing system to Prohibit Introduction of Plant Pests into the United States, Due: February 10, 1998, Contact: Jack Edmundson (301) 734–8565.

EIS No. 970469, Draft EIS, USN, CA, US Pacific Fleet F/A 18 E/F Aircraft for Development of Facilities to Support Basing on the West Coast of the United States, Possible Site Installations are (1) Lemoore Naval Air Station and (2) El Centro Naval Air Facility, Fresno, King and Imperial Counties, CA, Due: January 26, 1998, Contact: Surinder Sikand (415) 244–3020.

Dated: December 9, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–32567 Filed 12–11–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5487–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 24, 1997 Through November 28, 1997 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 11, 1997 (62 FR 16154).

Draft EISs

ERP No. D–COE–K36122–CA Rating EC2, Upper Guadalupe River Feasibility Study, Flood Control Protection, Construction, National Economic Development Plan (NED), Santa Clara Valley Water District, City of San Jose, Santa Clara County, CA.

Summary: EPA expressed environmental concerns regarding the lack of a discussion as to whether a combination of structural and non-structural features may be a reasonable alternative, whether the project would comply with applicable Water Quality Standards, and the potential impacts and mitigation measures associated with using herbicides to control vegetation under the Channel Bypass Plan. EPA recommended that the FEIS incorporate pollution prevention features in the project's design, construction and operation.

ERP No. DS–COE–G39002–00 Rating LO, Red River Chloride Control Project, Construction and Operation Methods, Updated and Additional Information, several counties TX and OK.

Summary: EPA had no objection; however, EPA recommended that the description of the no action alternative be expanded to include the economic consequences of not developing additional water supply sources to users in the Red River Basin.

ERP No. D1–COE–K35012–CA Rating EC2, Sacramento River Bank Protection Project, Implemention of Streambank Protection for the Lower American River between RM–0 and 13.7, Updated Information, City of Sacramento, Sacramento County, CA.

Summary: EPA commended the Corps for the collaborative process with Federal, State and local agencies that lead to the project's design and environmental documentation. However, EPA expressed concerns regarding potential impacts to aquatic resources. The lack of a discussions of mitigation measures to compensate for the unavoidable loss of aquatic resources. EPA asked that the FSEIS clearly indicate whether adverse impacts to aquatic resources would be avoided and minimized to the greatest extent practicable while still executing the project's purpose and need. EPA also asked that the FSEIS discuss whether the project would comply with Water Quality Standards and protect beneficial uses.

Final EISs

ERP No. F–AFS–L61214–OR, Kalmiopsis Wilderness, Approval for Motorized Vehicular Access to the Private Property within the Chetco River

Drainage, Special-Use-Permit Issuance, Illinois Valley Ranger District, Siskiyou National Forest, Curry County, OR.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65278–ID, Middle Fork Analysis Area Management Plan, Implementation, Nez Perce National Forest, Selway Ranger District, Idaho County, ID.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–K67045–NV, Florida Canyon Mine Expansion Project and Comprehensive Reclamation Plan, Construction and Operation of New Facilities and Expansion of Existing Gold Mining Operations in Imlay Mining District, Plan-of-Operation Approval and Right-of-Way Permit Issuance, Pershing County, NV.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–DOE–L91001–ID, Nez Perce Tribal Hatchery Program, Implementation, Restore Chenook Salmon to the Clearwater River Subbasin, Snake River, Idaho.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory.

ERP No. F–IBR–K31018–AZ, Programmatic EIS—Pima-Maricopa Irrigation Project, Construction and Operation, Maricopa and Pinal Counties, AZ.

Summary: EPA expressed environmental concern over the large scope of the proposed action and potential adverse environmental impacts. EPA recommended prioritization of project components for implementation with primary emphasis on rehabilitation of existing irrigation systems and agricultural areas. EPA also strongly advocated monitoring and adaptive management and urged full integration of the Community's comprehensive water management plan. EPA urged implementation of the demonstration Riparian Habitat Area as soon as feasible.

Dated: December 9, 1997.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 97–32568 Filed 12–11–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATION COMMISSION

[Report No. 2241]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

December 8, 1997.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchase form the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed December 29, 1997. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules Regarding Installment Payment Financing For Personal Communications Services (PCS) Licensees (WT Docket No. 97–82).

Number of Petitions Filed: 37.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–32518 Filed 12–11–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2242]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

December 8, 1997.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed December 29, 1997. See. § 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Administration of the North American Numbering Plan Carrier Identification Codes (CICS) (CC Docket No. 92–237).

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Sales,

Secretary.

[FR Doc. 97–32519 Filed 12–11–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:58 a.m. on Tuesday, December 9, 1997, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) reports from the Office of Inspector General, and (2) matters relating to the Corporation's corporate and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Joseph H. Neely (Appointive), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Director Ellen S. Seidman (Director, Office of Thrift Supervision), and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Dated: December 9, 1997.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 97–32647 Filed 12–10–97; 12:15 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following

agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–010776–106.

Title: Asia North America Rate Agreement (''ANERA'').

Parties:

American President Lines, Ltd.
Hapag-Lloyd Container Linie GmbH
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
P&O Nedlloyd Limited
P&O Nedlloyd B.V.
Sea-Land Service, Inc.

Synopsis: The proposed modification revises Article 8.6 to provide that Neptune Orient Lines, Ltd. and American President Lines, Ltd., as affiliated companies, will have a single vote on Agreement matters. The parties have requested a shortened review period.

Agreement No.: 224–201042.

Title: Terminal Agreement between the Philadelphia Regional Port Authority and Tioga Fruit Terminal Inc.

Parties:

Philadelphia Regional Port Authority (''Port'')
Tioga Fruit Terminal, Inc. (''Tioga'').

Synopsis: The proposed lease agreement authorizes the Port to grant Tioga exclusive use of the Tioga III Building, approximately 40,000 square feet of refrigerated space in the Tioga II Building, certain yard space west of the Tioga III Building, and berthing and other rights through May 31, 1998.

Dated: December 8, 1997.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–32471 Filed 12–11–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 29, 1997.

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Gerald E. Smith, Marshall, Texas; Geraldine Smith Mauthe, Uncertain, Texas; Frances Smith Hurley, Marshall, Texas; Betty Smith Henigsmith, Marshall, Texas; William Louis Mauthe, Uncertain, Texas; Martheil Mauthe Clanton, Waco, Texas; Coleta Daves Smith, Marshall, Texas; John E. Hurley, Jr., Marshall, Texas; Caddo Industries, Inc., Marshall, Texas; Thomas D. Howell, Marshall, Texas; and Steven H. Howell, Marshall, Texas, all acting in concert; to acquire additional voting shares of First Marshall Corporation, Marshall, Texas, and thereby indirectly acquire East Texas National Bank, Marshall, Texas.

Board of Governors of the Federal Reserve System, December 9, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32555 Filed 12–91–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 97-31838) published on page 64382 of the issue for Friday, December 5, 1997.

Under the Federal Reserve Bank of Atlanta heading, the entry for Harold Gary Morse, Oxford, Florida, is revised to read as follows:

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Harold Gary Morse, Oxford, Florida, Mark Morse Irrevocable Trust, Lady Lake, Florida, Jennifer Boone Irrevocable Trust, Lady Lake, Florida, Tracy Mathews Irrevocable Trust, Lady Lake, Florida, Donald W. and Tracy L. Mathews, Lady Lake, Florida, Tracy L. Mathews, Lady Lake, Florida, Mark G. Morse, Lady Lake, Florida, Jennifer Boone Parr, Lady Lake, Florida, and Jennifer Boone Parr Self Directed IRA; to acquire additional voting shares of Villages Bancorporation, Inc., Lady Lake, Florida, and thereby indirectly acquire First Bank of the Villages, Lady Lake, Florida.

Comments on this application must be received by December 19, 1997.

Board of Governors of the Federal Reserve System, December 9, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32556 Filed 12–11–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 8, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Lenox Financial Services Corp., Lenox, Massachusetts; to become a bank holding company by acquiring 100 percent of the coring shares of Lenox Savings Bank, Lenox, Massachusetts.

In connection with this application, Applicant also has applied to acquire Trust Company of the Berkshires, N.A., Pittsfield, Massachusetts, and thereby engage in trust company activities, pursuant to § 225.28(b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of Cleveland (Jeffery Hirsch, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. National City Corporation, Cleveland, Ohio; to merge with First of America Bank Corporation, Kalamazoo, Michigan, and thereby indirectly acquire First of America Bank - Michigan, N.A., Kalamazoo, Michigan, and First of America Bank - Illinois, N.A., Bannockburn, Illinois.

In connection with this application, Applicant has also applied to acquire First of America Community Development Corporation, Kalamazoo, Michigan, and thereby indirectly acquire: (1) SunAmerica Affordable Housing Partners, Carson City, Nevada, and thereby engage in community development financing and investment activities, pursuant to § 225.28 (b)(12) of the Board's Regulation Y; (2) First of America Insurance Company, Kalamazoo, Michigan, and thereby engage in credit life and disability insurance activities, pursuant to § 225.28 (b)(11) of the Board's Regulation Y; (3) First of America Securities, Inc., Kalamzoo, Michigan, and thereby engage in discount and full service brokerage activities through agency transactional services for consumer investments, pursuant to § 225.28 (b)(7) of the Board's Regulation Y; investment transactions as principal, pursuant to § 225.28(b)(8) of the Board's Regulation Y; financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y; extending credit and servicing loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y; and in underwriting and dealing to a limited extent, in all types of debt and equity securities, (see *Citicorp, et al.*, 73 Fed. Res. Bull. 473 (1987) (1987 Section 20 Order) as modified, and First of America Bank Corporation, 80 Fed. Res. Bull. 1120 (1994); and (4) First of America Trust Company, Peoria, Illinois, and thereby indirectly acquire New England Trust Company, Providence, Rhode Island, and thereby engage in trust activities and financial and investment advisory activities, pursuant to §§ 225.28 (b)(5) and (b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 9, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32557 Filed 12–11–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 29, 1997.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Fleet Financial Group, Inc., Boston, Massachusetts (Notificant); to acquire through its wholly owned subsidiary, Fleet Securities, Inc., New York, New York (Section 20 Subsidiary), all the shares of The Quick & Reilly Group, Inc., Palm Beach, Florida (Q&R Group), and all the shares of the subsidiaries of Q&R Group, including JJC Specialist Corp., New York, New York, Nash, Weiss & Co., Jersey City, New Jersey, and Sure Trade Corp., New York, New York, and thereby engage in certain nonbanking activities. Notificant proposes to engage in the following: (1) extending credit and servicing loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y; (2) providing services related to extending credit, pursuant to § 225.28(b)(2) of the Board's Regulation Y; (3) providing financial and investment advisory services, pursuant to § 225.28(b)(6) of the Board's Regulation Y; (4) providing securities brokerage, riskless principal, private placement, and other agency transactional services, pursuant to § 225.28(b)(7) of the Board's Regulation Y; (5) underwriting and dealing in government obligations and money market instruments (''bank-eligible securities'') and buying and selling bullion and related activities, pursuant to § 225.28(b)(8) of the Board's Regulation Y; (6) providing data processing services, pursuant to § 225.28(b)(14) of the Board's Regulation Y, and activities incidental thereto; and (7) providing administrative services to open-end investment companies, *see Commerzbank AG*, 83 Fed. Res. Bull. 678 (1997) and *Bankers Trust New York Corp.*, 83 Fed. Res. Bull. 780 (1997). Notificant also proposes to provide certain swaps-related back-office and middle-office services in connection with the provision of agency transactional services, pursuant to § 225.28(b)(7) of the Board's Regulation Y.

In addition, Notificant proposes to engage in underwriting and dealing to a limited extent in all types of equity and debt securities that a state member bank may not underwrite and deal in (''bank-ineligible securities''), except ownership interests in open-end investment companies, *see J.P. Morgan & Co., Inc.*, 75 Fed. Res. Bull. 192 (1989) and *Citicorp*. 73 Fed. Res. Bull. 473 (1987). In connection with these activities, Notificant proposes to act as a specialist for certain issues listed on the New York Sock Exchange (NYSE).

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Middle Georgia Corporation, Ellaville, Georgia; to acquire Fairbanco Holding Company, Inc., Fairburn, Georgia, and thereby indirectly acquire Fairburn Banking Company, Fairburn, Georgia, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4) of the Board's Regulation Y. This activity will be conducted throughout the State of Georgia. Comments regarding this application must be received by January 8, 1998.

Board of Governors of the Federal Reserve System, December 9, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32554 Filed 12–11–97; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Uniform Relocation and Real Property Acquisition Under Federal and Federally-assisted Programs (45 CFR part 15 and 49 CFR part 24)—0990–0150—Extension—HHS has adopted standard government-wide regulations on acquisition of real property and relocation of persons thereby displaced. Federal agencies and State and local governments must maintain records of their displacement activities sufficient to demonstrate compliance with those regulations. Agencies may be required to file reports every three years (or more often with good cause) to permit Federal verification of compliance. *Respondents:* State or local governments; *Annual Number of Respondents:* one; *Frequency of Response:* once; *Burden per Response:* one hour; *Total Annual Burden:* one hour.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: November 28, 1997.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 97–32499 Filed 12–11–97; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Developmental Disabilities Annual Protection and Advocacy Program Performance Report.

OMB No.: 0970–0159.

Description: HHS cannot fulfill its obligation to effectively serve the nation's Adoption and Foster Care populations, nor report meaningful and reliable information to Congress (Adoption and Foster Care Analysis and Reporting System (AFCARS) required by section 479(b)(2) of the Social Security Act, or CAPTA reporting requirements) about the extent of the problems facing these children or the effectiveness of various methodologies designed to provide assistance to this population, without access to timely and accurate information. Forty-six States and the District of Columbia have developed or have committed to develop a SACWIS system with enhanced (75 percent) Federal financial participation (FFP). The purpose of these reviews is to ensure that all aspects of the project, as described in the approved Advance Planning Document (APD), have been adequately completed, and conform with applicable regulations and policies.

States will submit the completed SACWIS Assessment Review Questionnaire and other documentation. The additional documents should all be readily available to the State as a result good project management.

The information collected in the Assessment Review Guide will allow State and Federal officials to determine if the State's SACWIS system meets the requirements for enhanced title IV–E Federal financial participation defined at 45 CFR 1355.50. Additionally, other States will be able to use the documentation provided as part of this review process, in their own system development efforts.

Respondents: State, Local or Tribal Govt.

Annual Burden Estimates

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Review	10	1	60	600

Estimated Total Annual Burden Hours: 600

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: December 9, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–32538 Filed 12–11–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0487]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the patent and exclusivity notification requirements under the new drug application (NDA) and abbreviated new drug application (ANDA) regulations.

DATES: Submit written comments on the collection of information by February 10, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Abbreviated New Drug Application Regulations; Patent and Exclusivity Provisions; 21 CFR 314.50(i), 314.50(j), 314.52, 314.53, 314.54(a)(1)(vii), 314.70(f), 314.94(a)(12), 314.95, 314.107(c)(4), (e)(2)(iv), (f)(2), and (f)(3)—(OMB Control No. 0910–0305)—Extension

Section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) requires patent owners to submit to FDA information about patents that cover approved drugs. Generic copies of these drugs may be approved when the patents expire or if a generic company certifies that the patent is invalid or will not be infringed. In such cases, the generic company must notify the patent owner about the certification, and approval of the drug may not be made effective until after the court decides the patent infringement suit or a period of 36 months, whichever occurs first. In addition, section 505 of the act, provides several periods of marketing exclusivity ranging from 3 to 10 years (depending primarily on the nature of the innovation). If a drug product receives marketing exclusivity, FDA will not approve (or, in limited cases not receive) an ANDA for the drug product.

Under the authority found in sections 505 and 701 of the act (21 U.S.C. 371), FDA issued regulations governing patent and exclusivity provisions in part 314 (21 CFR part 314). The regulations provide instructions for NDA applicants (including section 505(b)(2) applicants) and ANDA applicants on how to file patent information and request marketing exclusivity; require patent certification information for section 505(b)(2) applications and ANDA's; require information for requests for marketing exclusivity for NDA's (including section 505(b)(2) applications and certain NDA supplements); and require patent information for NDA's.

The specific reporting requirements that are the subject of this information collection are as follows: (1) § 314.50(i) requires patent certification as part of a section 505(b)(2) application; (2) § 314.50(j) requires an NDA applicant to submit information if seeking marketing exclusivity; (3) § 314.52 requires section 505(b)(2) applicants to provide notice of certification of noninfringement of patent or invalidity to patent holders and NDA holders; (4) § 314.53 requires submission of patent information as part of an NDA or supplement; (5) § 314.54(a)(1)(vii) requires applicants to submit a statement if a section 505(b)(2) applicant is seeking marketing exclusivity for changes to a listed drug; (6) § 314.70(f) requires a statement if an applicant is seeking marketing exclusivity for a supplement; (7) § 314.94(a)(12) requires an applicant to submit patent information as part of an ANDA; (8) § 314.95 requires ANDA applicants to provide notice of certification of noninfringement of patent or invalidity to patent holders and NDA holders; and (9) §§ 314.107(c)(4), (e)(2)(iv), (f)(2), and (f)(3) require notice to FDA by ANDA or section 505(b)(2) application holders of any legal action concerning patent infringement.

Applicants must provide information on patents to FDA to enable the agency to determine whether a product is covered by a patent or whether approval of a proposed drug product would result in patent infringement. The agency lists the patent information as a reference for potential applicants. If an applicant believes a patent is invalid or would not be infringed, federal law also requires it to notify the patent holder. FDA approval, in such cases, is affected should there be any patent litigation. Failure to provide this information would result in an incomplete application and constitute grounds for refusing to approve the application.

Applicants submitting NDA's are required under the act to provide information on certain patents that cover their drug products. The agency lists this patent information in its publication titled ''List of Approved Drug Products With Therapeutic Equivalence Evaluations.'' To promote product innovation, the act also gives NDA applicants several periods of ''market exclusivity'' ranging from 3 to 10 years (depending primarily on the nature of the innovation). If a drug

product receives marketing exclusivity, FDA will not approve (or, in limited cases, even receive) an ANDA for the drug product during that time period.

Respondents to this collection of information are new drug and abbreviated new drug applicants.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
314.50(i)	8	1	8	2	16
314.50(j)	50	1	50	2	100
314.52	8	1	8	8	64
314.53	200	1	200	1	200
314.54(a)(1)(vii)	8	1	8	1	8
314.70(f)	43	1	43	1	43
314.94(a)(12)	395	1	395	2	790
314.95	30	1	30	16	480
314.107(c)(4), (e)(2)(iv), (f)(2), (f)(3)	30	1	30	1	30
Total					1,731

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on FDA's experience over the last 3 years in receiving this information, and the familiarity by FDA reviewers with the amount of time it takes to prepare and submit the information to FDA.

Dated: December 5, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32553 Filed 12–11–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0320]

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Filing Objections and Requests for a Hearing on a Regulation or Order'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 6, 1997 (62 FR 42257 to 42258), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0184. The approval expires on September 30, 2000.

Dated: December 5, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32583 Filed 12–11–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0443]

Iron-Containing Supplements and Drugs: Label Warning Statements and Unit-Dose Packaging Requirements; Small Entity Compliance Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a small entity compliance guide entitled ''Iron-Containing Supplements and Drugs: Label Warning Statements and Unit-Dose Packaging Requirements; Small Entity Compliance Guide'' (compliance guide). This compliance guide is intended to help small entities comply with the final rule requiring label warnings and unit-dose packaging for iron-containing supplements and drug products. This action is being taken under the Small Business Regulatory Enforcement Fairness Act of 1996 (the SBREFA).

DATES: Written comments on the compliance guide may be submitted at any time.

ADDRESSES: An electronic version of the compliance guide entitled ''Iron-Containing Supplements and Drugs: Label Warning Statements and Unit-Dose Packaging Requirements; Small Entity Compliance Guide'' is available on the Internet at ''http://vm.cfsan.fda.gov/~dms/secqiron.html''. Printed copies may be obtained from the Iron Labeling and Packaging, Industry Activities Staff (HFS–565), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204. Submit written comments on the compliance guide to the contact person below.

FOR FURTHER INFORMATION CONTACT: Linda S. Kahl, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3101.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 15, 1997 (62 FR 2218), FDA issued a final rule requiring: (1) Label warning statements on products taken in solid oral dosage form to supplement the dietary intake of iron or to provide iron for therapeutic purposes and (2) unit-dose packaging for iron-containing products that contain 30 milligrams or more of iron per dosage unit. This final rule became effective July 15, 1997.

FDA is announcing the availability of a compliance guide entitled ''Iron-Containing Supplements and Drugs: Label Warning Statements and Unit-Dose Packaging Requirements; Small Entity Compliance Guide'' under the SBREFA (Pub. L. 104–121). This compliance guide is intended to help small businesses comply with the requirements of the new rule, and it restates in plain language the legal requirements set forth in the current regulation for labeling and packaging of iron-containing supplements and drug products. Any statement in this compliance guide that goes beyond merely restating the applicable legal requirements represents the agency's current thinking on this subject. The regulation is binding and has the force and effect of law; however, this compliance guide does not, itself, create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

Dated: November 12, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32552 Filed 12–11–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following National Institute of Allergy and Infectious Diseases Special Emphasis Panel (SEP) meeting:

Name of SEP: Acute Infection and Early Disease Research Network (AIEDRN).

Date: January 9, 1998.

Time: 8:00 a.m. to Adjournment.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815, (301) 656–1500.

Contact Person: Dr. Allen C. Stoolmiller, Scientific Review Adm., 6003 Executive Boulevard, Solar Bldg., Room 4C05, Bethesda, MD 20892, (301) 496–7966.

Purpose/Agenda: To evaluate contract proposals.

The meeting will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Programs Nos. 93.855, Immunology, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: December 5, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–32470 Filed 12–11–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Promotion of Homologous Recombination DNA Pairing by RecA And RecA Peptides

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice is accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in U.S. Patents No. 5,460,941, entitled, ''Method of Targeting DNA'' and 5,510,473, entitled, ''Cloning of the RecA Gene From Thermus Aquaticus YT–1'', U.S. Patent Applications Serial Numbers 08/446,413, entitled, ''Cloning of the RecA Gene From Thermus Aquaticus YT–1'', 08/483,115 entitled, ''Promotion of Homologous Recombination DNA Pairing By Rec-A-Derived Peptides'', 60/001,384 and 08/682,305, ''Rec A Assisted Cloning of DNA'', and corresponding U.S. and foreign patent applications to the Pangene Corporation of Menlo Park, California. The patent rights in these inventions have been assigned to the United States of America.

DATES: Only written comments and/or applications for a license which are received by NIH on or before February 10, 1998 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Raphe Kantor, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804. Telephone: (301) 496–7735 ext. 247; Facsimile: (301) 402–0220. A signed Confidentially Agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: This technology covers methodology for inducing sequence-specific homologous recombination between an exogenous DNA sequence and the corresponding genomic DNA sequence by use of the *E. coli* RecA protein. The RecA protein brings together an exogenous DNA sequence and a corresponding genomic DNA sequences for homologous recombination. A peptide of RecA can be substituted for the entire *E. Coli* RecA protein to target a double-strand of DNA or to inhibit transcription of a given gene. The ability of a RecA peptide to induce homologous recombination gives this technology broad commercial applicability. The peptide can be used in site-specific targeting of DNA sequences for purposes of cleavage, protection or enrichment as a research reagent, a diagnostic tool or for use in gene therapy.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use of this exclusive license may be limited to human therapeutics.

Applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Comments and objections submitted to this notice will not be available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 1, 1997.

Barbara M. McGarey,

Deputy Director, Office of Technology Transfer.

[FR Doc. 97–32469 Filed 12–11–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–62]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: January 12, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 8, 1997.

David S. Cristy,

Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Report on Occupancy for Public Housing.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0028.

Description of the Need for the Information and its Proposed Use: The information collected will be used to measure and evaluate the utilization of Public and Indian Housing units by low-income families as well as assure that all persons have an equal opportunity to participate in and receive the benefits of the housing assistance offered. Occupancy and tenant characteristic information is needed for monitoring and compliance activities. An annual report is provided to Congress.

Form Number: HUD–51234.

Respondents: State, Local, or Tribal Government and Not-For-Profit Institutions.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–51234	3,400		1		1		3,400

Total Estimated Burden Hours: 3,400.

Status: Extension, without changes.

Contact: Brenda Earle, HUD, (202) 708–0744x4022; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: December 8, 1997.

[FR Doc. 97–32509 Filed 12–11–97; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4235–N–33]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265.

(This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available for suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be make available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area—MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; INTERIOR: Ms. Lola Knight, Department of the Interior, 1849 C Street, NW., Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–4080; VA: Mr. George Szwarcman, Director, Land Management Service, 184A, Department of Veterans Affairs, 811 Avenue, NW., Room 414, Lafayette Bldg., Washington, DC 20420; (202) 565–5941; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Street, NW., Washington, DC 20405; (202) 501–2059; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; (These are not toll-free numbers).

Dated: December 4, 1997.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 12/12/97

Suitable/Available Properties

Buildings (by State)

California

Bldgs. 65–74, 86, 87
Naval Postgraduate School
La Mesa
Monterey CA 93943–
Landholding Agency: Navy
Property Number: 779740067
Status: Excess
Comment: 4,482 sq. ft., family housing, presence of asbestos/lead paint, need rehab

Hawaii

Bldg. 618, Ferry Terminal
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779740069
Status: Underutilized
Comment: intermittent use, 315 sq. ft., most recent use—storage

Bldg. 619, Ferry Terminal
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779740070
Status: Underutilized
Comment: intermittent use, 1460 sq. ft., most recent use—storage

Bldg. 594, Ferry Terminal
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779740071
Status: Excess
Comment: 1300 sq. ft., most recent use—parking shed, needs rehab

Bldg. 566, Ferry Terminal
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779740072
Status: Excess
Comment: 52 sq. ft., most recent use—sentry post

Structure 5378, Ford Island
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779740073
Status: Underutilized
Comment: intermittent use, berthing pier

Virginia

Bldg. 94
St. Juliens Creek Annex
Portsmouth VA 23702–
Landholding Agency: Navy
Property Number: 779740075
Status: Unutilized
Comment: 361 sq. ft.

Bldg. 206
St. Juliens Creek Annex
Portsmouth VA 23702–
Landholding Agency: Navy
Property Number: 779740076
Status: Unutilized
Comment: 204 sq. ft., most recent use—storage

Bldg. 211
St. Juliens Creek Annex
Portsmouth VA 23702–
Landholding Agency: Navy
Property Number: 779740077
Status: Unutilized
Comment: 165 sq. ft., most recent use—storage

Bldg. 274
St. Juliens Creek Annex
Portsmouth VA 23702–
Landholding Agency: Navy
Property Number: 779740078
Status: Unutilized
Comment: 81 sq. ft., most recent use—storage

Bldg. 124
St. Juliens Creek Annex
Portsmouth VA 23702–
Landholding Agency: Navy
Property Number: 779740079
Status: Unutilized
Comment: 4900 sq. ft., most recent use—office

Bldg. 193
St. Juliens Creek Annex
Portsmouth VA 23702–
Landholding Agency: Navy
Property Number: 779740080
Status: Unutilized
Comment: 1932 sq. ft., most recent use—office

Bldg. P82
Naval Station Norfolk
Norfolk VA 23511–
Landholding Agency: Navy
Property Number: 779740081
Status: Excess
Comment: 1324 sq. ft., most recent use—retail store

Land (by State)

Hawaii

1.49 acres, Ferry Terminal
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 779740068
Status: Underutilized
Comment: intermittent use, most recent use—parking

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. 52–651
Elmendorf AFB
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189740004
Status: Unutilized
Reason: Secured Area Extensive deterioration

California

Bldg. 01310
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189740005
Status: Unutilized
Reason: Secured Area

Bldg. 08412
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189740006
Status: Unutilized
Reason: Secured Area

Bldg. 11153
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189740007
Status: Unutilized
Reason: Secured Area

Bldg. 11154
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189740008
Status: Unutilized
Reason: Secured Area Extensive deterioration

Bldg. 15001
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189740009
Status: Unutilized
Reason: Secured Area Extensive deterioration

Bldg. 16158
Vandenberg AFB
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189740010
Status: Unutilized
Reason: Secured Area Extensive deterioration

Florida

Bldg. 10686
Elgin AFB
Elgin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 189740001
Status: Unutilized
Reason: Secured Area Extensive deterioration

Bldg. 10563
Elgin AFB
Elgin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 189740002
Status: Unutilized
Reason: Secured Area Extensive deterioration

Bldg. 10352
Elgin AFB
Elgin AFB Co: Okaloosa FL 32542–5133
Landholding Agency: Air Force
Property Number: 189740003
Status: Unutilized
Reason: Secured Area Extensive deterioration

Maryland

Bldg. 510, Indian Head Div.
Naval Surface Warfare Center
Indian Heal Co: Charles MD 20640–
Landholding Agency: Navy
Property Number: 779740083
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Minnesota

Federal Building
200 East 4th Street
Redwood Falls Co: Redwood MN 56283–
Landholding Agency: GSA
Property Number: 549740017
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–G–MN–563

Montana

Bldg. 3070
Malmstrom AFB
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189740011
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material

New Mexico

Bldg. 1257
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189740012
Status: Unutilized
Reason: Secured Area

Bldg. 332
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189740013
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 205
Holloman AFB
Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189740014
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

New York

Galloo Island Light
Lake Ontario
Hounsbfield Co: Jefferson NY
Landholding Agency: GSA
Property Number: 549740016
Status: Excess
Reason: Other
Comment: inaccessible
GSA Number: 1–U–NY–735C

Washington

Bldg. 4446
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–1199
Landholding Agency: Navy
Property Number: 779740082
Status: Unutilized
Reason: Secured Area Extensive deterioration

West Virginia

Jarrell House
New River Gorg National River
Meadow Creek Co: Summers WV 25977–
Landholding Agency: Interior
Property Number: 619740005
Status: Excess
Reason: Extensive deterioration

Blackburn Houses
New River Gorg National River
Meadow Creek Co: Summers WV 25977–
Landholding Agency: Interior
Property Number: 619740006
Status: Excess
Reason: Extensive deterioration

Adkins House
New River Gorg National River
Claypool Hollow Co: Summers WV 25977–
Landholding Agency: Interior
Property Number: 619740007
Status: Excess
Reason: Extensive deterioration

Land (by State)

Maryland

Govt. Railroad
Naval Surface Warfare Center
Indian Head Div.
Indian Head Co: Charles MD 20640–
Landholding Agency: Navy
Property Number: 779740084
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material Floodway

Minnesota

3.85 acres (Area #2)
VA Medical Center
4801 8th Street
St. Cloud Co: Stearns MN 56303–
Landholding Agency: VA
Property Number: 979740004
Status: Unutilized
Reason: Other
Comment: landlocked

7.48 acres (Area #1)
VA Medical Center
4801 8th Street
St. Cloud Co: Stearns MN 56303–
Landholding Agency: VA
Property Number: 979740005
Status: Underutilized
Reason: Secured Area

North Carolina

0.85 parcel of land
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 779740074
Status: Unutilized
Reason: Secured Area

[FR Doc. 97–32249 Filed 12–11–97; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Extension of Comment Period on an Application for an Incidental Take Permit from the County of San Diego, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice announces the extension of the comment period on the application from the County of San Diego, California, for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). Because of an administrative error, the original public comment period that closes December 15, 1997 (62 FR 61140) is extended to allow adequate time for review and response by the public. This notice is provided pursuant to section 10(c) of the Act. All comments received will become part of the public record and may be released.

DATES: Written comments should be received on or before January 12, 1998.

ADDRESSES: Comments should be addressed to Mr. Gail Kobetich, Field Supervisor, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008. Comments may be sent by facsimile to telephone (760) 431–9618.

FOR FURTHER INFORMATION CONTACT: Ms. Sherry Barrett, Assistant Field Supervisor, at the above address; telephone (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

The application includes the County of San Diego Subarea Plan and an Implementing Agreement, both of which were prepared in accordance with the regional Multiple Species Conservation Program. Persons wishing to obtain copies of the documents or additional background material should contact the County of San Diego, Department of Planning and Land Use, 5201 Ruffin Road, Suite B, Mail Station 0650, San Diego, California 92123; telephone (619) 260–8316. Documents will be available for public inspection, by appointment, during normal business hours (8 a.m. to 12 p.m. and 1 p.m. to 5 p.m.), Monday through Friday, at the above County office and at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Dated: December 8, 1997.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–32513 Filed 12–11–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement to Allow Incidental Take of Species on Lands Administered by Plum Creek Timber Company, L.P., in the States of Idaho, Montana, and Washington

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service, NOAA, Commerce.

ACTION: Notce of intent.

SUMMARY: This notice advises the public that the Fish and Wildlife Service and National Marine Fisheries Service (collectively, the ''Services'') intend to gather information necessary to prepare an Environmental Impact Statement and to conduct public scoping meetings. Plum Creek Timber Company, L.P. (Plum Creek) has informed the Services that it is preparing an application for a permit and approval of a Conservation Plan (Plan) covering bull trout (*Salvelinus confluentus*) and possibly other native salmonids, including steelhead trout (*Onchorynchus mykiss* ssp.), pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (Act). The proposed Plan would be designed to address the effects of Plum Creek activities that may have an impact on bull trout and possibly other aquatic species not currently listed under the Act. As a part of its application, Plum Creek may be seeking a permit that would authorize incidental take of steelhead trout, an aquatic species presently listed under the Act. Plum Creek would also be seeking future incidental take authority, subject to certain conditions, for other species adequately covered by the Plan should those species subsequently be listed under the Act during the term of the Plan. The Plan would be in the form of a Candidate Conservation Agreement or a Habitat Conservation Plan, depending upon whether it includes species currently listed under the Act.

In compliance with their responsibilities under the National Environmental Policy Act of 1969, as amended, and its implementing regulations (40 CFR 1500, *et. seq.*) the Services jointly announce their intent to prepare an Environmental Impact Statement for the proposed action of approving the proposed Plan and issuing the permit. This notice is furnished to solicit suggestions and information from tribes, other agencies, and the public to determine the scope of issues and alternatives to be considered in preparation of the Environmental Impact Statement. The Services jointly announce their intent to hold scoping meetings, the date, time, and place of which are provided in this notice, below. This notice is provided pursuant to section 10(c) of the Endangered Species Act and the National Environmental Policy Act implementing regulations (40 CFR 1506.6.

DATES: Scoping will commence as of the date of publication of this notice in the **Federal Register.** Written comments on the scope of the proposed action, the approval of the Plan and issuance of the permit should be received on or before February 27, 1998. A total of six scoping meetings will be held in each of the three states, on January 14, 15, 21, 22, 28, and 29, 1998. Each meeting will run from 3:30 p.m. until 7:30 p.m. The Services will use an open house format for the meetings, allowing interested members of the public to drop by at any point during the meeting to gather information and/or provide comments.

ADDRESSES: Meeting locations are scheduled as follows: January 14—Venture Motor Inn, 443 Highway 2 West, Libby, Montana; January 15—Outlaw Inn, 1701 U.S. 93 South, Kalispell, Montana; January 21—Shilo Inn, 702 West Appleway, Coeur d'Alene, Idaho; January 22—Holiday Inn Parkside, 200 South Pattee, Missoula, Montana; January 28, Doubletree Inn, 510 Kelso Drive, Kelso, Washington; and January 29, Cavanaugh's Gateway, 9 North 9th Street, Yakima, Washington, Written comments regarding the proposed action and the proposed Environmental Impact Statement should be addressed to Robert G. Ruesink, Supervisor, Snake River Basin Fish and Wildlife Office, 1387 South Vinnell Way, Room 368, Boise, Idaho 83709.

FOR FURTHER INFORMATION CONTACT: Ted Koch, at the address above, (208) 378–5293; Bill Vogel, Western Washington Fish and Wildlife Office, 510 Desmond Drive, Suite 102, Lacey, Washington, 98503–1273 (360) 753–4367; or Bob Ries, National Marine Fisheries Service, 1387 S. Vinnell Way, Room 377, Boise, Idaho, 83709 (208) 378–5647.

SUPPLEMENTARY INFORMATION:

Background

Under section 9 of the Act and its implementing regulations, ''taking'' of a threatened or endangered species, is prohibited. However, under certain circumstances the Services may issue permits to take these wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities.

Regulations governing permits for taking of threatened or endangered species are found at 50 CFR 17.22, 50 CFR 17.32, 50 CFR 222.22, 50 CFR 222.23, and 50 CFR 227.21. According to the Services' draft policy and proposed rule for Candidate Conservation Agreements, the Services may also issue permits, under certain circumstances, in connection with a Candidate Conservation Agreement (see 62 FR 32183–32188, June 12, 1997).

Plum Creek proposes to develop the Plan employing the technical assistance of the Services. Plum Creek has identified the goals of their Plan as:

1. To the maximum extent practicable, minimize and mitigate the impacts of Plum Creek's activities on all species covered by the Plan.

2. Provide habitat conditions that are necessary and advisable to conserve and enhance species populations, and allow for the long-term survival of species covered by the Plan.

To the extent that unlisted species are covered by the Plan, Plum Creek's objective is to address the listing factors under its control such that the listing of such species would be unnecessary, assuming the measures in the Plan were implemented by similarly situated landowners through a species' range.

3. Provide Plum Creek will predictability and flexibility to manage its timberlands economically. Plum Creek's objective is that the Plan would meet or exceed the standards set forth in the Services' ''No Surprises'' Policy proposed rule such that Plum Creek would be entitled to the assurances provided thereunder (see FR 29091, May 29, 1997).

The terms of any permit that the Services may issue in connection with Plum Creek's Plan, will be governed by the Services' final policy and rules for Candidate Conservation Agreements, or the final ''No Surprises'' rule, depending upon which is applicable.

The Scope of the Agreement

As currently envisioned, the Plan would involve a multi-year agreement covering approximately 1.7 million acres of Plum Creek ownership in the Pacific Northwest, including 1,462,000 acres in Montana, 132,000 acres in Idaho, and 85,000 acres in Washington. These acres include all Plum Creek ownership in Idaho and Montana, and those acres in Washington which are tributary to the Columbia River and not included in Plum Creek's approved Cascades Habitat Conservation Plan. In addition, the Plan might include 71,000 acres of Plum Creek ownership in the Puget Sound Basin that are presently not addressed in the company's Cascades Habitat Conservation Plan. Plum Creek is currently considering an agreement term of 30 years for the Plan. The Services specifically request comment on the term of the agreement.

Plum Creek has indicated that the Plan will adopt a multi-species, aquatic-ecosystem approach spanning all watersheds in the planning area in order to protect bull trout specifically, as well as other aquatic species. Bull trout are currently proposed for listing under the Act.

The intent of employing an aquatic-ecosystem approach would be to address biological concerns of fish species present in the area and remove threats to the species and/or their habitat. Other species besides bull trout which could be included in the plan include westslope cutthroat trout (*Onchorynchus clarki lewisi*), redband trout (*Onchorynchus mykiss* ssp.), and steelhead trout. Other aquatic species may also be included. Except for steelhead trout, which is listed as threatened under the Act, all of these species are currently unlisted. The Service specifically requests comment on the aquatic ecosystem approach to Plan development, and the possibility of inclusion of these and other species in the Plan and permit.

A key assumption for species protection in the Plan may be that actions taken to address the biological needs of bull trout would be beneficial to other fish species in the area. For planning purposes, the Plan and environmental analysis may rely, in part, on a classification of watershed units based on bull trout biology. In addition, the conservation needs of other fish species to be included in the Plan would be fully and independently identified and analyzed, and any additional actions necessary for their conservation would be included in the Plan.

The Plan may use a two-tier bull trout habitat classification system. Tier 1 watersheds would include Plum Creek lands within catchment areas (drainages) tributary to 1st, 2nd, 3rd, and 4th order watercourses known or suspected to support spawning and juvenile rearing of bull trout. Tier 2 watersheds would include Plum Creek lands within catchment areas tributary to all other watercourses within the Columbia River basin, within the project area. Some of these areas are known or are suspected to provide migratory, foraging, and over-wintering habitat for adult and sub-adult bull trout. Tier 2 watersheds may also provide the majority of available habitat (on Plum Creek lands), for other native salmonids such as westslope cutthroat trout, redband trout, and steelhead trout.

Fish habitat management, mitigation and restoration activities in Tier 1 watersheds would focus on protection of habitat for spawning and rearing of bull trout and other fish species included in the plan. Conservation measures in Tier 2 watersheds would be designed to protect migration, foraging, and overwintering habitat for bull trout and other fish species, and possibly spawning and rearing habitat for other fish species. The Services will evaluate the conservation needs of bull trout and other fish species throughout their ranges to ensure that conservation measures in the Plan are adequate to allow for long-term survival of each species.

As a component of this planning process, the Services seek to identify fish habitat conditions and land management actions on lands adjacent to those owned and managed by Plum Creek. In many cases, these lands may be managed by the U.S. Department of Agriculture, Forest Service. In such cases the Services will seek to work with the Forest Service under existing authorities to develop and implement management actions that are complementary to those developed for Plum Creek lands. This approach to habitat conservation planning will help ensure that adequate conservation of bull trout habitat, and habitat for other fish species, is achieved in the planning area.

Plum Creek management activities that might impact fish species covered under the Plan include commercial forestry and associated activities (such as logging road construction, logging road maintenance, gravel quarrying primarily for the purposes of logging road construction, and silvicultural activities including tree planting, site preparation, pesticide application, fertilization, and prescribed burning). Other activities which could also be addressed include forest fire suppression, open range cattle grazing, miscellaneous forest and land product sales (such as gravel and landscape stones). Non-forestry related activities also addressed would include special forest use permits for commercial outfitting, special recreation permits (such as club activities on Plum Creek land), electronic facility sites, manufacturing of forest products, and other activities common to commercial forestry and the forest products business.

Proposed Conservation Measures

For the proposed Plan, Plum Creek would develop specific conservation

measures to be implemented under the umbrella of the company's ''environmental principles.'' The measures would be developed under the following general categories:

1. Riparian Management Areas. Conservation measures would be developed to regulate activities in riparian areas. Such measures would address habitat needs by providing adequate wood for habitat complexity, adequate canopy cover for temperature management, and adequate filtration for the prevention of sediment delivery to streams.

2. Forest Road Management. Sediment from forest roads is recognized as having the potential to significantly impact fish habitat. Conservation measures would be developed to minimize the delivery of sediment from forest roads to streams.

3. Grazing. Livestock grazing (primarily cattle) occurs on over 40% of Plum Creek ownership in the planning area. Intensive grazing on many of these acres has occurred annually for decades, and for over a century in some locations. Conservation measures would be developed to manage riparian impacts resulting from grazing.

4. Land-Use Planning. Plum Creek owns property in the planning area that may ultimately have long-term uses other than forestry. Plum Creek also buys and sells land in the planning area. Land Use Planning measures would be developed to mitigate the impacts of future development or land ownership adjustments.

5. Legacy Management and Other Restoration Opportunities. On Plum Creek ownership, the legacy impacts of a variety of past management activities may have a greater bearing on fish habitat health than current practices under well-informed land-management policies and regulations. Restoration and legacy-management projects designed to remove threats to fish habitat may be identified as a part of this Plan.

6. Administration and Implementation. Plum Creek would initiate a program to monitor significant elements of the Plan and develop a program to inform and educate contractors and employees on standards and practices to be implemented.

Monitoring and Adaptive Management

As currently envisioned, the Plan would incorporate active adaptive management features, including watershed analysis. Research and monitoring would help determine the effectiveness of the Plan, validate models used to develop the Plan, and provide the basic information used to implement ''mid-course corrections'' if necessary.

Dated: December 8, 1997.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 97–32512 Filed 12–11–07; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request revising and extending the collection of information listed below has been submitted to the Office of Management and Budget for approval below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Lime.

Current OMB approval number: 1032–0038.

Abstract: Respondents supply the U.S. Geological Survey with domestic production, values, end-use data, and capacity information on the domestic lime industry. This information will be published as an Annual Report for use by Government agencies, industry, and the general public.

Bureau form number: 6–1221–A.

Frequency: Annual.

Description of respondents: Commercial and captive producers of quicklime, hydrated lime, and dead-burned dolomite.

Annual Responses: 110.

Annual burden hours: 165.

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Acting Chief Scientist, Minerals Information Team.

[FR Doc. 97–32514 Filed 12–11–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request revising and extending the collection of information listed below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 and to the Bureau Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Portland and Masonry Cement.

OMB approval number: 1028–0058.

Abstract: Respondents supply the U.S. Geological Survey with data on cement shipments to final customers. This information will be published as monthly reports for use by Government agencies, industry, and the general public.

Bureau form number: 9–3079.

Frequency: Monthly.

Description of respondents: Manufacturers and importers of portland and masonry cement.

Annual responses: 600.

Annual burden hours: 300.

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 97–32515 Filed 12–11–97; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–990–1020–01]

Call for Nominations for Upper Snake River District, Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Resource Advisory Council Call for Nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for the Bureau of Land Management (BLM) Upper Snake River District (USRD), Resource Advisory Council that have two vacant positions, which expire August 1998. This Council provides advice and recommendations to the BLM USRD on land use planning and management of the public lands within central and eastern Idaho. Public nominations will be considered for 30 days after the publication date of this notice.

The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, Resource Advisory Council members appointed to the council must be balanced and representative of the various interests concerned with the management of the public lands. The two vacant categories are in Category 1 and Category 2. Category 1 includes holders of federal grazing permits, representatives of energy and mining development, timber industry, off-road vehicle use and developed recreation; Category 2 includes representatives of environmental and resource conservation organizations, archaeological and historic interests, and wild horse and burro groups.

Individuals may nominate themselves or others. Nominees must be residents of the State of Idaho in which the council has jurisdiction. Nominees will be evaluated based on their education, training, and experience of the issues and knowledge of the geographical area of the Council. Nominees should have demonstrated a commitment to collaborative resource decision making. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

Simultaneous with this notice, BLM Upper Snake River District will issue press releases providing additional information for submitting nominations and with specifics about the positions available for this council. Nominations for Upper Snake River District Resource Advisory Council should be sent to Debra Kovar, BLM Shoshone Resource Area Office, 400 West F Street, P O Box 2-B, Shoshone, Idaho 83352–1522.

Dated: December 5, 1997.

Tom Dyer,

Area Manager.

[FR Doc. 97–32535 Filed 12–11–97; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–931–1310–00–NPRA]

Northeast National Petroleum Reserve-Alaska Draft Integrated Activity Plan/ Environmental Impact Statement

AGENCY: Bureau of Land Management.

ACTION: Notice of availability and announcement of public subsistence-related hearing schedule

SUMMARY: The Bureau of Land Management announces the availability of Northeast National Petroleum Reserve-Alaska Draft Integrated Activity Plan/Environmental Impact Statement (IAP/EIS). The planning area is roughly bounded by the Colville River to the east and south, the Ikpikpuk River to the west and the Beaufort Sea to the north. The IAP/EIS contains five alternatives for a land management plan for the 4.6 million-acre planning area and assessments of each plan's impacts on the surface resources present there. These alternatives provide varying answers to two primary questions. First, will BLM conduct oil and gas lease sales in the planning area and, if so, what lands will be made available for leasing? Second, what protections and enhancements will be implemented for natural and cultural resources and the activities that are based on these resources?

Alternative A calls for no action, or no change from the status quo, and under it no leasing would occur. Alternatives B through E make progressively more land, and more environmentally sensitive land, available to possible leasing. Alternative B makes 43 percent available, Alternative C makes 74 percent available, Alternative D makes 89 percent available and Alternative E makes the entire planning area available. Restrictive stipulations would provide protections for natural and cultural resources under all alternatives, but their number and scope would vary between alternatives.

Alternative A contains the fewest stipulations because it authorizes the fewest activities and entirely precludes leasing. As alternatives B through E make progressively more sensitive lands available for leasing, they also include increasing numbers of protective stipulations. Thus, while Alternative E opens the entire planning area to leasing it also has many specific stipulations whose intent is to ensure that sensitive natural resources are protected.

Some alternatives contain proposals for specially designated areas that would enhance recognition of their values. The Secretary of the Interior is authorized to identify specific lands in the NPR–A as ''Special Areas'', and there are two previously designated Special Areas within the planning area. Some alternatives recommend that the Pik Dunes, an unusual geologic feature in the planning area with importance for caribou, be added to the existing Teshekpuk Lake Special Area. Some alternatives also contain recommendations that lands along the Ikpikpuk River be designated as a Special Area for their paleontological values.

Under various alternatives, BLM would recommend that Congress designate the Colville River a wild, scenic, or recreation river under the Wild and Scenic Rivers Act. BLM is also proposing that it work with nearby Colville River land owners, including the State and Arctic Slope Regional Corporation, to create a Bird Conservation Area under the Partners in Flight Program. Finally, in some alternatives BLM is proposing a plan, or plans, to guide future studies of caribou and waterfowl populations in the Teshekpuk Lake area.

Section 810 of the Alaska National Lands Conservation Act requires BLM to evaluate the effects of the alternative plans presented in this IAP/EIS on subsistence activities in the planning area, and to hold public hearings if it finds that any alternative might significantly restrict subsistence activities. Appendix D of the document indicates that alternatives D and E may significantly restrict subsistence activities, therefore, BLM is holding the public hearings whose dates are given below.

DATES: Written comments on the draft IAP/EIS must be submitted or postmarked no later than February 10, 1998. Oral and/or written comments may also be presented at seven public hearings to be held:

January 12, 1998, 7:30 pm, Atqasuk Community Hall, Atqasuk, Alaska
January 13, 1998, 7:30 pm, North Slope Assembly Chambers, Barrow, Alaska
January 14, 1998, 7:30 pm, Kisik Community Center, Nuiqsit, Alaska
January 15, 1998, 7:30 pm, Anaktuvuk Pass Community Hall, Anaktuvuk Pass, Alaska
January 21, 1998, 2:00 pm and 6:00 pm, Marston Theater, Loussac Library, Anchorage, Alaska
January 22, 1998, 2:00 pm and 6:00 pm, Carlson Center, Conference Room, Fairbanks, Alaska
January 26, 1998, 7:00 pm and 9:00 pm, Washington Capital Hilton, Federal Room, 16th and K Street NW, Washington, DC

Any changes to the hearing schedule will be accompanied by appropriate public notice.

ADDRESSES: Written comments on the document should be addressed to: NPR-A Planning Team, Bureau of Land Management, Alaska State Office (930), 222 West 7th Avenue, Anchorage, Alaska 99513–7599. Comments can also be sent to the NPR-A home page (http://aurora.ak.blm.gov/npra/).

FOR FURTHER INFORMATION CONTACT: Gene Terland (907–271–3344; gterland@ak.blm.gov) or Jim Ducker (907–271–3369; jducker@ak.blm.gov). They can be reached by mail at the Bureau of Land Management (930), Alaska State Office, 222 West 7th Avenue, Anchorage Alaska 99513–7599.

SUPPLEMENTARY INFORMATION: Authority for developing this document is derived from the Federal Land Policy and Management Act, the Naval Petroleum Reserves Production Act of 1976 and the National Environmental Policy Act (NEPA).

The BLM leased tracts in the NPR-A in 1982 and 1983 (all now expired), but halted a lease sale in 1984 when no acceptable bids were made. Recently, interest in a lease sale has increased as oil and gas infrastructure moved west. Soon a development at the Alpine Field, in the Colville River delta, will bring a pipeline to within 10 miles of the eastern boundary of the planning area. None of the federal lands in the planning area are currently available to oil and gas leasing because existing NEPA documentation is dated and inadequate to meet current standards. Should BLM undertake a leasing program, this IAP/EIS will form the basic NEPA documentation to authorize leasing, and it will determine those lands that are available and those that are unavailable for leasing.

Public participation has occurred throughout the period since the Notice of Intent to Prepare an Environmental Impact Statement was published on February 13, 1997. In addition to holding scoping meetings in Nuiqsit, Atqasuk, Barrow, Fairbanks and Anchorage several publicly attended workshops have addressed important issues within the planning area. The planning area provides particularly important habitat for caribou, waterfowl and other species and many of the local residents of the area rely on harvesting these resources for subsistence purposes. Ensuring adequate protection of these resources has been one of the driving forces behind workshops to seek input from a variety of public sources with expertise in related fields. Additional information from these workshops has also been helpful in developing this draft document.

The BLM has worked very closely with the North Slope Borough and the State of Alaska in developing this draft IAP/EIS. Representatives of both organizations have directly participated in meetings that led to the development of the alternatives presented here, although BLM is solely responsible for the form the alternatives took. The Mineral Management Service of the Department of the Interior has also assisted BLM in developing the document.

Copies of the draft IAP/EIS will be available for pubic review at the following locations: Tuzzy Public Library, Barrow, AK; City of Nuiqsut, Nuiqsut, AK; City of Atqasuk, Atqasuk, AK; City of Anaktuvuk, Pass, Anaktuvuk Pass, AK; and City of Wainwright, Wainwright, AK.

Tom Allen,

State Director.

[FR Doc. 97–31771 Filed 12–11–97; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1990–00]

Record of Decision, Phelps Dodge Little Rock Mine Project, Environmental Impact Statement, Grant County, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of availability.

SUMMARY: The BLM Las Cruces District Office has prepared a Record of Decision (ROD) for the Phelps Dodge Little Rock Mine Project Environmental Impact Statement (EIS). The ROD was signed by the District Manager approving the proposed mine project and incorporating environmental protection measures in the EIS.

The EIS analyzed the impacts of the re-establishment of the Little Rock Mine. The Little Rock Mine is an open-pit copper mine located approximately 7 miles south of Silver City, New Mexico. The Proposed Action includes the construction, operation, and reclamation of the proposed mine pit, including the diversion of stream water in California Gulch, and the creation of a pit lake after mining operations have ceased. Approximately 100 million tons of leachable ore could be removed from the proposed pit. Up to 160,000 tons of ore per day would be mined and processed over a 2- to 4-year period.

The proposed project will also require the construction of a haul road that will allow transportation of ore from the mine site to the processing facilities located at the Tyrone Mine facility. Overburden or other inert, nonmineralized materials will be stockpiled for potential use in reclamation. Project construction will employ the existing workforce at Tyrone.

ADDRESSES: Linda S. C. Rundell, District Manager, BLM, Las Cruces District

Office, 1800 Marquess, Las Cruces, New Mexico, 88005.

FOR FURTHER INFORMATION CONTACT: Juan S. Padilla, Team Coordinator at (505) 525–4376.

SUPPLEMENTARY INFORMATION: Parties adversely affected by the ROD have 30 days from the date of publication of this notice to file a Notice of Appeal (43 CFR part 4) in the office which issued this decision. The Notice of Appeal should be addressed to the BLM Las Cruces District Manager (see **ADDRESSES** section above). A petition for a stay of the decision must be filed in accordance with the above cited regulations.

Copies of the ROD can be obtained from the Las Cruces District Office at 1800 Marquess, Las Cruces, New Mexico 88005, and the BLM New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87505, or by calling (505) 525–4376 , and requesting a copy of the document. Additionally, a copy of the ROD will be mailed to individuals, agencies, or companies on the mailing list. Reading copies are available at public and university libraries in Las Cruces, Silver City, Deming, Lordsburg, Socorro, and Santa Fe, New Mexico.

Dated: December 4, 1997.

Linda S.C. Rundell,

District Manager.

[FR Doc. 97–32254 Filed 12–11–97; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–990–1020–01]

Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council meeting location and time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM) council meeting of the Upper Snake River Districts Resource Advisory Council will be held as indicated below. The agenda includes a discussion on implementation of the healthy rangeland standard and guidelines, briefing on the Draft Dairy Syncline EIS and to prepare comments for the Upper Columbia Basin—EIS. All meetings are open to the public. The public may present written comments to the council. Each formal council meeting will have a time allocated for hearing public comments. The public comment period for the council meeting is listed below. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Debra Kovar at the Shoshone Resource Area Office, P. O. Box 2–B, Shoshone, ID, 83352, (208) 886–7201.

DATE AND TIME: Date is January 22, 1998, starts at 8:30 a.m. at the Pocatello Resource Area Office at 1111 N 8th Avenue, Pocatello, Idaho. Public comments will be received from 1:00 p.m. to 1:30 p.m.

SUPPLEMENTARY INFORMATION: The purpose of the council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of the public lands.

FOR FURTHER INFORMATION: Contact Debra Kovar, Shoshone Resource Area Office, P. O. Box 2-B, Shoshone, ID 83352, (208) 886–7201.

Dated: December 5, 1997.

Tom Dyer,

Area Manager.

[FR Doc. 97–32534 Filed 12–11–97; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ070–1990–00–241A; AZA 23217–A]

Arizona: Reconveyed Mineral Estate Opened to Entry (Mohave County)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The mineral estate in the following-described land was reconveyed to the U.S. in an exchange under the provisions of sec. 206 of the Federal Land Policy and Management Act of 1976, on October 10, 1988. This order will open the lands to entry under the mining laws and the mineral leasing laws.

Gila and Salt River Meridian, Arizona

T. 14 N., R. 19 W.,
Sec. 7, lots 1 to 4 inclusive, E½, E½W½.
Containing 636.52 acres.

SUPPLEMENTARY INFORMATION: At 9 a.m. on January 12, 1998 the land will be opened to entry under the mining laws and the mineral leasing laws, subject to valid existing rights and requirements of applicable laws. Opening this land to mineral entry is in conformance with the Yuma District Resource Management Plan, as amended and approved February 1987. Appropriation of the above-described land under the mining laws or mineral leasing laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by state law where not in conflict with Federal laws. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts. All applications and offers received prior to 9 a.m. on January 12, 1998 will be considered as simultaneously filed as of that time and date. Those applications and offers received thereafter shall be considered in the order of filing. A drawing will be held in accordance with 43 CFR 1821.2–3 if necessary.

The above-described land will remain closed to all other forms of appropriation.

FOR FURTHER INFORMATION CONTACT: Dave Taylor, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406–9071, (520) 505–1200.

Dated: December 2, 1997.

Mary Jo Yoas,

Supervisor, Lands and Minerals Operations.

[FR Doc. 97–32495 Filed 12–11–97; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Kern County, CA in the Possession of California State University-Bakersfield, Bakersfield, CA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains and associated funerary objects in the possession of California State University-Bakersfield, Bakersfield, CA.

A detailed assessment of the human remains was made by California State University-Bakersfield professional staff

in consultation with representatives of the Tule River Indian Tribe of the Tule River Reservation (Yokuts).

In 1978, human remains representing five individuals were collected from site CA-KER–2421, Kern County, CA by an unknown individual. In 1989, this individual donated these human remains to the California State University-Bakersfield. No known individuals were identified. No associated funerary objects are present.

In 1992, human remains representing one individual were collected from site CA-KER–2720 during routine screening of soil excavated from a test unit prior to a work project. In 1994, these human remains were found in the collections of California State University-Bakersfield during laboratory procession of the screen soils. No known individual was identified. No associated funerary objects are present.

Based on the skeletal morphology and apparent age of these remains, these individuals have been determined to be Native American. Archeological evidence, including continuities of material culture, occupation sites, and manner of interment indicate that Yokuts people have occupied this area for several thousand years. These human remains are believed not to pre-date Yokuts occupation of this area.

Based on the above mentioned information, officials of the California State University-Bakersfield have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of six individuals of Native American ancestry. Officials of the California State University-Bakersfield have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Tule River Indian Tribe of the Tule River Reservation.

This notice has been sent to officials of the Tule River Indian Tribe of the Tule River Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Mark Q. Sutton, Department of Sociology and Anthropology, California State University-Bakersfield, Bakersfield, CA 93311–1099; telephone: (805) 664–33153, before January 12, 1998. Repatriation of the human remains to the Tule River Indian Tribe of the Tule River Reservation may begin after that date if no additional claimants come forward.

Dated: December 9, 1997.

Daniel Haas,

Acting Departmental Consulting Archeologist,

Archeology and Ethnography Program.

[FR Doc. 97–32566 Filed 12-11-97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on November 20, 1997, a proposed Consent Decree in *United States* v. *Boise Cascade Corp., et al.,* Civil Action No. 97CV1704 (N.D.N.Y.), was lodged with the United States District Court for the Northern District of New York.

In this action the United States sought cost recovery and injunctive relief pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606 and 9607, against defendant Boise Cascade Corporation, Labelon Corporation, Miller Brewing Company, Niagara Mohawk Power Company, and The Stroh Brewery Company related to the Sealand Restoration Superfund Site in Lisbon, New York. In the proposed consent decree, the settling parties agree to pay to the United States $750,000 in reimbursement of costs expended by the United States in connection with the Site and to perform the remedial action for the Site selected by the Environmental Protection Agency in the Record of Decision dated September 29, 1995.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C., 20530, and should refer to *United States* v. *Boise Casade Corp., et al.,* DOJ #90–11–3–1144.

The consent decree may be examined at the Office of the United States Attorney, 231 James T. Foley Courthouse, 445 Broadway, Albany, New York, at U.S. EPA Region 2, 290 Broadway, New York, New York, and at the Consent Decree Library, 1120 G Street, N.W. 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the consent decree may be obtained in person or by mail for the Consent Decree Library, 1120 G Street, N.W. 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $13.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–32480 Filed 12–11–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Kirkwood Gas and Electric Company,* (E.O. Cal.) was lodged with the United States District Court for the Eastern District of California on November 18, 1997 (CIV–S–97–2164, DFL PAN). The proposed Consent Decree resolves the United States' claims against Kirkwood Gas and Electric Company (KG&E) pursuant to Section 113(b) of the Clean Air Act for KG&E's failure to obtain a Prevention of Significant Deterioration permit before construction of its facility. The alleged violation occurred at the diesel generator facility at Kirkwood Ski and Summer Resort in Alpine County, California. Under the Consent Decree, KG&E agrees to install a selective catalytic reduction control system and a continuous emission monitor to monitor emissions of oxides of nitrogen, to conduct source testing and to practice good air pollution control practices. KG&E also agrees to raise the height of its powerhouse exhaust stacks. KG&E also agrees to pay a penalty of $13,671.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, D.C. 20044; and refer to *United States* v. *Kirkwood Gas and Electric Company,* DOJ Ref. # 90–5–2–1–2123.

The proposed settlement agreement may be examined at the Office of the United States Attorney, Eastern District of California, 650 Capitol Mall, Sacramento, California 95814 and at the office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105; and at the

Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–32478 Filed 12–11–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Stipulation Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 113(g) of the Clean Air Act, 42 U.S.C. 7413(g), notice is hereby given that a proposed Stipulation in *United States* v. *Commonwealth of Pennsylvania and Pennsylvania Department of Corrections,* Civil Action No. 4:CV–96–0563, was lodged on November 26, 1997 with the United States District Court for the Middle District of Pennsylvania. The proposed Stipulation is intended to settle an action that the United States brought on behalf of the United States Environmental Protection Agency under Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), against the Commonwealth of Pennsylvania and the Pennsylvania Department of Corrections (''defendants'') seeking civil penalties and injunctive relief to redress defendants' alleged violations of emissions limits promulgated by Pennsylvania and incorporated into the Pennsylvania State Implementation Plan (SIP) under Section 110(a) of the Clean Air Act, 42 U.S.C. 7410(a). The alleged violations concern particulate matter emitted in connection with the operation of three coal-fired boilers at the State Correctional Institute at Camp Hill, Pennsylvania. Under the terms of the proposed Stipulation, the defendants will be required to (1) pay a civil penalty of $192,500, (2) install new pollution control equipment for their coal-fired boilers by January 31, 1998, (3) demonstrate compliance with the applicable particulate matter emission limits by March 15, 1998, using the new control equipment, and (4) continue to operate in compliance with those emission limits in the interim using temporary fuel-oil boilers that were installed at the facility in July 1997.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Stipulation. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Commonwealth of Pennsylvania and Pennsylvania Department of Corrections,* DOJ Ref. No. 90–5–2–1–2058.

The proposed Stipulation may be examined at the office of the United States Attorney for the Middle District of Pennsylvania, Federal Building, 228 Walnut Street, Room 217, Harrisburg, PA 17108; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Stipulation may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $4.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–32477 Filed 12–11–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to Clean Water Act and Rivers and Harbors Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *United Winner Metals, Inc., et al.*, Civ. No. 2:97CV1117 (E.D. Va.), was lodged with the United States District Court for the Eastern District of Virginia on November 25, 1997. This case arises, and the proposed Consent Decree secures relief, under the Clean Water Act, 33 U.S.C. §§ 1251–1387, and the Rivers & Harbors Act, 33 U.S.C. §§ 401–467n.

The proposed Consent Decree would provide for (1) prohibitions of future spillage at the United Winner Metal (''UWM'') scrap metal handling facility and certain restrictions on handling operations there; (2) the cleanup of scrap metal from large areas of river bottom at both of the relevant sites; (3) bulkhead construction actions at the UWM scrap metal handling facility; (4) wetland creation, preservation and enhancement actions on other portions of that facility; and (5) a $300,000 penalty under the Clean Water Act.

The Department of Justice will receive, until thirty (30) days from the date of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the United States Department of Justice, Assistant Attorney General, Environment and Natural Resources Division, 601 D Street, N.W., Suite 8000, Washington, D.C. 20004, to the attention of Lewis M. Barr, Senior Trial Counsel, Environmental Defense Section, and should refer to *United States* v. *United Winner Metals, Inc., et al.*, Civ. No. 2:97CV1117 (E.D. Va.), and to DJ Reference No. 90–5–1–1–4310.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Eastern District of Virginia, Walter E. Hoffman United States Courthouse, 600 Grandby Street, Room 193, Norfolk, VA 23510, during regular business hours, or a copy may be requested from Lewis M. Barr at (202) 514–4206.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 97–32479 Filed 12–11–97; 8:45 am]

BILLING CODE 4410–15–M

PAROLE COMMISSION

Sunshine Act Meeting; Public Announcement

Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 9:30 a.m., Tuesday, December 16, 1997.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting: Appeal to the Commission involving approximately three cases decided by the National Commissioners pursuant to a reference under 28 C.F.R. 2.27. These cases were originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting

revocation of parole or mandatory release.

AGENCY CONTACT: TOM KOWALSKI, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: December 9, 1997.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 97–32697 Filed 12–10–97; 3:25 pm]

BILLING CODE 4410–01–M

PAROLE COMMISSION

Sunshine Act Meeting; Public Announcement

Pursuant To The Government In the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 11:00 a.m., Tuesday, December 16, 1997.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.
2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.
3. Approval of an informational pamphlet for District of Columbia Prisoners concerning the August 5, 1998 transition.
4. Approval of Proposed Procedural Guidelines for District of Columbia cases.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: December 9, 1997.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 97–32698 Filed 12–10–97; 3:25 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
- MA970001 (Feb. 14, 1997)
- MA970002 (Feb. 14, 1997)
- MA970003 (Feb. 14, 1997)
- MA970006 (Feb. 14, 1997)
- MA970007 (Feb. 14, 1997)
- MA970009 (Feb. 14, 1997)
- MA970012 (Feb. 14, 1997)
- MA970013 (Feb. 14, 1997)
- MA970017 (Feb. 14, 1997)
- MA970018 (Feb. 14, 1997)
- MA970019 (Feb. 14, 1997)
- MA970020 (Feb. 14, 1997)
- MA970021 (Feb. 14, 1997)

New Hampshire
- NH970001 (Feb. 14, 1997)
- NH970005 (Feb. 14, 1997)
- NH970007 (Feb. 14, 1997)
- NH970008 (Feb. 14, 1997)

New Jersey
- NJ970003 (Feb. 14, 1997)
- NJ970004 (Feb. 14, 1997)

New York
- NY970002 (Feb. 14, 1997)
- NY970007 (Feb. 14, 1997)
- NY970042 (Feb. 14, 1997)
- NY970049 (Feb. 14, 1997)
- NY970061 (Feb. 14, 1997)

Volume II

Maryland
- MD970059 (Feb. 14, 1997)

Pennsylvania
- PA970005 (Feb. 14, 1997)

Virginia
- VA970003 (Feb. 14, 1997)
- VA970005 (Feb. 14, 1997)
- VA970014 (Feb. 14, 1997)

VA970018 (Feb. 14, 1997)
VA970022 (Feb. 14, 1997)
VA970023 (Feb. 14, 1997)
VA970031 (Feb. 14, 1997)
VA970033 (Feb. 14, 1997)
VA970034 (Feb. 14, 1997)
VA970039 (Feb. 14, 1997)
VA970046 (Feb. 14, 1997)
VA970050 (Feb. 14, 1997)
VA970055 (Feb. 14, 1997)
VA970064 (Feb. 14, 1997)
VA970069 (Feb. 14, 1997)
VA970084 (Feb. 14, 1997)
VA970087 (Feb. 14, 1997)
VA970088 (Feb. 14, 1997)
VA970107 (Feb. 14, 1997)

Volume III

Alabama
AL970007 (Feb. 14, 1997)
AL970008 (Feb. 14, 1997)
AL970017 (Feb. 14, 1997)
AL970042 (Feb. 14, 1997)
AL970052 (Feb. 14, 1997)
Florida
FL970001 (Feb. 14, 1997)
FL970002 (Feb. 14, 1997)
FL970009 (Feb. 14, 1997)
FL970014 (Feb. 14, 1997)
FL970015 (Feb. 14, 1997)
FL970017 (Feb. 14, 1997)
FL970032 (Feb. 14, 1997)

Volume IV

Illinois
IL970001 (Feb. 14, 1997)
IL970002 (Feb. 14, 1997)
IL970003 (Feb. 14, 1997)
IL970006 (Feb. 14, 1997)
IL970007 (Feb. 14, 1997)
IL970008 (Feb. 14, 1997)
IL970009 (Feb. 14, 1997)
IL970013 (Feb. 14, 1997)
IL970014 (Feb. 14, 1997)
IL970015 (Feb. 14, 1997)
IL970019 (Feb. 14, 1997)
IL970023 (Feb. 14, 1997)
IL970026 (Feb. 14, 1997)
IL970030 (Feb. 14, 1997)
IL970040 (Feb. 14, 1997)
IL970041 (Feb. 14, 1997)
IL970049 (Feb. 14, 1997)
IL970057 (Feb. 14, 1997)
IL970061 (Feb. 14, 1997)
Indiana
IN970001 (Feb. 14, 1997)
IN970002 (Feb. 14, 1997)
IN970003 (Feb. 14, 1997)
IN970004 (Feb. 14, 1997)
IN970005 (Feb. 14, 1997)
IN970006 (Feb. 14, 1997)
IN970060 (Feb. 14, 1997)

Volume V

Arkansas
AR970001 (Feb. 14, 1997)
AR970008 (Feb. 14, 1997)
Iowa
IA970001 (Feb. 14, 1997)
IA970005 (Feb. 14, 1997)
Kansas
KS970009 (Feb. 14, 1997)
KS970025 (Feb. 14, 1997)
KS970063 (Feb. 14, 1997)
Missouri
MO970001 (Feb. 14, 1997)
MO970002 (Feb. 14, 1997)
MO970007 (Feb. 14, 1997)
MO970009 (Feb. 14, 1997)
MO970011 (Feb. 14, 1997)
MO970013 (Feb. 14, 1997)
MO970016 (Feb. 14, 1997)
MO970017 (Feb. 14, 1997)
MO970019 (Feb. 14, 1997)
MO970041 (Feb. 14, 1997)
MO970042 (Feb. 14, 1997)
MO970043 (Feb. 14, 1997)
MO970051 (Feb. 14, 1997)
MO970054 (Feb. 14, 1997)
MO970055 (Feb. 14, 1997)
MO970057 (Feb. 14, 1997)
MO970058 (Feb. 14, 1997)
MO970059 (Feb. 14, 1997)
MO970063 (Feb. 14, 1997)
MO970064 (Feb. 14, 1997)
MO970067 (Feb. 14, 1997)
MO970070 (Feb. 14, 1997)
New Mexico
NM970001 (Feb. 14, 1997)
Texas
TX970001 (Feb. 14, 1997)
TX970002 (Feb. 14, 1997)
TX970007 (Feb. 14, 1997)
TX970008 (Feb. 14, 1997)
TX970009 (Feb. 14, 1997)
TX970019 (Feb. 14, 1997)
TX970034 (Feb. 14, 1997)
TX970037 (Feb. 14, 1997)
TX970053 (Feb. 14, 1997)
TX970060 (Feb. 14, 1997)
TX970064 (Feb. 14, 1997)
TX970069 (Feb. 14, 1997)
TX970081 (Feb. 14, 1997)

Volume VI

Colorado
CO970001 (Feb. 14, 1997)
CO970005 (Feb. 14, 1997)
CO970006 (Feb. 14, 1997)
CO970007 (Feb. 14, 1997)
CO970008 (Feb. 14, 1997)
CO970009 (Feb. 14, 1997)
CO970016 (Feb. 14, 1997)
CO970021 (Feb. 14, 1997)
CO970022 (Feb. 14, 1997)
CO970023 (Feb. 14, 1997)
CO970024 (Feb. 14, 1997)
CO970025 (Feb. 14, 1997)
Oregon
OR970001 (Feb. 14, 1997)
Washington
WA970002 (Feb. 14, 1997)
WA970006 (Feb. 14, 1997)
WA970010 (Feb. 14, 1997)

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 5th day of December 1997.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–32288 Filed 12–11–97; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–3–92]

TUV Rheinland of North America, Inc., Request for Expansion of Recognition

(Authority: 29 CFR 1910.7)

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of request for expansion of recognition as a Nationally Recognized Testing Laboratory (NRTL), and preliminary finding.

SUMMARY: This notice announces the application of TUV Rheinland of North America, Inc., for expansion of its recognition as a NRTL under 29 CFR 1910.7, for test standards, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is February 10, 1998.

ADDRESSES: Send comments concerning this notice to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653 Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Variance Determination, NRTL Recognition Program at the above address, or phone (202) 219-7056.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that TUV Rheinland of North America, Inc., (TUV), has made application pursuant to 29 CFR 1910.7, for expansion of its recognition as a Nationally Recognized Testing Laboratory for the equipment or materials listed below. TUV previously made application pursuant to 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (58 FR 61101, 11/19/93), and was so recognized (60 FR 42594, 8/16/95).

The address of the TUV laboratory covered by this application is: TUV Rheinland of North America, Inc., 12 Commerce Road, Newton, Connecticut 06470.

Background

This **Federal Register** notice announces TUV's application for expansion of recognition as a Nationally Recognized Testing Laboratory for additional test standards, dated May 12, 1997 (see Exhibit 13A). TUV's application for expansion also included a request for recognition of an additional site. However, in a letter to OSHA dated September 15, 1997 (see Exhibit 13B), TUV requested that the expansion for the standards be processed first since the recognition of the additional site required additional processing time on OSHA's part.

TUV requests recognition for the following standards when applicable to equipment or materials that will be used in environments under OSHA's jurisdiction. TUV desires recognition for testing and certification of products tested for compliance with these test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements
UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use

The NRTL staff performed an on-site survey (review) of TUV's Newton, CT facility on June 23–24, 1997. In the cover memo for the on-site review report, dated October 10, 1997 (see Exhibit 14), the NRTL staff recommended that TUV's recognition be expanded to include these additional test standards. Recognition for these standards will be granted on condition that TUV perform the testing and certification activities associated with these standards at its Newton, CT facility only. This condition will be eliminated upon OSHA's grant of recognition to TUV to permit use of other programs and procedures described in the March 9, 1995 **Federal Register** notice. (60 FR 12980 entitled, ''Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures'')

Preliminary Finding

Based upon a review of the complete application, the on-site review report, and the recommendations of the staff, the Assistant Secretary has made a preliminary finding that TUV Rheinland of North America, Inc., can meet the requirements as prescribed by 29 CFR 1910.7 for the expansion of its recognition to include the four (4) test standards previously listed, subject to the condition noted above.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for expansion of its recognition as a Nationally Recognized Testing Laboratory, as required by 29 CFR 1910.7 and Appendix A to 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than February 10, 1998, and must be addressed to the NRTL Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210. Copies of the TUV application letter, the on-site survey (review) report, and all submitted comments, as received, are available for inspection and duplication (under Docket No. NRTL–3–92) at the Docket Office, Room N2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (TUV Rheinland of North America, Inc.) satisfies the requirements for expansion of its recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider to be appropriate in accordance with Appendix A to Section 1910.7.

Signed at Washington, D.C. this 1st day of December, 1997.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 97–32541 Filed 12–11–97; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Notice of Pending Submittal to the Office of Management and Budget (OMB) for Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collection under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: Policy Statement on ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof By States Through Agreement,'' Maintenance of Existing Agreement State Programs, Requests for Information Through the Integrated Materials Performance Evaluation Program (IMPEP) Questionnaire, and Agreement State Participation in IMPEP.

2. Current OMB approval number: 3150–0183.

3. How often the collection is required: Four activities occur under this collection: Annual requirements for Agreement States to maintain their programs; IMPEP reviews conducted no less frequently than every four years; participation by Agreement States in the IMPEP reviews; and, as needed, for States interested in becoming Agreement States.

4. Who is required or asked to report: Any State receiving Agreement State status by signing Section 274b. agreements with NRC. Presently there are 30 Agreement States. Any State interested in becoming an Agreement State.

5. The number of annual respondents: 30 existing Agreement States: Approximately eight of these States are asked to respond annually. For States interested in becoming an Agreement State, one every three years.

6. The number of hours needed annually to complete the requirement or request: For maintenance of existing Agreement State programs and the IMPEP questionnaire: 219,600 hours (an average of 7,320 hours per State). For 8 IMPEP team reviews: 288 hours (an average of 36 hours per review). For a State interested in becoming an Agreement State, approximately 3,600 hours. The total number of hours annually is 223,848 hours.

7. Abstract: States wishing to become an Agreement State are requested to provide certain information to the NRC as specified by the Commission's Policy Statement, ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof By States Through Agreement.'' Agreement States need to ensure that the Radiation Control Program under the Agreement remains adequate and compatible with the requirements of Section 274 of the Atomic Energy Act and must maintain certain information. NRC conducts periodic evaluations through IMPEP to ensure that these programs are compatible with the NRC's, meet the applicable parts of Section 274 of the Atomic Energy Act, and are adequate to protect public health and safety.

Submit, by February 10, 1998, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, D.C. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, D.C. 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 5th day of December, 1997.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 97–32526 Filed 12–11–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 95, Security Facility Approval and Safeguarding of National Security Information and Restricted Data.

3. *The form number if applicable:* None.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* NRC regulated facilities and other organizations requiring access to NRC classified information.

6. *An estimate of the number of responses:* 202.

7. *The estimated number of annual respondents:* 33.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 550.5 hours (374.8 hours for reporting and 175.7 hours recordkeeping, or an average of 2.7 hours per response.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* NRC regulated facilities and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided to NRC classified information and material.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature data of this notice.

Comments and questions should be directed to the OMB reviewer by January 12, 1998. Norma Gonzales, Office of Information and Regulatory Affairs (3150–0047), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 5th day of December 1997.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 97–32522 Filed 12–11–97; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Boston Edison Company; Pilgrim Nuclear Power Station

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an Order approving, under 10 CFR 50.80, an application regarding the proposed corporate restructuring of Boston Edison Company, the licensee for the Pilgrim Nuclear Power Station (PNPS). By application dated June 9, 1997, Boston Edison Company informed the Commission that it is proposing to become a wholly owned subsidiary of a newly created holding company, BEC Energy. Boston Edison Company will remain the holder of its license to own and operate the PNPS. No direct transfer of the license will occur. Under the restructuring, the holders of Boston Edison Company common stock will become the holders of common stock of the holding company. After the restructuring, Boston Edison Company will continue to be a public utility providing the same utility services as it did immediately prior to the restructuring, and will continue to be an

''electric utility'' under Commission regulations. According to the application, there will be no effect on the management, or sources of funds for operation, maintenance, or decommissioning, of the PNPS as a result of the corporate restructuring.

Pursuant to 10 CFR 50.80, the Commission may approve the transfer of control of a license after notice to interested persons. Such approval is contingent upon the Commission's determination that the holder of the license following the transfer is qualified to hold the license and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders of the Commission.

For further details with respect to this proposed action, see the licensee's application dated June 9, 1997. This document is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC, and at the local public document room located at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts.

Dated at Rockville, Maryland this 8th day of December 1997.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–32525 Filed 12–11–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–003 and 50–247]

Consolidated Edison Company of New York, Inc.; (Indian Point Nuclear Generating Unit Nos. 1 and 2)

I

Consolidated Edison Company of New York, Inc. (Con Edison), is sole owner of Indian Point Nuclear Generating Units Nos. 1 and 2. Con Edison holds Facility Operating License Nos. DPR–5 and DPR–26 issued by the U.S. Atomic Energy Commission pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50) on March 26, 1962, and September 28, 1973, respectively. Under these licenses, Con Edison has the authority to possess, but not operate, Indian Point Nuclear Generating Unit No. 1 (IP1), and to operate Indian Point Nuclear Generating Unit No. 2 (IP2). Indian Point Nuclear Generating Units Nos. 1 and 2 are located in Westchester County, New York.

II

By letter dated December 24, 1996, Con Edison informed the Commission that it was in the process of implementing a corporate restructuring that will result in the creation of a holding company under the temporary name of HoldCo., of which Con Edison would become a wholly owned subsidiary. Under the restructuring, the holders of Con Edison common stock will exchange their shares for common stock of the parent company on a share-for-share basis. By letter dated February 19, 1997, the staff deemed Con Edison's letter as an application for comment, under 10 CFR 50.80, to the indirect transfer of the licenses that would result from the corporate restructuring. Notice of this application for consent was published in the **Federal Register** on July 14, 1997 (62 FR 37627), and an Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on October 6, 1997 (62 FR 52159).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information submitted in the application dated December 24, 1996, the NRC staff has determined that the restructuring of Con Edison will not affect the qualifications of Con Edison as holder of the licenses, and that the transfer of control of the licenses for IP1 and IP2, to the extent effected by the restructuring of Con Edison, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a Safety Evaluation dated December 4, 1997.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b), 2201(i), 2201(o) and 2234, and 10 CFR 50.80, *it is hereby ordered* that the Commission approves the application regarding the restructuring of Con Edison subject to the following: (1) Con Edison shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from Con Edison to its proposed parent or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of Con Edison's consolidated net utility plant, as recorded on Con Edison's books of account, and (2) should the restructuring of Con Edison not be completed by December 31, 1998, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

IV

By December 31, 1997, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how that interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an Order designating the time and place of such hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays, by the above date. Copies should be also sent to the Office of the General Counsel, and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Brent L. Brandenburg, Consolidated Edison Company of New York, Inc., 4 Irving Place, New York, NY 10003, Assistant General Counsel for Con Edison.

For further details with respect to this Order, see the application for approval regarding the corporate restructuring dated December 24, 1996, and the Safety Evaluation dated December 4, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 4th day of December 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–32524 Filed 12–11–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

In the Matter of Southern Nuclear Operating Company, Inc., et al. Edwin I. Hatch Nuclear Plant, Units 1 and 2; Exemption

I

Southern Nuclear Operating Company, Inc., et al. (the licensee) is the holder of Facility Operating License Nos. DPR–57 and NPF–5 for the Edwin I. Hatch Nuclear Plant, Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission in effect now and hereafter.

The facility consists of two 4-loop boiling water reactors located in Appling County, Georgia.

II

Title 10 of the *Code of Federal Regulations* (10 CFR), Section 73.55, ''Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage,'' paragraph (a), in part, states that ''The licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety.''

Section 73.55(d), ''Access Requirements,'' paragraph (1), specifies that ''The licensee shall control all points of personnel and vehicle access into a protected area.'' Section 73.55(d)(5) requires that ''A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort.'' Section 73.55(d)(5) also states that an individual not employed by the licensee, e.g., contractor, but who requires frequent and extended access to protected and vital areas may be authorized access to such areas without escort provided the individual ''receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *.''

The licensee has proposed to implement an alternative unescorted access control system that would eliminate the need to issue, store, and retrieve badges from a central location onsite and would allow all individuals with unescorted access to keep their badges when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated July 2, 1997, the licensee requested an exemption from the requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, ''Specific exemptions,'' the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest. Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have ''the same high assurance objective'' and meet ''the general performance requirements'' of the regulation, and ''the overall level of system performance provides protection against radiological sabotage equivalent'' to that which would be provided by the regulation.

Currently, unescorted access into the protected areas at the Hatch site is controlled through the use of a photograph on a badge/keycard (hereafter, referred to as ''badge''). The security officers use the photograph on the badge to visually identify the individual requesting access. The licensee's employees and contractor personnel who have been granted unescorted access are issued badges upon entrance to the protected area and the badges are returned upon exit. In accordance with 10 CFR 73.55(d)(5), contractors are not allowed to take these badges offsite.

Under the proposed biometric system, individuals who are authorized unescorted entry into protected areas would have the physical characteristics of their hand (i.e., hand geometry) registered, along with their badge number, in the access control system. When registered users enter their badge into the card reader and place their hand onto the measuring surface, the system detects that the hand is properly positioned, and records the image. The unique characteristics of the hand image are then compared with the previously stored template in the access control computer system corresponding to the badge to verify authorization for entry.

Individuals, including Hatch plant employees and contractors, would be allowed to keep their badges when they depart the site and, thus, eliminate the need to issue, retrieve, and store badges at the entrance stations to the plant. Badges do not carry any information other than a unique identification number. All other access processes, including search function capability, would remain the same. This system would not be used for persons requiring escorted access, e.g., visitors.

On the basis of the Sandia report, ''A Performance Evaluation of Biometrics Identification Devices,'' SAND91–0276/UC–906, Unlimited Release, June 1991, that concluded hand geometry equipment possesses strong performance and high detection characteristics, and on its own experience with the current photo-identification system, the licensee determined that the proposed hand geometry system would provide the same high level of assurance as the current system that access is only granted to authorized individuals. The biometrics system has been in use for a number of years at several sensitive Department of Energy facilities and, recently, at some nuclear power plants.

The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. When the changes are implemented, the respective Physical Security Plan will be revised to include implementation and testing of the hand geometry access control system and to allow Hatch plant employees and contractors to take their badges offsite.

When implemented, the licensee will control all points of personnel access into a protected area under the observation of security personnel through the use of a badge and a hand geometry verification system. The numbered picture badge identification system will continue to be used for all individuals who are authorized unescorted access to protected areas. Badges will continue to be displayed by all individuals while inside the protected areas.

Since both the badge and hand geometry would be necessary for access into the protected areas, the proposed system would provide a positive verification process. The potential loss of a badge by an individual as a result of taking the badge offsite would not enable an unauthorized entry into protected areas.

IV

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet ''the same high assurance objective,'' and ''the general performance requirements'' of the regulation and that ''the overall level of system performance provides protection against radiological sabotage equivalent'' to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, this exemption is authorized by law and will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption from the requirements of 10 CFR 73.55(d)(5) to allow individuals not employed by the licensee (i.e., contractors) to take their photo-identification badges offsite, provided that the proposed hand geometry biometrics system is in effect to control access into protected areas at the Hatch nuclear plant.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (62 FR 49539).

For further details with respect to this action, see the request for exemption dated July 2, 1997, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia.

This exemption is effective when modifications, procedures, and training to implement the hand geometry biometrics system have been completed and the corresponding revisions to the Physical Security Plan for the Hatch plant have been submitted to the NRC staff.

Dated at Rockville, Maryland, this 8th day of December 1997.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–32523 Filed 12–11–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Nonforeign Area Cost-of-Living Allowances Price and Background Surveys; Proposed Collection; Comment Request

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of Personnel Management (OPM) seeks comments on its intention to request a reinstatement, with change, of two previously approved information collections for which approval has expired. OPM uses the two collections—a price survey and a background survey—to gather data to be used in determining cost-of-living allowances for certain Federal employees in Alaska, Hawaii, Guam and the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. The price survey is conducted generally on an annual basis. The background survey is conducted approximately once every 5 years, but the survey is also conducted on a limited basis in preparation for each of the price surveys.

DATES: Submit comments on or before February 10, 1998.

ADDRESSES: *Comments:* Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, or FAX comments to (202) 606–4264, or email comments over the Internet to cola@opm.gov. *Copies:* For copies of this proposal, contact Jim Farron at (202) 418–3208 or by email at jmfarron@opm.gov.

FOR FURTHER INFORMATION CONTACT: Kurt M. Springmann, (202) 606–2838.

SUPPLEMENTARY INFORMATION: OPM is soliciting comments on the reinstatement of its Nonforeign Area Cost-of-Living Allowances Price and Background Surveys for an additional 3 years. As set out in Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(1), comments are requested to—

- Evaluate whether the surveys are necessary and have practical utility;
- Evaluate the accuracy of the burden estimate, including the assumptions and methodological validity used in determining the burden estimate;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden on respondents.

OMB approval of this information collection was originally scheduled to expire on June 30, 1997. Because of delays in conducting the price survey during the first quarter of 1997 as planned, OPM requested an emergency extension of the clearance. OMB granted an extension until September 30, 1997.

Title: Nonforeign Area Cost-of-Living Allowances Price Survey and Background Survey.

OMB Control Number: 3206–0199.

Summary: The Nonforeign Area Cost-of-Living Allowances Price Survey is used by OPM to collect price data in the allowance areas under four cost components: consumption goods and services, transportation, housing, and miscellaneous expenses. The price survey is conducted on approximately an annual basis.

The Nonforeign Area Cost-of-Living Allowances Background Survey is used by OPM to collect information to identify the services, items, quantities, outlets, and locations that will be surveyed in the annual price surveys. It is also used to collect information on local trade practices, consumer buying patterns, taxes and fees, and other economic characteristics related to living costs. The background survey is conducted approximately once every 5 years but is also used on a limited basis in preparation for each of the price surveys.

Need/Use for Surveys: The price survey is necessary for collecting living-cost data used to determine cost-of-living allowances (COLA's) paid to General Schedule, U.S. Postal Service, and certain other Federal employees in the nonforeign allowance areas. The information is used to compare costs in the allowance areas with costs in the Washington, DC, area, and to derive a COLA rate when the local cost of living significantly exceeds that in the DC area. The background survey is necessary to determine the continued appropriateness of items, services, and businesses selected for the annual price surveys. OPM uses the information collected under this survey to define the sources and parameters for the price surveys and to improve the COLA methodology.

Respondents: OPM will survey selected retail, service, realty, and other businesses and local governments in the nonforeign allowance areas and in the Washington, DC, area. Approximately 5,600 establishments will be contacted in the price survey and approximately 300 establishments will be contacted in the background survey.

Reporting and Recordkeeping Burden: OPM estimates that the average price survey interview will take approximately 7 minutes, for a total burden of 650 hours. The average background survey interview will take approximately 10 minutes, for a total burden of 50 hours.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 97–32581 Filed 12–11–97; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection, Comment Request Optional Form 306

AGENCY: Office of Personnel Management.

ACTION: Proposed collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and 5 CFR 1320.5 (a) (I) (iv), this notice announces that OPM intends to submit to the Office of Management and Budget (OMB) a request for reclearance of an information collection. Optional Form 306 (Declaration for Federal Employment) is used by OPM and other agencies to collect information to determine an individual's acceptability for Federal employment and enrollment status in the Government's Life Insurance program.

''Comments are particularly invited on: whether this collection of information is necessary for the proper performance of function of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of collection of information on those who respond, through the use of appropriate technological collection techniques or other forms of information technology.''

It is estimated that 474,000 individuals will respond annually for a total burden of 118,500 hours. To obtain copies of this proposal please contact James M. Farron at (202) 414–3208 or by E-mail to jmfarron@opm.gov.

DATES: Comments on this proposal should be received on or before February 10, 1998. Submit comments on this proposal to Richard A. Ferris, Office of Personnel Management, Room 5416, 1900 E. Street N. W., Washington, D.C. 20415.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 97–32582 Filed 12–11–97; 8:45 am]

BILLING CODE 6325–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application and Claim for Sickness Insurance Benefits; OMB 3220–0039.

Under Section 2 of the Railroad Unemployment Insurance Act (RUIA), sickness benefits are payable to qualified railroad employees who are unable to work because of illness or injury. In addition, sickness benefits are payable to qualified female employees if they are unable to work, or if working would be injurious, because of pregnancy, miscarriage or childbirth. Under Section 1(k) of the RUIA, a statement of sickness with respect to days of sickness of an employee is to be filed with the RRB within a 10-day period from the first day claimed as a day of sickness. The RRB's authority for requesting supplemental medical information is Section 12(I) and 12(n) of the RUIA. The procedures for claiming sickness benefits and for the RRB to obtain supplemental medical information needed to determine a claimant's eligibility for such benefits is prescribed in 20 CFR part 335.

The forms used by the RRB to obtain information needed to determine eligibility for and the amount of sickness benefits due a claimant follows: Form SI–1a, Application for Sickness Benefits; Form SI–1b, Statement of Sickness; Form SI–3, Claim for Sickness Benefits; Form SI–7, Supplemental Doctor's Statement; Form SI–8, Verification of Medical Information; Form ID–7h, Non-Entitlement to Sickness Benefits and Information on Unemployment Benefits; and Form ID–11a, Requesting Reason for Late Filing of Sickness Benefit. Completion is required to obtain or retain benefits. One response is requested of each respondent.

The RRB proposes to revise Form SI–1a to add new items that obtain information from a sickness claimant who is filing a delayed claim for benefits and also to reformat and clarify an existing item that requests wage information. Form SI–3 is being revised to clarify an existing item that requests wage information and also to modify the certification statement. Form SI–8 is being revised primarily to emphasize that a response is needed only if the information provided is erroneous. Minor editorial changes which include the addition of language required by the Paperwork Reduction Act of 1995 are also proposed to Forms SI–1b, SI–7, SI–8 and ID–11A.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form Nos.	Annual responses	Time (minutes)	Burden (hours)
SI–1a/1b(ee)	27,700	10	4,617
SI–1a/1b(Dr.)	27,000	8	3,693
SI–3	181,000	5	15,083
SI–7	33,600	8	4,480
SI–8	50	5	4
ID–7H	50	5	4
ID–11A	800	3	40

Form Nos.	Annual responses	Time (minutes)	Burden (hours)
Total	270,900		27,921

Additional Information or Comments

To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 97–32490 Filed 12–11–97; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–22927; 812–10704]

Diamonds Trust, DJIA Trust Receipts Series, PDR Services Corporation and ALPS Mutual Funds, Inc.; Notice of Application

December 5, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 4(2), 14(a), 22(d), 24(d), and 26(a)(2)(C) of the Act and rule 22c–1; under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a) (1) and (2) of the Act; and under rule 17d–1 to permit certain joint transactions.

APPLICANTS: Diamonds Trust, DJIA Trust Receipts Series (the ''Trust''), PDR Services Corporation (together with its ''successors in interest'' [1] and with any person directly or indirectly controlling, controlled by, or under common control with, PDR Service Corporation, the ''Sponsor'') and ALPS Mutual Funds, Inc. (the ''Distributor'').

SUMMARY OF APPLICATION: Applicants request an order that would (i) permit the Trust, a unit investment trust whose portfolio will consist of the component stocks of the Dow Jones Industrial Average (''DJIA''), to issue non-redeemable securities (''DJIA Trust Receipts''); (ii) permit secondary market transactions in DJIA Trust Receipts at negotiated prices; (iii) permit dealers to sell DJIA Trust Receipts to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933 (the ''Securities Act''); (iv) permit certain expenses associated with the creation and maintenance of the Trust to be borne by the Trust rather than the Sponsor; (v) exempt the Sponsor from the Act's requirement that it purchase, or place with others, $100,000 worth of DJIA Trust Receipts; (vi) permit affiliated persons of the Trust to deposit securities into, and receive securities from, the Trust in connection with the purchase and redemption of DJIA Trust Receipts; and (vii) permit the Trust to reimburse the Sponsor and/or the American Stock Exchange, Inc. (''AMEX'') for payment of an annual licensing fee to Dow Jones & Company, Inc. (''Dow Jones'').

FILING DATES: The application was filed on June 17, 1997, and an amendment to the application was filed on December 3, 1997.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 29, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o James F. Duffy, Executive Vice President and General Counsel, American Stock Exchange, Inc., 86 Trinity Place, New York, NY 10006.

FOR FURTHER INFORMATION CONTACT: Brian T. Hourihan, Senior Counsel, at (202) 942–0526, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington D.C. 20549 (tel. (202) 942–8090).

Applicant's Representations

1. The Trust is a unit investment trust (''UIT'') organized under the laws of the state of New York. The Sponsor is a wholly-owned subsidiary of AMEX. State Street Bank and Trust Company will act as trustee of the Trust (''Trustee''). The Distributor, a registered broker-dealer, will serve as underwriter of the DJIA Trust Receipts on an agency basis.

2. The Trust will hold a portfolio of securities consisting of all of the component common stocks of the DJIA. The DJIA is a price-weighted index of thirty stocks. Issuers of the component stocks are all leaders in their respective industries, and the component stocks represent approximately one-fifth of the market value of all U.S. stocks. Applicants represent that the DJIA is the oldest continuous barometer of the U.S. stock market, and the most widely quoted indicator of U.S. stock market activity. DJIA Trust Receipts, units of beneficial interest in the Trust, are designed to provide investors with an instrument that closely tracks the DJIA, that trades like a share of common stock, and pays periodic dividends proportionate to those paid by the portfolio of stocks held by the Trust.[2] Applicants believe that DJIA Trust Receipts will afford significant benefits in the public interest. Applicants expect the Trust to be able to track the DJIA more closely than certain other index products and, unlike open-end index funds, trade at negotiated prices throughout the business day. Applicants also state that DJIA Trust Receipts will compete with comparable products available on foreign exchanges and attract capital to the U.S. equity market.

3. The composition of the Trust's portfolio will be adjusted periodically to conform to changes in the DJIA resulting from corporate actions such as stock

[1] ''Successors in interest'' is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization, *e.g.*, a partnership or a corporation.

[2] The Trust will make monthly distributions of an amount representing the dividends accumulated on portfolio securities during each month, net of fees and expenses.

splits or changes in the identity of the DJIA component stocks.[3] All adjustments to the Trust's portfolio will be made by the Trustee as set forth in the trust agreement and will be nondiscretionary.

4. The Trustee will be paid a ''Trustee's Fee'' ranging between 11/100 of 1% to 15/100 of 1% of the Trust's net asset value (''NAV'') on an annualized basis. The Trustee's Fee will be adjusted to reflect the costs that the Trustee incurs in connection with the issuance and redemption of DJIA Trust Receipts (as discussed below). The Sponsor and the AMEX are paying the Trust's organizational expenses. The Trust will reimbuse the Sponsor and the AMEX for these expenses ratably over a five-year period. Should the Trust terminate prior to its fifth anniversary, the remaining unamortized organizational expenses will continue to be borne by the Sponsor and the AMEX, and will not be charged against the Trust. The Trust also will reimburse the Sponsor and/or the AMEX up to a maximum of 20 basis points of the Trust's NAV on an annualized basis, for the following expenses: (i) annual licensing fees for the use of the ''DJIA'' trademark; (ii) federal and state annual registration fees for the issuance of DJIA Trust Receipts; and (iii) expenses of the Sponsor relating to the marketing of DJIA Trust Receipts and the Trust (including, but not limited to, related legal, consulting, and advertising expenses). The Sponsor will pay the Distributor a flat annual fee. The Sponsor will not seek reimbursement for payment of this annual fee from the Trust without obtaining prior exemptive relief from the Commission.

5. DJIA Trust Receipts will be issued in aggregations of 50,000 (''Creation Units''). The price of each Creation Unit will be approximately $4,007,000 (based on the value of the DJIA on November 28, 1997). To be eligible to purchase a Creation Unit, an investor must either be a participant in the Continuous Net Settlement (''CNS'') System of the National Securities Clearing Corporation (''NSCC''), or a Depository Trust Company (''DTC'') participant, but is not required to be an AMEX member. An investor wishing to purchase a Creation Unit from the Trust will have to transfer to the Trust a ''Portfolio Deposit'' consisting of: (i) a portfolio of securities that is substantially similar in composition and weighting to the DJIA component securities (''Index Securities''); (ii) a cash payment equal to the dividends accrued on the Trust's portfolio securities since the last dividend payment by the Trust, net of expenses and liabilities; and (iii) a cash payment or credit to equalize any differences between the Portfolio Deposit Amount and the NAV per Creation Unit (which may be required, for example, if a portion of the Trust's assets is held in cash).[4] An investor making a Portfolio Deposit will be charged a service fee (''Transaction Fee''), paid to the Trustee, to defray the Trustee's costs in processing securities deposited into the Trust.[5]

6. Orders to purchase Creation Units will be placed with the Distributor, who will be responsible for transmitting the orders to the Trustee.[6] The Distributor will maintain records of these orders, issue confirmations of acceptance, and issue delivery instructions to the Trustee to implement the delivery of DJIA Trust Receipts. The Distributor will be responsible for delivering prospectuses to purchasers of the Creation Units and may provide certain other administrative services, such as those related to state securities law compliance.

7. Person purchasing DJIA Trust Receipts from the Trust in Creation Unit aggregations may hold those Receipts or sell some or all of them in the secondary market. DJIA Trust Receipts will be listed on the AMEX and traded in the secondary market as individual units (*i.e.*, in less than Creation Unit size aggregations) in the same manner as other equity securities. An AMEX specialist will be assigned to make a market in DJIA Trust Receipts. The price of DJIA Trust Receipts on the AMEX will be based on a current bid/offer market and will be in the range of $80 per Receipt (based on the value of the DJIA on November 28, 1997). Transactions involving the sale of DJIA Trust Receipts will be subject to customary brokerage commissions and charges. Applicants expect that the price at which DJIA Trust Receipts trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Unit-size aggregations at NAV, which should ensure that DJIA Trust Receipts will not trade at a material discount or premium in relation to NAV.

8. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). The AMEX specialist, in providing for a fair and orderly secondary market for DJIA Trust Receipts, also may purchase Receipts for use in its market-making activities on the AMEX. Applicants expect that secondary market purchasers of DJIA Trust Receipts will include both institutional and retail investors.[7]

9. Applicants will make available a standard DJIA Trust Receipt product description (''Product Description'') to AMEX members and member organizations for distribution to investors purchasing DJIA Trust Receipts in accordance with AMEX Rule 1000. The purpose of the Product Description is to provide a brief and readily understandable description of the salient aspects of DJIA Trust Receipts. The Product Description will advise investors that a prospectus for DJIA Trust Receipts is available without charge upon request from the investor's account executive. Applicants expect

[3] Changes in the composition of the DJIA are made entirely by the editors of the *Wall Street Journal.*

[4] At the close of the market on each business day, the Trustee will calculate the NAV of the Trust and then divide the NAV by the number of outstanding DJIA Trust Receipts in Creation Unit size aggregations, resulting in an NAV per Creation Unit. The Trustee will then calculate the required number of shares of the Index Securities, and the amount of cash, comprising a Portfolio Deposit for the following business day. The Sponsor will make available a list of the names of each of the Index Securities in the current Portfolio Deposit and the required number of shares. The cash equivalent of an Index Security may be included in the cash component of a Portfolio Deposit in lieu of the Security if (i) the Trustee determines that an Index Security is likely to be unavailable or available in insufficient quantity for inclusion in a Portfolio Deposit (for example, when the security is subject to a trading halt or stop order, or the subject of a tender offer), or (ii) a particular investor is restricted from investing or engaging in transactions in the Index Security (for example, when the investor is a broker-dealer restricted by regulation or internal policy from investing in securities issued by a company on whose board of directors one of its principals serves, or when the investor is a broker-dealer and the security is on its ''restricted list''). In the latter situation, the Trustee will use the cash equivalent payment to purchase the appropriate number of shares of the Index Security that the investor was unable to purchase.

[5] The Transaction Fee will be $1,000 per day regardless of the number of Creation Units purchased on that day by the investor. An additional amount not to exceed three times the Transaction Fee will be charged to investors who purchase Creation Units via DTC rather than via the NSCC, to cover increased expense associated with settlement outside the CNS system. To the extent the Transaction Fee exceeds the Trustee's actual settlement costs, and subject to certain limitations, the excess will be subtracted from the Trustee's Fee. The Trustee's Fee also will be reduced by the amounts earned by the Trustee in respect of cash held for the benefit of the Trust and not otherwise expended on behalf of the Trust. The amount of the Transaction Fee (including any variation in the amount) will be disclosed in the prospectus for the Trust.

[6] The procedures for processing a purchase order will depend upon whether the transaction is settled through NSCC or DTC.

[7] DJIA Trust Receipts will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding DJIA Trust Receipts. Records reflecting the beneficial owners of DJIA Trust Receipts will be maintained by DTC or its participants.

that customer purchases of DJIA Trust Receipts through a non-member broker-dealer in a transaction away from the AMEX floor will be rare.

10. DJIA Trust Receipts will not be individually redeemable, except upon termination of the Trust. DJIA Trust Receipts will only be redeemable in Creation Unit-size aggregations through the Trust. To redeem, an investor will have to accumulate enough DJIA Trust Receipts to constitute a Creation Unit. An investor redeeming a Creation Unit amount of DJIA Trust Receipts will receive a portfolio of securities identical in weighting and composition to the securities portion of a Portfolio Deposit as of the date the redemption request was made. An investor may receive the cash equivalent of a portfolio security (i) when the Trustee determines that an Index Security is likely to be unavailable or available in insufficient quantity, (ii) upon the request of the redeeming investor, or (iii) upon notice of the termination of the Trust. A redeeming investor will also receive an amount of cash equal to the dividends accrued on the portfolio securities since the last dividend payment by the Trust, net of expenses and liabilities, and may also receive an amount of cash to equalize any differences between the Portfolio Deposit Amount and the NAV per Creation Unit. A redeeming investor will pay a Transition Fee calculated in the same manner as a Transaction Fee payable in connection with the purchase of a Creation Unit.[8] The Trustee will transfer the cash and securities to the redeeming investor on the third business day after the redemption request date.

11. Because a redeeming Creation Unit holder will ordinarily receive a Portfolio Deposit in exchange for its Unit, the Trustee will not have to maintain large cash reserves for redemptions. This will allow the Trust's assets to be committed as fully as possible to tracking the DJIA, enabling the Trust to track the index more closely than certain other investment products that must allocate a greater portion of their assets for cash redemptions.

12. The Trust will terminate on the earlier of (i) January 30, 2122, or (ii) the date 20 years after the death of the last survivor of eleven persons named in the trust agreement. The Trust also will terminate: (i) if DJIA Trust Receipts are de-listed from the AMEX; (ii) by agreement of the holders of 66⅔% of outstanding DJIA Trust Receipts; (iii) if the DTC is unable or unwilling to continue to perform its functions and a comparable replacement is unavailable; and (iv) if NSCC no longer provides clearance services with respect to DJIA Trust Receipts, or if the Trustee is no longer a participants in NSCC. In addition, the Sponsor will have the discretionary right to terminate the Trust if (i) at any time after six months following and prior to three years following the initial receipt of Portfolio Deposits by the Trust the NAV of the Trust falls below $150,000,000, and (ii) after three years the NAV is less than $350,000,000. The Sponsor also may direct the Trustee to terminate the Trust if within 90 days from the initial receipt of Portfolio Deposits the NAV of the Trust is less than $100,000.

13. Within a reasonable period after the Trust's termination, the Trustee will use its best efforts to sell all portfolio securities not previously distributed to investors redeeming Creation Units. DJIA Trust Receipts not redeemed prior to termination will be redeemed in cash at NAV based on the proceeds from the sale of portfolio securities.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 4(2), 14(a), 22(d), 24(d), and 26(a)(2)(C) of the Act and rule 22c-1; under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act; and under rule 17d-1 to permit certain joint transactions.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction, or any class of persons, securities, or transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 4(2) of the Act

1. Section 4(2) of the Act defines a UIT as an investment company that, among other things, issues only redeemable securities. Because DJIA Trust Receipts will not be individually redeemable, applicants request an order that would permit the Trust to register and operate as a UIT. Applicants state that investors may purchase DJIA Trust Receipts in Creation Units from the Trust and redeem Creation Units. Applicants further state that, because the market price of DJIA Trust Receipts will be disciplined by arbitrage opportunities, investors should be able to sell DJIA Trust Receipts in the secondary market at approximately their NAV.

Section 14(a) of the Act

1. Section 14(a) provides, in pertinent part, that no registered investment company may make an initial public offering of its securities unless it has a net worth of at least $100,000, or provision is made in connection with the registration of its securities that (i) firm agreements to purchase $100,000 worth of its securities will have been made by not more than 25 persons, and (ii) all proceeds, including sales loads, will be refunded to investors if the investment company's net worth is less than $100,000 within 90 days after the effective date of the registration statement. Applicants state that section 14(a) was designed to address the formation of undercapitalized investment companies.

2. Rule 14a-3 under the Act exempts from section 14(a) UIT's that invest only in ''eligible trust securities,'' which do not include equity securities, subject to certain safeguards, including the refund of any sales load collected from investors. Applicants will comply in all respects with rule 14a-3, except that the Trust will not restrict its investments to eligible trust securities and the Trustee will not refund the Transaction Fee. Applicants contend that the Trust's investment in equity securities does not negate the effectiveness of the rule's safeguards nor subject investors to any greater risk of loss due to investment in an undercapitalized investment company. With respect to the Transaction Fee, applicants assert that it is not a sales load, and therefore is not covered by the rule's refund provision. Applicants not that the Transaction Fee will be paid note by retail investors, but by institutional and other sophisticated, well-capitalized investors who can afford the approximately $4,007,000 purchase price of a Creation Unit and who do not require the protections of section 14(a).

Section 22(d) of the Act

1. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is being currently offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in DJIA Trust Receipts will take place at negotiated prices, not a current offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of DJIA Trust

[8] *See* note 5, *supra*.

Receipts in the secondary market will not comply with section 22(d) and rule 22c-1. Applicants request an exemption from these provisions.

2. Applicants assert that the concerns sought to be addressed by section 22(d) and rule 22c-1 with respect to pricing are equally satisfied by the proposed method of pricing DJIA Trust Receipts. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (i) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (ii) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (iii) assure an orderly distribution investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

3. Applicants believe that none of these purposes will be thwarted by permitting DJIA Trust Receipts to trade in the secondary market at negotiated prices. Applicants state (i) that secondary market trading in DJIA Trust Receipts does not involve the Trust as a party and cannot result in dilution of an investment in DJIA Trust Receipts; and (ii) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand, not as a result of unjust or discriminary manipulation. Therefore, applicants assert that secondary market transactions in DJIA Trust Receipts will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of DJIA Trust Receipts and their NAV remains narrow.

Section 24(d) of the Act

1. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by a UIT. Applicants request an exemption from section 24(d) to permit dealers in DJIA Trust Receipts to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.[9] Applicants state that the imposition of prospectus delivery requirements on dealers in the secondary market will materially impede the success of DJIA Trust Receipts.

2. Applicants state that the secondary market for DJIA Trust Receipts is significantly different from the typical secondary market for UIT securities, which is usually maintained by the sponsor. DJIA Trust Receipts will be listed on a national securities exchange and will be traded in a manner similar to the shares of common stock issued by operating companies and closed-end investment companies. Dealers selling shares of operating companies and closed-end investment companies in the secondary market generally are not required to deliver a prospectus to the purchaser.

3. Applicants contend that DJIA Trust Receipts, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because DJIA Trust Receipts will be exchange-listed, prospective investors will have access to several types of market information about the product. Applicants state that quotations, last sale price and volume information will be continually available on a real time basis through the consolidated tape and will be available throughout the day on brokers' computer screens and other electronic services, such as Quotron. The previous day's price and volume information also will be published daily in the financial section of newspapers. The Sponsor also will publish daily, on a per DJIA Trust Receipt basis, the amount of accumulated dividends, net of accrued expenses.

4. Investors also will receive the Product Description. Applicants state that, while not intended as a substitute for a prospectus, the Product Description will contain pertinent information about DJIA Trust Receipts. Applicants also note that DJIA Trust Receipts will be readily understandable to retail investors as a product that tracks the DJIA, which is well known to most investors and widely recognized.

Section 26(a)(2)(C) of the Act

1. Section 26(a)(2)(C) requires, among other things, that a UIT's trust indenture prohibit payments to the trust's depositor (in the case of the Trust, the Sponsor), and any affiliated person of the depositor, except payments for performing certain administrative services. Applicants request an exemption from section 26(a)(2)(C) to permit the Trust to reimburse the Sponsor and/or the AMEX for certain licensing, registration, marketing, and organizational expenses.

2. Applicants state that, ordinarily, a sponsor of a UIT has several sources of income in connection with the creation of the trust. Applicants assert, however, that under the proposed structure of the Trust, the usual sources of income are not available because the Sponsor will not impose a sales load, maintain a secondary market, or deposit Index Securities into the Trust. Although the Sponsor's parent company, the AMEX, will earn some income on the trading fees imposed on transactions occurring on the AMEX, applicants expect that the fees will generate substantially less revenue than what would have been generated by a normal sales charge on secondary market trades of DJIA Trust Receipts. Applicants contend that the abuse sought to be remedied by section 26(a)(2)(C)—''double dipping'' by UIT sponsors collecting money from their captive trusts as well as the profits already generated by sales charges and other sources—will not be present if the requested exemption is granted.

3. Applicants contend that permitting the Trust to reimburse the Sponsor for the Trust's expenses (discussed above) would be no more disadvantageous to the holders of DJIA Trust Receipts than allowing the expenses to be imposed indirectly as offsets to sales loads and other charges, as is done by typical UITs. Applicants also state that the Trust will pay the Sponsor only its actual out-of-pocket expenses and no component of profit will be included. Finally, applicants state that the payment is capped at 20 basis points of the Trust's NAV on an annualized basis, with any expenses in excess of that amount absorbed by the Sponsor.

[9] Applicants state that persons purchasing Creation Units will be cautioned in the prospectus that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm or its client may be deemed a statutory underwriter if it takes Creation Units after placing a creation order with the Distributor, breaks them down to the constituents DJIA Trust Receipts, and sells DJIA Trust Receipts directly to its customers; or if it chooses to couple the creation of a supply of new DJIA Trust Receipts with an active selling effort involving solicitation of secondary market demand for DJIA Trust Receipts. The prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. The prospectus also will state that broker-dealer firms should also note that dealers who are not ''underwriters'' but are participating in a distribution (as contrasted to ordinary secondary trading transactions), and thus dealing with DJIA Trust Receipts that are part of an ''unsold allotment'' within the meaning of section 4(3)(C) of the Securities Act, would be unable to make advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

Section 17(a) of the Act

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling any security to or purchasing any security from the company. Because purchases and redemptions of Creation Units will be ''in-kind'' rather than cash transactions, section 17(a) may prohibit affiliated persons of the Trust from purchasing or redeeming Creation Units. Because the definition of ''affiliated person'' of another person in section 2(a)(3) of the Act includes any person owning five percent or more of an issuer's outstanding voting securities, every purchaser of a Creation Unit will be affiliated with the Trust so long as fewer than twenty Creation Units are extant. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b), to permit affiliated persons of the Trust to purchase and redeem Creation Units.

2. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting affiliated persons of the Trust from purchasing or redeeming Creation Units. The composition of a Portfolio Deposit made by a purchaser or given to a redeeming unitholder will be the same regardless of the investor's identity, and will be valued under the same objective standards applied to valuing the Trust's portfolio securities. Therefore, applicants state that ''in kind'' purchases and redemptions will afford no opportunity for an affiliated person of the Trust to effect a transaction detrimental to the other holders of DJIA Trust Receipts. Applicants also believe that ''in kind'' purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Trust.

Rule 17d–1

1. Applicants request an order under rule 17d–1 that would permit the Trust to reimburse the Sponsor and/or the AMEX for the payment by either party to Dow Jones of the annual fee required under a license agreement. The license agreement allows applicants to use the DJIA as a basis for DJIA Trust Receipts and to use certain of Dow Jones' trademark rights. Applicants believe that relief is necessary because the Trust's undertaking to reimburse the Sponsor and/or the AMEX (each an affiliated person of the Trust) might be deemed a joint enterprise or joint arrangement in which the Trust is a participant, in contravention of section 17(d) of the Act and rule 17d–1.

2. Applicants assert that the terms and provisions of the license agreement were negotiated at arm's length and that the annual license fee is for fair value, bargained for in good faith, and, to the best of their knowledge, is an amount comparable to that charged for similar arrangements. Applicants submit that the proposed transaction will result in an arrangement in which the participants deal with each other in a manner similar to, and no less advantageous than, others who might be similarly situated.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a new series of the Trust, whether identical or similar to the DJIA Trust Receipts Series, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless applicants have requested and received with respect to such new series, either exemptive relief from the Commission or a no-action position from the Division of Investment Management of the Commission.

2. The Trust's prospectus and the Product Description will clearly disclose that, for purposes of the Act, DJIA Trust Receipts are issued by the Trust and that the acquisition of DJIA Trust Receipts by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32487 Filed 12–11–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 22928; 811–5280]

Partner Wealth Fund I, L.P.; Notice of Application

December 5, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for order under section 8(f) of the Investment Company Act of 1940 (the ''Act'') declaring that applicant has ceased to be an investment company.

SUMMARY OF APPLICATION: Applicant, Partner Wealth Fund I, L.P., is an employees' securities company under section 2(a)(13) of the Act. Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on November 19, 1997. Applicant has agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 30, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 333 Clay Street, Suite 2300, Houston, TX 77002.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: This is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicant's Representations

1. Applicant is a Delaware limited partnership and an employees' securities company under section 2(a)(13) of the Act. On July 21, 1987, applicant received an order from the SEC exempting applicant from various provisions of the Act.[1] On August 13, 1987, applicant filed a notification of registration on Form N–8A.

2. Under applicant's limited partners have received distributions at least

[1] Investment Company Act Release Nos. 15824 (notice) (June 24, 1987) and (July 21, 1987) (order).

equal to each partner's respective investment in applicant. On October 2, 1996, the board of directors of Touche Holdings, Inc., applicant's general partner (the ''General Partner''), met and approved the sale of substantially all of applicant's assets.[2] On November 4, 1996, applicant's liabilities exceeded its assets and applicant sold substantially all of its assets in exchange for cash and a promissory note which applicant then transferred together with its other assets to Deloitte & Touche USA LLP (''D&T''), the parent of applicant's General Partner, in partial satisfaction of a promissory note previously issued by applicant to D&T. D&T forgave a portion of the note not satisfied by the assets received from applicant.

3. D&T is assuming all administrative and legal expenses in connection with the liquidation of applicant. Such expenses are estimated at $15,000.

4. As of the date of the application, applicant had no outstanding security-holders to whom any distributions were due. Applicant also had no liabilities, or assets, and was not a party to any litigation or administrative proceeding. Applicant is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32488 Filed 12–11–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 15, 1997.

An open meeting will be held on Wednesday, December 17, 1997, at 10:00 a.m. A closed meeting will be held on Wednesday, December 17, 1997, following the 10:00 a.m. open meeting.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Carey, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Wednesday, December 17, 1997, at 10:00 a.m., will be:

(1) Consideration of whether to propose rules 3a12–12, 3a12–13, 3b–12, 3b–13, 3b–14, 3b–15, 3b–16, 15b9–2, 15c1–9, 15c3–4, and 17a–5A under the Securities Exchange Act of 1934 (''Exchange Act'') and amendments to Exchange Act rules 8c–1, 15b1–1, 15c2–1, 15c3–1, 15c3–3, 17a–3, 17a–4, 17a–11, and Form X–17A–5 (FOCUS report). The proposed rules and rule amendments would tailor capital, margin, and other broker-dealer regulatory requirements to a class of registered dealers, called OTC derivatives dealers, active in OTC derivatives markets. Registration as an OTC derivatives dealer would be an alternative to registration as a fully regulated broker-dealer, and would be available only to entities acting primarily as counterparties in privately negotiated OTC derivatives transactions. For further information, please contact Catherine McGuire, Chief Counsel and Associate Director, Division of Market Regulation, at (202) 942–0061, or Michael Macchiaroli, Associate Director, Division of Market Regulation, at (202) 942–0132.

(2) Consideration of whether to issue a concept release seeking comment on alternatives to the current method of calculating net capital requirements pursuant to Rule 15c3–1 under the Exchange Act for broker-dealers, including whether statistical models should be used to calculate net capital requirements. As part of its study, the Commission is considering the extent to which statistical models should be used in setting the capital requirements for a broker-dealer. Accordingly, the Commission is posing a number of questions on this subject as well as soliciting views on other possible alternatives for establishing net capital requirements. For further information, please contact Michael A. Macchiaroli, Associate Director, Division of Market Regulation, at (202) 942–0132.

(3) Consideration of whether to propose amendments to rule 15c3–1 under the Exchange Act regarding net capital requirements for broker-dealers. When calculating the value of their assets for net capital purposes, broker-dealer must reduce the market value of the securities they own by certain percentages, or haircuts. The rule amendments would alter the haircuts taken by broker-dealers for certain interest rate instruments, including: government securities; investment grade nonconvertible debt securities; certain mortgage-backed securities; money market instruments; and debt-related derivative instruments. For further information, please contact Michael A. Macchiaroli, Associate Director, Division of Market Regulation, at (202) 942–0132.

(4) Consideration of whether to propose amendments to amend Rule 15c3–1 to define the term ''nationally recognized statistical rating organization'' (''NRSRO''). The proposed definition sets forth a list of attributes to be considered by the Commission in designating rating organizations as NRSROs and the process for applying for NRSRO designation. For further information, please contact Michael A. Macchiaroli, Associate Director, Division of Market Regulation, at (202) 942–0132.

The subject matter of the closed meeting scheduled for Wednesday, December 17, 1997, following the 10:00 a.m. open meeting, will be:

Institution of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 10, 1997.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32655 Filed 12–10–97; 12:30 pm]

BILLING CODE 8010–01–M

---

[2] Under applicant's limited partnership agreement the General Partner has sole discretion to affect the liquidation and need not obtain the consent of the limited partners.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39402; File No. SR–Amex–97–46]

Self-Regulatory Organizations; Notice of Filing and Order Granting Immediate Effectiveness of Proposed Rule Change by American Stock Exchange, Incorporated Relating to the Listing of Commodity Indexed Preferred or Debt Securities

December 4, 1997.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, as amended, (''Act''),[1] notice is hereby given that on November 25, 1997, the American Stock Exchange, Incorporated (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (e)(6) of Rule 19b–4 under the Act[2] which renders the proposal effective upon receipt of this filing by the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under Section 107A of the Amex *Company Guide*, the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred stock, bonds and debentures and warrants. The Amex proposes to list and trade commodity index preferred or debt securities (''ComPS'') on futures contracts for: corn; soybeans; wheat; a corn, soybean and wheat index (''Agricultural Index''); the ''total return'' variation of the J.P. Morgan Commodity Index (''JPMCI''); the ''excess return'' variation of the JPMCI (''JPMCI:X''); and the total return and excess return versions of the Energy (''JPMCI:E''), Base Metal (''JPMCI:B'') and Precious Metal (''JPMCI:P'') subindices of the JPMCI.[4] An excess return represents the cumulative returns of investing in unleveraged positions in nearby commodity futures contracts and constantly rolling the position forward to the next designated contract as the contract nears expiration. A total return consists of the excess return plus the return on the three-month Treasury Bills. In 1996, the Commission approved ComPS overlying various financial instruments for listing on both the Amex and the New York Stock Exchange, Incorporated (''NYSE'').[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As previously stated, the Amex proposes to list for trading ComPS overlying futures contracts for: corn; soybeans; wheat; the Agricultural Index; the JPMCI; the JPMCI:X; the JPMCI:E; the JPMCI:B; and the JPMCI:P. The ComPS and the issuer of the ComPS will conform to the Amex's listing guidelines under Section 107A of the *Company Guide*.[6] Accordingly, all issuances of ComPS must have: a public distribution of one million trading units; 400 holders; and a market value of not less than $4 million. The Exchange also will require that the issuer have a minimum tangible net worth of $150 million.

Holders of ComPS may receive a dividend or interest payment as applicable on the face value of their securities. The frequency and rate of the dividend or interest payment varies from issue to issue based upon prevailing interest rates and other factors. In addition, investors will receive at maturity a payment linked to the value of an index based upon a single commodity in accordance with the following formula: Face Amount × (Ending Index Value/Beginning Index Value) − Factor.

The ''Beginning Index Value'' is announced at the time of the offering. The ''Ending Index Value'' is based upon a 10 day average of the daily index value computed during the determination period prior to the redemption date. The ''Factor'' represents the costs of issuing and hedging the securities and also may include the future value of the stated dividend or interest payment (if any).

Commodity prices for the purpose of determining the payment to holders at maturity will be determined by reference to prices for a linked commodity over at least a ten business day period. The securities will have a term of from two to ten years. Holders of the securities have no claim to any of the underlying physical linked commodities.[7]

(a) *Design of the Underlying Instruments.* The Amex asserts that the futures contracts are all actively traded for: Corn, soybeans, and wheat on the Board of Trade of the City of Chicago (''CBOT''); the base metal components of the JPMCI and JPMCI:X on the London Mercantile Exchange (''LME''); the energy components of the JPMCI and JPMCI:X on the New York Mercantile Exchange (''NYMEX''); and the precious metal components of the JPMCI and JPMCI:X of the Comex division of the NYMEX (''COMEX''). The Amex asserts that prices for all of the above commodities are widely reported by vendors of financial information and the press. Information

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4(e)(6).

[3] The Exchange has represented that this proposed rule change: (i) will not significantly affect the protection of investors or the public interest; (ii) will not impose any significant burden on competition, and (iii) will not become operative for 30 days after the date of this filing. The Exchange also has provided at least five business days notice to the Commission of its intent to file this proposed rule change, as required by Rule 19b–4(e)(6) under the Act.

[4] Telephone call between Bill Floyd-Jones, Assistant General Counsel, Amex and Marianne H. Duffy, Special Counsel, Division of Market Regulation, SEC on December 1, 1997 (''Amex Call'').

[5] Securities Exchange Act Release No. 36885 (February 26, 1996) 61 FR 8315 (March 4, 1996) (order approving the listing and trading of ComPS on the Amex linked to one of eleven physical commodities that comprise the JPMCI and JPMCI:X (''Amex Individual ComPS Order'')) and Securities Exchange Act Release No. 37188 (May 9, 1996) 61 FR 24846 (May 16, 1996) (order approving the listing and trading of commodity futures index preferred securities (''CFIPs'') on the NYSE linked to one of eleven physical commodities that comprise the JPMCI and JPMCI:X (''NYSE Individual CFIPs Order'')).

[6] The proposed underwriter of the ComPS has advised the Exchange that the securities will comply with the ''hybrid exemption'' of the Commodity Futures Trading Commission (''CFTC'') under 17 CFR Part 34. The underwriter has further advised the Exchange that it presented a description of the structure and sample term sheet of ComPS to the staff of the CFTC when the underwriter first proposed the structure for ComPS overlying individual commodities in 1995. The CFTC raised no objection to the structure. *See* Amex Individual ComPS Order, *id.*

[7] Amex Call, *supra* note 4.

regarding the proposed underlying contracts follows: [8]

Underlying futures	1996 average open interest (billions)	1996 ADT volume (millions)	Contract month	Description
Corn	$6.6	$1.4	Mar, May, Jul, Dec	No. 2 yellow corn & substitutes as specified by CBOT rules.
Soybeans	$7.0	$2.1	Jan, Mar, May, Jul, & Nov.	No. 2 yellow soybeans & substitutes as specified by CBOT rules.
Wheat	$2.0	$516	Mar, Jul, Dec	Hard winter wheat & substitute grades as specified by CBOT rules.

The following commodities comprise the JPMCI and JPMCI:X:

Name/units	Market	Units per contract	Contracts in index
Aluminum $/Metric Tons	LME (MT)	25 tons	3rd Wed of Mar, Jun, Sep and Dec.
Copper $/MT	LME	25 tons	3rd Wed of Mar, Jun, Sep and Dec.
Nickel $/MT	LME	6 tons	3rd Wed of Mar, Jun, Sep and Dec.
Zinc $/MT	LME	25 tons	3rd Wed of Mar, Jun, Sep and Dec.
Heat Oil $/gal	NYMEX	42,000 gal	Every month.
Nat Gas $/MM BTU	NYMEX	10,000 MM BTU	Every month.
Unleaded Gas $/gal	NYMEX	42,000 gal	Every month.
WTI Lt Swt Crude Oil $/BBL	NYMEX	1,000 bbl	Every month.
Platinum $/troy ounce	NYMEX	50 troy oz	Jan, Apr, Jul, Oct.
Gold $/troy ounce	COMEX	100 troy oz	Feb, Apr, Jun, Aug, and Dec.
Silver $/troy ounce	COMEX	5,000 troy oz	Mar, May, Jul, Sep and Dec.

The relative weighting of the various commodities in the JPMCI:E, JPMCI:B, JPMCI:P and Agricultural Index are as follows:

Component	Subindex	Weight in subindex (percent)
Aluminum	Base metal	40.91
Copper	Base metals	36.36
Nickel	Base metals	9.09
Zinc	Base metals	13.64
Crude Oil	Energy	60.00
Heating Oil	Energy	18.18
Unleaded Gas	Energy	9.09
Natural Gas	Energy	12.73
Gold	Precious metals	65.22
Silver	Precious metals	21.74
Platinum	Precious metals	13.04
Corn	Agricultural	33.33
Soybeans	Agricultural	33.33
Wheat	Agricultural	33.33

Based on the foregoing information and for the following reason, the Exchange believes that the JPMCI and the JPMCI:X are diversified indices of industrial commodities. The JPMCI is a weighted arithmetic average of total returns afforded by an investment in liquid exchange traded futures on eleven industrial commodities. In addition, the Exchange notes that the Commission has previously reviewed and approved the listing of a security which was linked to the performance of the JPMCI or the JPMCI:X.[9]

b. *Maintenance of Underlying Instruments.* It is anticipated that the contract or contracts underlying a particular issue of ComPS will remain unchanged during the term of the instrument. Certain developments, however, may necessitate changes with respect to the underlying contract or contracts.[10] Decisions regarding such changes will be made by J.P. Morgan upon the advice of the JPMCI Policy Committee, a neutral business committee. This committee consists of senior employees in the commodities and research areas of J.P. Morgan as well as independent and academic experts. Personnel from J.P. Morgan's Commodities group serve only in an advisory, non-voting role on the committee. J.P. Morgan will immediately notify the Exchange and vendors of financial information if there is a change in the design, composition or calculation of the securities.

If it becomes necessary to choose a replacement price source for the securities, the new price source will meet the following criteria: (i) it will be

[8] For liquidity purposes, JPMCI and JPMCI:X indices skip May and September wheat, September corn and August and September soybeans in the designated contract definitions.

[9] Securities Exchange Act Release No. 35581 (March 21, 1995) 60 FR 15804 (March 27, 1997) (order approving the listing and trading of commodity linked intermediate term notes (''COINs'') overlying the JPMCI and the JPMC:X on the Amex).

[10] Such developments could include, among other things, changing liquidity conditions or the discontinuation of existing contracts, the emergence of new ''benchmark'' contracts for the particular linked commodity or the imposition of a tax or other charge on transactions.

priced in U.S. dollars, or if priced in a foreign currency, the exchange on which the contract is traded must publish an official exchange rate for conversion of the price into U.S. dollars and such currency must be freely convertible in U.S. currency, (ii) it will be traded on a regulated futures exchange in the U.S., Canada, U.K, Japan, Singapore or an O.E.C.D. country,[11] and (iii) it will have a minimum annual volume of 300,000 contracts of $500 million. The underwriter will immediately notify the Exchange and vendors of financial information in the event that there is a change in the futures contract underlying a particular series of ComPS.

In the event that a determination is made to change a contract related to an issue of ComPS and an appropriate benchmark replacement contract is identified, the substitution of the new contract for the old only will be done where: (1) the Exchange has established a comprehensive information sharing agreement with the market or self-regulator for the replacement contract, or (2) the SEC has established suitable alternative agreements with an appropriate regulator of the market for the replacement contract.

When there is no suitable benchmark replacement contract or, there is suitable benchmark contract but the Exchange's or the Commission's information sharing arrangement do not meet the above criteria, in the case of ComPS on a single commodity, the affected ComPS either will be called by the issuer or the payment to be made to holders at maturity will be fixed as of such time using prices derived from the old underlying contract, and thereafter the principal amount will not fluctuate throughout the term of the instrument as a result of the price of a linked commodity. In the case of ComPS related to a basket of commodities, the affected contract within the index basket will be removed from the basket. Unlike ComPS on individual commodities, the index value of ComPS related to baskets will not be fixed and determined early. Rather, the index will continue to be calculated using the above described index calculation methodology by excluding the removed commodity, and using the new weights determined by J.P. Morgan under the advice of the JPMCI Policy Committee. The new weights will adjust only for the removed commodity, taking its old arithmetic percentage weight in the index and dividing it up among one or more of its same sector index group members (i.e., energy, precious metal, base metal or agricultural). Thus, for example, the removal of an energy related commodity will not change the energy related weighting in the JPMCI basket, but it will change the individual weightings of some or all of the remaining energy components within the energy subindex. For example, if natural gas were removed from the JPMCI, its 7% weight in the basket would be divided among the three remaining energy commodities as determined by J.P. Morgan with the advice of the JPMCI Policy Committee and the energy subindex would remain at 55% of the basket. The removal of a commodity will not change the value of the index; it only will change the weights of the contracts in the index which, going forward, will be used to determine future changes in the value of the index.

Members of the JPMCI Policy Committee will be prohibited from trading ComPS and from communicating any knowledge concerning changes in the underlying commodities.

c. *Surveillance.* The Amex is able to obtain market surveillance information, including customer identify information, with respect to transactions occurring on the LME pursuant to its information sharing arrangements with the Securities and Futures Authority (''SFA'') through the Intermarket Surveillance Group (''ISG''). The Exchange also is able to obtain market surveillance information, including customer identity information, with respect to transactions occurring on NYMEX or COMEX pursuant to its information sharing agreement with NYMEX. In addition, the Exchange is able to obtain market surveillance information, including customer identity information, regarding transactions on the CBOT through the ISG.[12]

d. *Calculation of Value of Underlying Instruments.* The JPMCI:E, JPMCI:B, JPMCI:P and agricultural index (collectively the ''sector indices'') are calculated using the same methodology as the JPMCI or JPMCI:X which the Commission previously approved.[13] The sector indexes are dollar weighted, arithmetic averages measuring the return from an investment in the applicable futures contracts. The value of each sector index is defined by a trading strategy that holds a futures position in each of the commodities for a one month period and then rebalances the value of the commodities held for the following month based on a constant dollar weighting scheme. The rebalancing generally occurs at the end of the trading on the 4th business day of every month on which the relevant exchanges are open. The new contract used to rebalance is the nearest designated futures contract which has termination of trading or first notice day at least 10 business days into the following month. In addition, due to the periodic expiration of the futures contracts used to compute the index value, it also is necessary to ''roll'' out of expiring contracts and into the new nearby contracts. To minimize possible pricing volatility arising from conducting the roll on a single business day, the substitution of the new contract for the old is accomplished over a five business day period in increments of 20%.

The futures contract to be used for monthly rebalancing and rolling of each commodity will be the nearest designated futures contract to be used in the index, with a termination of trading date or first notice day not earlier than ten business days into the following month. The futures contract used for rebalancing will be called the ''new contracts'' and the futures contract that the index refers to up to the rebalancing date will be called the ''old contract.'' For energy futures the new and old contracts will be different. For precious metals, base metals and agricultural commodities, the new and old contracts may be the same contract because of the absence of a designated contract for every month. Where the new and old contracts are the same, rebalancing and rolling only involve and adjustment of the amount held of the old contract.

Rebalancing is calculated according to the following formulae on the rebalancing date: number of new units needed = current index value * weight of the commodity in the index/current price of the new contract per unit; and number of contracts needed = number of new units needed/number of units per contract.

After rebalancing has occurred, the roll is executed. This is the process by which the old contracts are sold and the

[11] The O.E.C.D. (Organization of Economic Cooperation and Development) consists of the following countries: the U.S., Japan, Germany, France, Italy, U.K., Canada, Australia, Austria, Belgium, Denmark, Finland, Greece, Iceland, Ireland, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland and Turkey.

[12] The Exchange currently has information sharing arrangements that qualify as comprehensive information sharing agreements with the following futures markets and self-regulators: CBOT; Chicago Mercantile Exchange, London International Financial Futures and Options Exchange; Montreal Exchange; New York Futures Exchange; NYMEX; the SFA; and the Sydney Futures Exchange.

[13] *See* Amex Individual ComPS Order and NYSE Individual CFIPs Order, *supra* note 4.

new contracts are purchased. Twenty per cent of the roll volume is transacted on each of the five subsequent business days after the rebalance date.

The rebalancing and rolling process determines the new contract and the number of new contracts to be used in the daily index calculation for the coming month. (During the five day roll period, the theoretical portfolio may consist of a blend of the new and old contracts for each commodity.) The daily index value is calculated as the sum of the previous day's closing index value plus the gain, or minus the loss, of the theoretical portfolio on that day. For each component commodity, the gain for the day is calculated by multiplying the difference between the current day's price and the previous day's price times the number of these contracts held in the theoretical portfolio times the number of units of the commodity per contract.[14] The daily gain or loss on the theoretical portfolio then is simply the sum total of the gains and losses of the individual positions in the theoretical portfolio. The index value calculated in this manner for today then serves as the base to which tomorrow's gain or loss on the theoretical portfolio is added to determine the next day's index level. The foregoing describes an ''excess return'' methodology for calculating the index such as used in the JPMCI:X. If a total return index is used, a return based upon the U.S. Treasury Bill rate is incorporated into the index. The index calculation may be described as follows: Index (today) = Index (yesterday) + P&L on theoretical portfolio + Daily collateral interest where; Daily collateral interest = Index (yesterday) × Treasury Bill yield; and P&L on theoretical portfolio = Sum of individual P&L calculations for all commodities in theoretical portfolio. The P&L calculations are in the form of: P&L = [number of contracts × change in price of designated contracts].

e. *Dissemination of Value of Underlying Instruments.* During U.S. market hours, index values with respect to ComPS based upon corn, wheat and soybeans will be calculated every 60 seconds and distributed by Reuters and Bloomberg. Index values with respect to the JPMCI, JPMCI:X and the four sector indices also will be calculated every 60 seconds and distributed by an independent calculation agent. The last disseminated price from the applicable exchange will be incorporated into the index calculations. The Ending Index Value for ComPS prior to the redemption date will be calculated by J.P. Morgan or an affiliate.

f. *Suitability.* Returns to investors in ComPS are unleveraged with neither a cap nor a floor. The Amex asserts that since commodity returns historically have been negatively correlated with financial assets, the ownership of ComPS (although their return is uncertain) will help to diversify a portfolio of financial instruments. There is an element of derivative pricing, however with respect to the calculation of the final payment. The Exchange, accordingly, will require members, member organizations and employees thereof to make a determination with respect to customers whose accounts have not previously been approved to trade futures or options that a transaction in the proposed securities is suitable for such customer. In addition, members, member organizations or employees thereof recommending a transaction in ComPS would be required: (1) to determine that the transaction recommended is suitable for the customer and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, the recommended transaction. This is more than the duty to know and approve customers, but entails an obligation to make a determination that the transaction is suitable for the customer. The Exchange will distribute a circular to its membership prior to trading such securities providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in ComPS and highlighting the special risks and characteristics thereof. The Exchange will provide the Commission staff with a copy of the circular prior to distribution.

ComPS will be subject to the quality margin and trading rules of the Exchange, except when ComPS are issued as debt in denominations with a face value of $1,000 or more, they will be traded subject to the Exchange's debt trading rules (although they will still remain subject to the Exchange's equity margin rules).[15]

2. Statutory Basis

The Exchange asserts that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove the impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change has been filed by the Exchange as a ''noncontroversial'' rule change pursuant to paragraph (e)(6) of Rule 19b–4. Consequently, the rule change shall become operative 30 days after the date of filing, or such shorter time as the Commission may designate, if the change (1) does not significantly affect the protection of investors or the public interest and (2) does not impose any significant burden on competition, pursuant to Section 19(b)(3)(A)(iii) of the Act[16] and subparagraph (e)(6) of Rule 19b–4 thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. Because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from November 25, 1997, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing.

[14] This last step is a result of the convention that contract prices are quoted on a per unit basis rather than a per contract basis.

[15] Amex Call, *supra* note 6.

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–97–46 and should be submitted by January 2, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32486 Filed 12–11–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39407; File No. SR–AMEX–97–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange, Inc. Relating to Listing and Trading Options on the Pauzé Tombstone Common Stock Index SM

December 5, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 8, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On November 14, 1997 the Exchange submitted an amendment to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to trade options on the Pauzé Tombstone Common Stock Index SM (the ''Index''), a new index developed by Pauzé Swanson Capital Management Co. ™ comprising death care industry stocks. In addition, the Amex proposes to amend Rule 902C to include the Pauzé Tombstone Common Stock Index SM in the disclaimer provisions of the rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections, A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the Exchange to trade standardized options on the Index. The Index is composed of the stocks of ten companies involved in providing death care services or products consisting of funeral services, cemetery services, and funeral and cemetery support goods and services. Options on the Index will provide investors with a low-cost means to participate in the performance of the death care industry and to hedge against the risk of investing in the industry. The Index also currently serves as the basis for an index mutual fund being offered by Pauzé Swanson Capital Management Co. ™, which has been registered with the Commission as an investment advisor since 1993. Pauzé Swanson's president, Philip C. Pauzé, has specialized in providing investment management for the assets of pre-need funeral accounts and cemetery endowment care funds since 1985, and is financial consultant to several state- and nation-wide funeral trusts and funeral directors associations' retirement plans.

The value to the public offered by options trading on the Index is underscored by the expected long-term growth of the death care industry, which offers essential, basic services required by the public regardless of economic conditions. Studies conducted by the Bureau of the Census of the United States Department of Commerce indicate that the aging of the population, as the ''Baby Boom'' generation begins to reach the age of mortality, as well as the population increase of approximately 28% from the years 1995 to 2025 will lead to a significant rise in the annual aggregate number of deaths. Consolidator companies, which purchase private funeral homes and consolidate their operations, currently constitute only about 15% of the total United States funeral service market, although the trend is toward consolidation. Consequently, these companies have a very large potential for future growth through acquisitions.

Eligibility Standards for Index Components. Pauzé Swanson Capital Management Co.™, as developer of the Index, is responsible for selecting and maintaining the list of companies to be included in the Index. Only stocks of companies which derive at least fifteen percent of their revenues from the provision of goods and/or services to the death care sector of the economy are eligible to be included. The Index conforms with the criteria of Exchange Rule 901C for including stocks in an index on which standardized options trade. In addition, all of the component securities currently meet the following standards: (1) Each component has a market capitalization of at least $100 million; (2) the total market capitalization of the Index is greater than $17 billion; (3) more than 95% of the weight of the Index is accounted for by securities each having an average monthly trading volume of greater than 1,000,000 shares over the six months preceding the date of this filing; (3) foreign country securities or American Depositary Receipts thereon are not currently represented in the Index; (4)

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claire McGrath, Vice President and Special Counsel, Amex to Michael Walinskas, Senior Special Counsel, Commission dated November 13, 1997 (''Amendment No. 1''). In Amendment No. 1, the Exchange added Rock of Ages Corp. to the Index. The Exchange also amended Exchange Rule 904C to set the position limit for the Index at 6,000 contracts on the same side of the market. In addition, the Exchange represents that component securities that in the aggregate account for no more than 10% of the weight of the Index will have an average monthly trading volume of at least 100,000 shares. The Exchange represents that it will maintain the Index so that at least 90% of the Index's numerical value and at least 70% of the total number of component securities will meet the then current criteria for standardized options trading set forth in Exchange Rule 915. Finally, Amendment No. 1 makes a non-substantive change to clarify the proposal.

all component stocks are either listed on the New York Stock Exchange (''NYSE''), Amex, or traded through the facilities of the National Association of Securities Dealers Automated Quotation System (''Nasdaq'') and are reported National Market System securities; and (5) over 95% of the numerical value of the Index is accounted for by securities that meet the current criteria for standardized options trading set forth in Exchange Rule 915.

While the shares of Service Corp. International constitute 55.63% of the overall Index value, the Exchange believes that the price of Service Corp. Stock is not readily susceptible to manipulation because the company enjoys a sizable market capitalization of more than 8.04 billion dollars, has over 251 million shares outstanding, and has experienced an average monthly trading volume of over 13 million shares in the six months preceding the date of this filing. Furthermore, its contribution to the value of the Index will diminish as the stocks of more companies are added. The Exchange anticipates that several more companies will qualify for addition to the Index within the next few months. No other component security in the Index currently accounts for more than 15.59% of its value.

The Exchange believes the potential for manipulation of the Index is minimized and, in particular, the lesser-traded component stocks should properly be included in the Index for the following reasons: (1) The representation of these stocks in relation to the overall Index value (an aggregate of 4.76% of the weight of the Index) is small; and (2) over 95% of the value of the Index is accounted for by stocks which comply with the listing criteria for standardized options trading set forth in Rule 915 and have an average market capitalization of 3.12 billion dollars, an average of 91 million shares outstanding, and a six-month average monthly trading volume of 5.14 million shares.

Index Maintenance. The Index will be maintained by the Amex. If necessary in order to maintain continuity of the Index, its divisor may be adjusted to reflect certain events relating to the component stocks. These events include, but are not limited to, stock distributions, stock splits, reverse stock splits, spin-offs, certain rights issuance, recapitalizations, reorganizations, and mergers and acquisitions.

The Exchange will maintain the Index so that: (1) The Index is comprised of no less than 9 component securities; (2) each of the component securities constituting the top 90% of the Index by weight, will have a minimum market capitalization of $75 million and each of the component stocks constituting the bottom 10% of the Index, by weight, may have a minimum market capitalization of $50 million; (3) 90% of the Index's numerical index value and at least 70% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Amex Rule 915; (4) foreign country securities or ADRs thereon that are not subject to comprehensive surveillance agreements will not in the aggregate represent more than 20% of the weight of the Index; (5) all component securities will either be listed on Amex, the New York Stock Exchange, or Nasdaq/NMS listed; and (6) 90% of the component securities shall have a monthly trading volume of at least 500,000 shares and the component securities constituting the bottom 10% of the Index, by weight, shall have a minimum average monthly trading volume of at least 100,000 shares.

The Exchange shall not open for trading any additional option series should the Index fail to satisfy any of the maintenance criteria set forth above unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination.

Index Calculation. The Index will be calculated by the Amex using a modified market capitalization methodology. The value of the Index is determined by multiplying the price of each stock times the number of its shares outstanding times the percentage of the company's revenues derived from the death care industry, adding those products and dividing by a divisor. Currently, in the case of Hillenbrand Industries and American Annuity Group, only 40% and 15%, respectively, of their total market capitalization are valued in the Index since those proportions of the companies' revenues are derived from business in the death care industry. The divisor was initially determined to yield a benchmark Index value of 100 at the close of trading on its base date of December 31, 1985.[4]

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

Expiration and Settlement. The proposed options on the Index will be European style (i.e., exercises permitted at expiration only), and cash settled. Standard option trading hours (9:30 a.m. to 4:02 p.m. New York Time) will apply. The options on the Index will expire on the Saturday following the third Friday of the expiration month. The last trading day in an expiring option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

The Exchange plans to list option series with expirations in the three near-term calendar months and in the two additional calendar months in the March cycle. In addition, longer term option series having up to thirty-six months to expiration may be traded. Instead of such long-term options on a full value Index level, the Exchange may list long-term, reduced value put and call options based on the one-tenth (1/10th) of the Index's full value. The interval between expirations months for either a full value or reduced value long-term option will not be less than six months. The trading of any long-term options would be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures, and all options will have European style exercise.

The exercise settlement value for all of the Index's expiring options will be calculated based upon the primary exchange regular way opening sale prices for the component stocks. In the case of securities traded through the NASDAQ system, the first reported regular way sale price will be used. If any component stock does not open for trading on its primary market on the last trading day before expiration, then the prior day's last sale price will be used in the calculation.

Exchange Rules Applicable to Stock Index Options. Amex Rules 900C through 980C will apply to the trading of option contracts based on the Index. These Rules cover issues such as surveillance, exercise prices and position limits. The Index is deemed to be a Stock Index Option under Rule 901C(a) and a Stock Index Industry Group under Rule 900C(b)(1). With respect to Rule 903C(b), the Exchange proposes to list near-the-money (i.e., within ten points above or below the current Index value) option series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points. In addition, the Exchange has set a position limit of 6,000 contracts on the same side of the market with respect to options on this

[4] The Index's value at the close of trading on August 19, 1997 was 523.04.

Index.[5] Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading options on the Index.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)(5) of the Act[6] in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–AMEX–97–33 and should be submitted by January 22, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32527 Filed 12–11–97; 8:45 am]

BILLING CODE 8010–01–M

[5] *See* Amendment No. 1, *supra* note 3.

[6] 15 U.S.C. § 78f(b).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39403; File No. SR–CHX–97–20]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change Defining the Scope and Application of the Guarantee Available Under the Exchange's Guaranteed Execution System

December 4, 1997.

I. Introduction

On September 12, 1997, the Chicago Stock Exchange, Incorporated (''CHX''or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to clarify the scope and application of the guarantee available under the Exchange's Guaranteed Execution System (''BEST System'').

The proposed rule change was published for comment in Securities Exchange Act Release No. 39249 (Oct. 16, 1997), 62 FR 55443 (Oct. 24, 1997). No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The provision currently governing the BEST System, Exchange Rule 37(a) of Article XX, states that, subject to certain exceptions, specialists must accept and guarantee execution of all agency orders[3] and fill such orders on the basis of the Intermarket Trading System (''ITS'') Best Bid or Best Offer (''BBO'')[4] for Dual Trading System issues and the NBBO[5] for Nasdaq/NM issues. The proposed rule change would amend Exchange Rule 37(a) to eliminate any ambiguity concerning the scope and application of the guarantee available under the BEST System and would make it clear that the guarantee is limited to both the size and price associated with the ITS BBO or NBBO.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular with the requirements of Section 6(b).[6] In particular, the commission believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Each bid and offer, including the ITS BBO and NBBO, contains two components—price and size. Because the Exchange's BEST Rule requires a specialist to accept and guarantee the execution of an agency market order on the basis of the ITS BBO or NBBO, the Exchange has consistently interpreted this guarantee as applying to both the size and price associated with that best bid or offer. However, the current text of the BEST Rule does not explicitly state that the guarantee is qualified in such a manner. To eliminate any uncertainty concerning the breadth of the guarantee, the proposed rule change adds the words ''size and price associated with'' to the BEST Rule to clarify that the guarantee available under the BEST System is limited to both the size and price associated with the ITS BBO or NBBO.

The proposed rule change is consistent with the automatic execution parameters employed by the Exchange's Midwest Automated Execution System (''MAX'').[7] Automatic execution of a

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of Exchange Rule 37, ''agency order'' means an order for the account of a customer but does not include professional orders.

[4] The ITS BBO is the best bid/offer quote among the American, Boston, Cincinnati, Chicago, New York, Pacific, and Philadelphia Stock Exchanges or the Intermarket Trading System/Computer Assisted Execution System, as appropriate.

[5] The NBBO is the best bid or offer disseminated pursuant to SEC Rule 11Ac1–1.

[6] 15 U.S.C. § 78f(b).

[7] The MAX System provides an automated delivery and execution facility for orders that are

Continued

market order through the MAX System is qualified by Exchange Rule 37(b)(11), Article XX, which states that ''notwithstanding anything in this Rule to the contrary, no market order or limit order that is marketable when entered into the MAX System will be automatically executed if the size associated with the ITS BBO or NBBO, as the case may be, is of a size less than such market order or limit order.''

The Commission believes that the proposed rule change will bring about certainty in the application of the Exchange's BEST System guarantee. Although the Exchange currently interprets the scope of the BEST System guarantee as being restricted by the price and size parameters, the absence of such criteria in the text of the BEST Rule may cause confusion among those entitled to use the BEST System.[8]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–CHX–97–20) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32483 Filed 12–11–97; 8:45 am]

BILLING CODE 8010–01–M

eligible for execution under the Exchange's BEST Rule and certain other orders. *see* Exchange Rule 37(b).

[8] Exchange Rule 37(a) states that the BEST System is available to exchange member firms and members of participating exchanges.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39405; File No. SR–MBSCC–97–5]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving a Proposed Rule Change Regarding Participant Liability for Transactions Submitted on Behalf of Nonparticipants

December 5, 1997.

On August 1, 1997, MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–MBSCC–97–5) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on September 26, 1997.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Pursuant to MBSCC's current rules, participants that process any contracts or other transactions through MBSCC for other participants are liable as principal for such contracts or transactions. The proposed rule change clarifies that participants also are liable as principal for any contracts or other transactions submitted to MBSCC on behalf of entities that are not participants (''nonparticipants'') and that nonparticipants are not deemed to possess any rights or benefits of participants.

As a result, MBSCC will treat all of a participant's accounts [3] and obligations as belonging to such participant regardless of the identity of the underlying party. Thus, a participant's participant fund [4] deposits will be available for all of the participant's transactions regardless of the source.

II Discussion

Section 17A(b)(3)(F) of the Act [5] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The Commission believes that the proposed rule change adds certainty as to the treatment of the positions submitted on behalf of nonparticipants upon default of a participant. Thus, the proposal should enhance MBSCC's ability to protect itself and its participants against loss. Therefore, the Commission believes that MBSCC's proposal is consistent with its obligations to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MBSCC–97–5) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32485 Filed 12–11–97; 8:45 am]

BILLING CODE 8010–01–M

[2] Securities Exchange Act Release No. 39103 (September 22, 1997), 62 FR 50646.

[3] According to MBSCC's rules, the term ''account'' generally means any account maintained by MBSCC on behalf of a participant for the comparison, margining, and clearing trades.

[4] According to MBSCC's rules, the term ''participant fund'' means the fund for which provision is made in Article IV to which participants are required to make basic deposits, minimum market margin differential deposits, and market margin differential deposits.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39408; File No. SR–Philadep–97–05]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Unclaimed Dividends and Distributions

December 5, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 25, 1997, Philadelphia Depository Trust Company (''Philadep'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by Philadep. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested parties and to grant accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, Philadep will amend its rules governing unclaimed dividends and distributions.[2] The amendments reflect undertakings recently agreed to by Philadep in connection with settling an administrative proceeding with the Commission.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] The text of the proposed amendments was submitted with Philadep's rule filing and is available for inspection and copying at the Commission's Public Reference Room and through the principal office of Philadep.

[3] Securities Exchange Act Release No. 38918 (August 11, 1997) (order instituting proceedings pursuant to Section 19(h) and 21C of the Act, making findings, and imposing remedial sanctions) [Administrative Proceeding File No. 3–9360] (''Order'').

II. Self-Regulatory Organization's Statements Regarding the Proposed Rule Change

In its filing with the Commission, Philadep included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Philadep has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In accordance with the Order, Philadep will amend Philadep Rule 29, entitled ''Unclaimed Dividends and Other Distributions,'' and Philadep Rule 2, Section 1(e), which governs the retention of any unclaimed dividend or other distribution. The Order provides that within forty-five (45) days of the entry of the Order, Philadep shall file with the Commission:

A proposed rule change amending Rule 2, Section 1(e), Rule 29, Section 3 and the procedures thereunder, to provide that Philadep shall diligently research each unclaimed dividend or other distribution received after the Closing Date with a value greater than $500. Any such unclaimed dividend or other distribution with a value of $500 or less shall continue to be treated in accordance with Rule 29 (*i.e.*, Philadep can take it into income after five (5) years). All unclaimed dividends and other distributions subject to Rule 29 shall be held and invested in accordance with Philadep's Participants' Fund Rule 4. No unclaimed dividends or distributions received after the Closing Date in excess of $500 shall be taken into income.

In their current form, both Philadep Rule 2, Section 1(e), and Philadep Rule 29, Section 3, provide that (i) any dividends or distributions outstanding and unclaimed after five years from the date of such dividend or distribution shall be taken into income by Philadep and (ii) the participant shall waive any claim to any such dividend or distribution except as Philadep otherwise may provide in accordance with its by-laws and rules. Rule 2 and Rule 29 will be amended to provide that Philadep may not retain any unclaimed dividends or distributions in excess of $500 that are paid and received after the closing date.[5] Also under the proposed rule change, Philadep will amend Rule 29, Section 1, to provide that Philadep shall diligently research any unclaimed dividend or distribution with a value greater than $500 that is received after the effective date of the amendments. No changes to Philadep's rules will be made with respect to unclaimed dividends or distributions received prior to the closing.

Finally, Philadep is amending Rule 29 by adding a new Section 3 that will require that all unclaimed dividends and distributions that are subject to Rule 29, but as yet not taken into income by Philadep in accordance with Rule 29, be held and invested pursuant to the same procedures as set forth in Philadep Participants' Fund Rule 4.

Philadep believes the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[6] and the rules and regulations thereunder because the amendments contemplated by the proposed rule change will better assure the safeguarding of securities and funds in the custody or control of Philadep or for which Philadep is responsible. Furthermore, Philadep believes the amendments are consistent with the undertakings set forth in the Order.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Philadep does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[7] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible. The Commission believes that the proposed rule change is consistent with this obligation because it will increase the likelihood that unclaimed dividends and distributions will be returned to their owners.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will allow Philadep to implement the undertakings set forth in the Order immediately which should benefit the owners of unclaimed dividends and distributions.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of SCCP. All submissions should refer to File No. SR–Philadep–97–05 and should be submitted by January 2, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32528 Filed 12–11–95; 8:45 am]

BILLING CODE 8010–01–M

[4] The Commission has modified the text of the summaries prepared by Philadep.

[5] The closing date tentatively has been scheduled for December 15, 1997, but may be rescheduled by mutual consent of the parties. The actual closing date will be inserted into the amended rules.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39404; File No. SR–Phlx–97–42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Responsibility to Represent Orders to the Trading Crowd

December 4, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1034 (''Act''),[1] notice is hereby given that on August 25, 1997, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'')

[1] 15 U.S.C. 78s(b)(1).

filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b–4 of the Act,[2] proposes to amend Floor Procedure Advice (''Advice'') C–7, Responsibility to Represent Orders to the Trading Crowd, to adopt a new paragraph (b) in order to specify a Floor Broker's responsibility to be loud and audible and positioned to be heard by a majority of the trading crowd.

Currently, Advice C–7 states that once an option order has been received on the floor, it must be represented to the trading crowd before it may be represented away from the crowd. This paragraph would be designated as paragraph (a). Proposed paragraph (b) would state that a Floor Broker must be loud and audible when requesting a market and/or representing an order in the trading crowd. Further, a Floor Broker must make reasonable efforts to position himself in the trading crowd to be heard by the majority of the trading crowd.

A fine schedule, pursuant to the Exchange's minor rule violation enforcement and reporting plan (''minor rule plan''),[3] is proposed to be levied for minor violations of proposed paragraph (b). Specifically, violations will be subject to the following fine schedule, which will be implemented on a one-year running calendar basis: 1st Occurrence—$100; 2nd Occurrence—$250; 3rd Occurrence and Thereafter—Sanction is discretionary with Business Conduct Committee (''BCC''). This fine schedule is proposed to be adopted into, and thus amend, the Exchange's minor rule plan. Instances not deemed minor, as with all floor procedure advices subject to the minor rule plan, would be forwarded to the BCC. Violations of paragraph (a) would continue to be referred to the BCC, as no fine schedule applies. However, language indicating that such matters are subject to review by the BCC is proposed to be added. The proposal would take effect upon notice to the membership. The complete text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements maybe examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the amendment is to codify the long-standing practice of requiring, in order to promote just and equitable principles of trade, that Floor Brokers be heard by the trading crowd. Advice C–7 was adopted in 1987,[4] and was designed to ensure that brokered orders receive the maximum interaction with orders competing for the other side of the trade, before they may be represented away from the crowd. This, in turn, improves the functioning of the auction market and the quality of customers executions. Similarly, the proposed loud and audible and crowd positioning requirements are intended to promote maximum interaction with other interest in the crowd, by improving the likelihood that Floor Brokers are heard and facilitating price discovery.

Currently, the loud and audible requirement is rooted in Rule 110, which requires bids and offers to be made in an audible tone of voice, as well as Rule 707, Just and Equitable Principles of Trade, which prohibits members and member organizations from engaging in conduct inconsistent with just and equitable principles of trade. Floor Brokers are also required to utilize due diligence in representing orders, pursuant to Rules 155 and 1063. Specifically, Floor Brokers are responsible for using due diligence to execute an order at the best price available, which implies complete crowd interaction. Proposed paragraph (a) would apply to Floor Brokers requesting a market (quoting) as well as representing a market, including bidding, offering, canceling, executing and inquiring as to the status of orders or bids/offers.

Similarly, the requirement that Floor Brokers position themselves so as to be heard by a majority of the trading crowd is also rooted in Rules 707, 155 and 1063, and is also intended to maximize order interaction. Crowd location, in busy situations, is especially important in fulfilling due diligence and best execution obligations. The Exchange notes that the proposal's intent is similar to that of Rule 1063(a) and Advice C–1, which require that a Floor Broker, prior to executing an order, ascertain that at least one Registered Options Principal (''ROT'') is present in the trading crowd.[5] ROT presence is intended to confirm pricing, prevent errors, and witness specialist-Floor Broker activity. The proposal should also promote an orderly environment, where Floor Brokers choose their crowd positioning centrally to comply with the requirement, and prevent unnecessary roughness and disorderly behavior by crowd participants attempting to hear a Floor Broker.

The proposed rule change is designed to preserve and enhance auction market principles and the process of representing orders by open outcry, which is integral to exchange options trading.

As stated previously, the proposal should ensure that Floor Brokers are heard. This, in turn, should help prevent errors by allowing verification of market quotes and orders by other crowd participants. As with paragraph (a), proposed paragraph (b) should prevent fraudulent and manipulative activity. The Exchange believes that expressly codifying these requirements into an Advice should help deter such activity, due to the potential imposition of fines for minor infractions, and should help encourage crowd vigilance for proper vocalization and wrongful activity.

The Exchange believes that the proposal is appropriately codified into Advice C–7, which deals with Floor Broker responsibilities, and, more specifically, with representing orders in the trading crowd. Furthermore, the Exchange believes that the new

[2] 17 CFR 240.19b–4.

[3] The Phlx's minor rule plan, codified in Phlx Rule 970, contains floor procedure advice, such as Advice C–7, with accompanying fine schedules. Rule 19d–1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 19d–1(c)(1) requires prompt filing with the Commission of any final disciplinary actions. However, minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

[4] Securities Exchange Act Release No. 24309 (April 7, 1987), 52 FR 11894 (April 13, 1987) (SR–Phlx–86–49).

[5] Prior to the adoption of a minor rule plan, this requirement appeared in Phlx Rule 1014.06. Securities Exchange Act Release No. 23296 (June 4, 1986), 51 FR 21430 (June 12, 1987)(SR–Phlx–86–11).

requirement is appropriate for the minor rule plan, because it involves actions that are objective and easily verifiable. The reference in the fine schedule to infractions of paragraph (a) being referred to the BCC is intended to bolster the distinction between provisions subject to fines and those referred directly to BCC; it does not imply that violations of paragraph (a) cannot result in fines or disciplinary action.

For these reasons, the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest, by maximizing order interaction and thus improving the functioning of the auction market, including price discovery and liquidity, and the quality of customer executions. The proposal is also consistent with Sections 6(b)(1) and (6), which require, respectively, that the Exchange have the capacity to enforce compliance with its rules and that members be appropriately disciplined.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes it reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–97–42 and should be submitted within January 2, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32484 Filed 12–11–97; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector (ITAC–R) Joint Task Group 4–9–11 Meeting Notice

The Department of State announces the formation of U.S. Joint Task Group 4–9–11 (JTG 4–9–11), under the Radiocommunication Sector of the U.S. International Telecommunication Advisory Committee. This Joint Task Group is the focal point within the United States to prepare for meetings of the corresponding international JTG 4–9–11 which was recently formed at the ITU–R Chairman/Vice Chairman meeting November 25 and 28, 1997. The JTG is to conduct studies and prepare a report for the next Conference Preparatory Meeting (CPM–99). The report will be based on the results of studies, in accordance with Resolutions COM5–18, COM5–19 and COM5–23 of the 1997 World Radiocommunication Conference, that are associated with items 1.13.1 and 1.13.2 of the agenda for WRC–99. These agenda items are:

1.13.1—review and, if appropriate, revise the power limits appearing in [1] Articles S21 and S22 in relation to the sharing conditions among non-GSO, GSO FSS, GSO BSS, space sciences and terrestrial services, to ensure the feasibility of these power limits and that these limits do not impose undue constraints on the development of these systems and services; and

1.13.2—consider the inclusion of limits similar to those in Article S21 and S22 in other frequency bands, or other regulatory approaches to be applied in relation to sharing situations.

Chairman of the U.S. Joint Task Group 4–9–11 is Mr. Harry Ng of the Federal Communications Commission. Mr. Hg may be reached at telephone 202–418–0752.

The initial organizational meeting of U.S. JTG 4–9–11 will be held on December 18, 1997 at 9:30 a.m. at the Department of State in Room 1912. Members of the General Public may attend this meeting and join in the discussions, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled.

Persons intending to attend the meeting should send a fax to (202) 647–7407 not later than 24 hours before the meeting. On this fax, please include the name of the meeting, your name, social security number, date of birth and organization. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or a U.S. Government identification (company ID's are no longer accepted by Diplomatic Security). Enter from the 'C' Street Main Lobby.

Subsequent meetings will be held at the FCC, 2000 M Street, NW, Washington, D.C., in Room 110 on January 7, 1998 at 9:30 a.m. and on February 4, 1998 at a time and location to be determined.

Dated: December 9, 1997.

John T. Gilsenan,

Acting Chairman, U.S. ITAC for Radiocommunications Section.

[FR Doc. 97–32597 Filed 12–10–97; 9:05 am]

BILLING CODE 4710–45–M

[6] 17 CFR 200.30–3(a)(12).

[1] Articles S21 and S22 of the international Radio Regulations, as agreed by the 1997 World Radiocommunication Conference.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 25.335–1, Design Dive Speed

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 25.335–1, Design Dive Speed. This AC sets forth an acceptable means, but not the only means, of demonstrating compliance with the provisions of part 25 of the Federal Aviation Regulations (FAR) related to the minimum speed margin between design cruise speed and design dive speed for transport category airplanes. Like all ACs, it is not regulatory but is to provide guidance for applicants in demonstrating compliance with the objective safety standards set forth in the rule.

DATE: Advisory Circular 25.335–1 was issued by the Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100, on October 20, 1997.

HOW TO OBTAIN COPIES: A copy may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, 3341Q 75th Ave., Landover, MD 20785, telephone 301–322–5377, or faxing your request to the warehouse at 301–386–5394.

Issued in Renton, Washington, on November 28, 1997.

Gary L. Killion,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 97–32579 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Memphis International Airport, Memphis, TN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Memphis-Shelby County Airport Authority for Memphis International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is December 4, 1997.

FOR FURTHER INFORMATION CONTACT: Jerry O. Bowers, Airports District Office, 2851 Directors Cove, Suite #3, Memphis, TN 38131–0301, 901–544–3495.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Memphis International Airport are in compliance with applicable requirements of Part 150, effective December 4, 1997.

Under section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Memphis-Shelby County Airport Authority. The specific maps under consideration are Memphis International Airport Existing (1997) Noise Exposure Map and Future (2002) Noise Exposure Maps submission. The FAA has determined that these maps for Memphis International Airport are in compliance with applicable requirements. This determination is effective on December 4, 1997. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under, section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, D.C. 20591.

Federal Aviation Administration, Airports District Office, 3851 Directors Cove, Suite #3, Memphis, TN 38131–0301.

Mr. Larry D. Cox, President, Memphis-Shelby County Airport Authority, Memphis International Airport, P.O. Box 30168, Memphis, Tennessee 38130–0168.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Memphis Airports District Office, December 4, 1997.

LaVerne F. Reid,

Manager.

[FR Doc. 97–32578 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–97–61]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 5, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. 29012, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMNTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Angela Anderson (202) 267–9681 or Tawana Matthews (202) 267–9783, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on December 8, 1997.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29012.

Petitioner: Contential Airlines, Inc.

Sections of the FAR Affected: 14 CFR 212.434(c)(1)(ii).

Description of Relief Sought: To permit Continental to substitute a qualified and authorized check airman for a Federal Aviation Administration inspector to observe a qualifying pilot in command (PIC) while that PIC is performing prescribed duties during at least one flight leg that includes a takeoff and landing when completing initial or upgrade training as specified in 14 CFR 121.424.

[FR Doc. 97–32577 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Wapello and Mahaska Counties, Iowa

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Wapello and Mahaska Counties, Iowa.

FOR FURTHER INFORMATION CONTACT: Dean Majzoub, Transportation Engineer, Federal Highway Administration, 105 6th Street, Ames, Iowa 50010, Telephone: (515) 233–7300.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Iowa Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to improve U.S. Highway 63 (formerly Iowa 137) in Wapello and Mahaska Counties. The proposed improvement would involve the construction of a four-lane bypass of the town of Eddyville.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand. Alternatives to be considered include (1) taking no action; (2) a near east bypass; (3) a far east bypass; and (4) a westerly bypass.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public information meeting will be held in Eddyville on December 17, 1997. In addition, a public hearing will be held after the draft EIS is made available. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(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)

Issued on: December 2, 1997.

Robert L. Lee,

Division Administrator, Ames, Iowa.

[FR Doc. 97–32481 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33513]

CMC Railroad, Inc.—Operation Exemption—GWI Switching Services, L.P.

CMC Railroad, Inc. (CMC RR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate a railcar storage yard (the Yard) that has been operated by GWI Switching Services, L.P. (GWISS).[1]

[1] The real estate on which the Yard is located is owned by CMC Railroad I Ltd. (CMC I), which leases all improvements thereto from NCC Charlie Company, an unrelated noncarrier.

GWISS has been operating the Yard and has been operating over incidental trackage rights pursuant to the class exemption at 49 CFR 1150.31. *See GWI Switching Services, L.P.—Operation Exemption—Rail Lines of Southern Pacific Transportation Company*, Finance Docket No. 32481 (ICC served May 3, 1994). The continuance in control of GWISS by Genesee and Wyoming Industries, Inc., is also exempt under the class exemption. *See Genesee and Wyoming Industries, Inc.—Continuance in Control Exemption—GWI Switching Services, L.P.*, Finance Docket No. 32482 (ICC served May 3, 1997). The Brotherhood of Locomotive Engineers and the United Transportation Union filed petitions to revoke these exemptions, which are pending before the Board. The publication of this notice of exemption does not reflect any assessment of the merits of the petitions to revoke. Should the Board

Continued

GWISS is assigning to CMC RR the operating agreement that would permit CMC RR to operate the Yard. CMC RR will access the Yard at connections with the Baytown Branch of Union Pacific Railroad Company (which the verified notice describes as a former Southern Pacific Transportation Company (SP) line) in the vicinity of Dayton, TX, at SP mileposts 2.0 and 3.3. Under the assignment by GWISS, CMC RR will also operate 10 miles of incidental trackage rights (a) from Baytown Branch SP milepost 5.0 to SP milepost 0.0 (also known as Lafayette Main Line SP milepost 327.8), a distance of 5.0 miles; and (b) from Lafayette Main Line SP milepost 325.0 to SP milepost 330.0, a distance of 5.0 miles.

The transaction was expected to be consummated after November 27, 1997.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33513, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.C., 213 West Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Decided: December 5, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–32564 Filed 12–11–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33521]

Norfolk Southern Railway Company—Trackage Rights Exemption—Pickens Railway Company

Pickens Railway Company (Pickens) has agreed to grant local access trackage rights to Norfolk Southern Railway Company (NSR) over approximately 1.2 miles of Pickens' tracks between former NSR milepost Z–9.0 and former NSR milepost Z–10.2, the division of ownership between Pickens and NSR at Murray Street, in Anderson, SC.

The transaction is scheduled to be consummated after the closing date of the transaction in *Pickens Railway Company—Acquisition and Operation Exemption—Norfolk Southern Railway Company,* STB Finance Docket No. 33423 (STB served July 17, 1997), which is anticipated to be on or after December 11, 1997.

The purpose of the trackage rights is to permit NSR to provide service on a joint basis with Pickens to present and future rail patrons and to park occupied circus train cars in Anderson.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33521, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on James R. Paschall, Esq., Norfolk Southern Railway Company, Three Commercial Place, Norfolk, VA 23510–9241.

Decided: December 4, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–32563 Filed 12–11–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–303 (Sub-No. 18X)]

Wisconsin Central Ltd.—Abandonment Exemption—in Polk County, WI

On November 24, 1997, Wisconsin Central Ltd. (WCL), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon its line of railroad known as the Dresser-Amery Line, extending between milepost 47.83 in Dresser and milepost 63.08 (the end of the line) in Amery, a distance of 15.25 miles, in Polk County, WI. The line traverses U.S. Postal Service Zip Codes 54001 and 54009, and includes the stations of Wanderoos at milepost 56.3 and Amery at milepost 62.9.

The line does not contain federally granted rights-of-way. Any documentation in WCL's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 13, 1998.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $900 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than January 2, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–303 (Sub-No. 18X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Michael J. Barron, Jr., General Attorney, Wisconsin Central Ltd., 6250 N. River Road, Suite 9000, Rosemont, IL 60018.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who

decide to revoke GWISS's exemption to operate the Yard and trackage rights, this exemption of the assignment of GWISS's operating agreement to CMC RR may also be revoked.

commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Decided: December 4, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–32562 Filed 12–11–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 4, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Departmental Offices/Office of International Financial Analysis/ Treasury International Capital Reporting System

OMB Number: 1505–0023.

Form Number: International Capital Form CM.

Type of Review: Extension.

Title: Dollar Deposit and Certificate of Deposit Claims on Banks Abroad.

Description: This report is required by law and is designed to gather timely and accurate information on international capital movements by collecting data on deposit and certificate of deposit claims held on banks abroad by nonbanking enterprises in the United States.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 175.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 1,050 hours.

OMB Number: 1505–0088.

Form Number: International Capital Form BL–3.

Type of Review: Extension.

Title: Intermediary's Notification of Foreign Borrowing Denominated in Dollars.

Description: This form is designed for use by a bank, other depository institution, or broker to notify a domestic nonbanking customer of its potential obligation to report on TIC Form CQ–1 borrowings from foreigners that will not be reported by the bank or other intermediary as a custody liability on TIC Form BL–2.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 25.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 150 hours.

Clearance Officer: Lois K. Holland (202) 622–1563. Departmental Offices, Room 2110, 1425 New York Avenue, N.W., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–32529 Filed 12–11–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission to OMB for Review; Comment Request

December 2, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0951.

Form Number: IRS Forms 5434 and 5434–A.

Type of Review: Extension.

Title: Application for Enrollment (5434); and Application for Renewal of Enrollment (5434–A).

Description: The information relates to the granting of enrollment status to actuaries admitted (licensed by the Joint Board for the Enrollment of Actuaries to perform actuarial services under the Employment Retirement Income Security Act of 1974.)

Respondents: Individual or households.

Estimated Number of Respondents/ Recordkeepers: 6,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form 5434, 1 hr., 0 min.
Form 5434—A, 18 min.
Recordkeeping, 9 min.

Frequency of Response: Other (once every 3 years).

Estimated Total Reporting/ Recordkeeping Burden: 3,800 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 97–32530 Filed 12–11–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices

Privacy Act of 1974 as Amended: System of Records

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of Alteration of a system of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), the Department of the Treasury is issuing notice of our intent to alter the system of records entitled the Treasury Integrated Management Information System (TIMIS), Treasury/DO .002, to include a new routine use. We invite public comment on this publication.

DATES: The proposed alteration will become effective without further notice on January 12, 1998, unless comments dictate otherwise.

ADDRESSES: Interested individuals may comment on this publication by writing to Director, Treasury Integrated Management Information System (System Manager for TIMIS), 740 15th Street NW, Suite 400, Washington, DC, 20005. All comments received will be available for public inspection at that address.

FOR FURTHER INFORMATION CONTACT: Director, Treasury Integrated

Management Information System (System Manager for TIMIS), 740 15th Street NW, Suite 400, Washington, DC, 20005.

SUPPLEMENTARY INFORMATION: Pursuant to Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Department of the Treasury will disclose data from its Treasury Integrated Management Information System (TIMIS)—Treasury/DO .002 to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, for use in the National Database of New Hires, part of the Federal Parent Locator Service (FPLS) and Federal Tax Offset System.

FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and/or their employers for purposes of establishing paternity and securing support.

On October 1, 1997, the FPLS will be enlarged to include the National Directory of New Hires, a database containing information on employees commencing employment, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. The FPLS will be expanded on October 1, 1998, to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified of the participant's current employer. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

The data to be disclosed by the Department of the Treasury to the FPLS include: name, social security number and address of the employee and the name, address and Federal Employer Identification Number (FEIN) of the Department of the Treasury.

In addition, names and social security numbers submitted by the Department of the Treasury to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct.

The data disclosed by the Department of the Treasury to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

We are proposing this routine use in accordance with the Privacy Act (5 U.S.C. 552a(b)(3)). The Privacy Act permits the disclosure of information about individuals without their consent for a routine use where the information will be used for a purpose which is compatible with the purpose for which the information was originally collected. The Office of Management and Budget has indicated that a ''compatible'' use is a use which is necessary and proper. See OMB Guidelines, 51 Fed. Reg. 18982, 18985 (1986). Since the proposed uses of the data are required by Pub. L. 104–193, they are clearly necessary and proper uses, and therefore ''compatible'' uses which meet Privacy Act requirements. We will disclose information under the proposed routine use only as required by Public Law 104–193.

The Treasury Integrated Management Information System (TIMIS), Treasury/DO .002 system notice most recently published in its entirety on November 9, 1995, at 60 FR 56651. The specific change to the record system being altered is set forth below:

Treasury/DO .002

SYSTEM NAME:

Treasury Integrated Management Information System (TIMIS),

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * *

(16) disclose to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services, the names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees, for the purposes of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement activities as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, Pub. L.104–193).

* * * * *

Dated: December 3, 1997.

Alex Rodriguez,

Deputy Assistant Secretary (Administration)

[FR Doc. 97–32496 Filed 12–11–97; 8:45 am]

Billing Code 4810–25–F

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

December 6, 1997.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

Dates: Written comments should be received on or before January 12, 1998 to be assured of consideration.

OMB Number: 1550–0023.

Form Number: OTS Form 1313 and OTS Form 1568.

Type of Review: Revision of a previously approved collection.

Title: Thrift Financial Report.

Description: OTS collects financial data from OTS-related savings associations and their subsidiaries in order to assure their safety and soundness as depositories of the personal monies of the general public. The OTS monitors the association's financial position an interest-rate risk so that adverse conditions can be remedied promptly.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 1239.

Estimated Burden Hours Per Respondent: 33 average hours.

Frequency of Response: 12 per year.

Estimated Total Reporting Burden: 183,343 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and

Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Catherine C. M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–32468 Filed 12–11–97; 8:45 am]

BILLING CODE 6720–01–P

Friday
December 12, 1997

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 243

FOX High Speed Rail Safety Standards; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 243

[FRA Docket No. HST–1]

RIN 2130–AB14

FOX High Speed Rail Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking for rule of particular applicability (NPRM).

SUMMARY: FRA is proposing a rule of particular applicability that establishes safety standards for the Florida Overland eXpress (FOX) high speed rail system. The proposed standards are not intended for general application in the railroad industry, but would apply only to the FOX system that is planned for development in the State of Florida. The FOX system will operate from Miami to Tampa, via Orlando on dedicated track, with no grade crossings, at a maximum speed of 200 mph. The FOX equipment and track are patterned after the French TGV high speed rail system, and will be used exclusively for passenger service.

The proposed rule of particular applicability takes a systems approach, and so includes standards that address all aspects of the FOX high speed system, including system description, system safety, signal, track, rolling stock, operating practices, system qualification tests, personnel qualifications, and power distribution. In addition, the proposed rule adopts and incorporates by reference many existing standards that apply to all railroads, which are appropriate for application to FOX, such as alcohol and drug standards, hours of service requirements, and locomotive engineer qualifications.

DATES: (1) *Written comments:* Written comments must be received on or before February 10, 1998. Comments received after that date will be considered only to the extent possible without incurring substantial expense or delay.

(2) *Public hearing:* A public hearing will be held if one is requested by January 2, 1998. Anyone requesting a hearing must notify FRA's Docket Clerk, Renee Bridgers, in writing and provide her with the requesting party's name, telephone number, and address. If a hearing is requested, FRA will notify the public of the date, time, and location of the hearing, and provide instructions for those who wish to make an oral statement at the hearing.

ADDRESSES: Written comments must identify the docket number and be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Stop 10, 400 Seventh Street, S.W., Washington, D.C. 20590. Persons desiring to be notified that their comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for written comments, during regular business hours on the seventh floor of 1120 Vermont Avenue, NW, in Washington, D.C.

FOR FURTHER INFORMATION, CONTACT: Bill Goodman or Mark Jones, Signal Division, Office of Safety Assurance and Compliance, FRA, 400 Seventh St., S.W., Stop 25, Washington, D.C. 20590, (telephone: 202–632–3353); Bill O'Sullivan or Dave Jamieson, Track Division, at the same address, (telephone: 202–632–3341); Ed Pritchard, Motive Power and Equipment Division, at the same address, (telephone: 202–632–3348); Doug Taylor or Laura Mizner, Operating Practices Division, at the same address, (telephone: 202–632–3346); Bob Dorer, Volpe National Transportation Systems Center, Kendall Square, Cambridge, MA 02142, (telephone: 617–494–3481); or Christine Beyer, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh St., S.W., Stop 10, Washington, D.C. 20590 (telephone: 202–632–3177).

SUPPLEMENTARY INFORMATION:

Background and Regulatory Structure

The State of Florida plans to develop a high speed rail system that will run from Miami to Tampa, via Orlando. The system's trains will travel on dedicated rail, with no public grade crossings, in exclusive passenger service, at speeds not to exceed 200 mph. These operational characteristics and the equipment that the State plans to use mark a dramatic step forward for the development of regional high speed passenger rail service in the United States. FRA announces in this notice proposed safety standards for the system that will be developed in Florida.

Through a public bid process, Florida has selected the Florida Overland eXpress (FOX) to build and operate the high speed rail system. FOX is a consortium of engineering and rail design and construction entities. The system FOX proposes to build in Florida utilizes the high speed technology and equipment currently in use in France, Holland, Spain, and Belgium, which was developed in France and is known as the French TGV (train a grande vitesse, or very high speed train). The French TGV has been in service in Europe since 1981 and has safely carried 450 million passengers. This is a traditional rail system, in the sense that steel wheels operate over steel rails, powered by electrical power that is carried and transferred to the equipment through an overhead catenary system. However, the TGV equipment is generally lighter than conventional rail vehicles, and utilizes advanced computer and aerodynamic technology that facilitates travel at very high speeds with minimal track and equipment degradation. (The trainsets travel at maximum speeds of 186 mph in France.) In addition, the TGV high speed trainsets are articulated into one long unit that resists buckling or rolling in the event of an accident, which greatly reduces the likelihood of serious injury for passengers. The lightweight design of the equipment permits high speed travel, but also lends itself to grave damage if involved in a train-to-train collision, particularly where heavy freight vehicles are present. To counter this aspect of the design, the TGV is operated with a focus on collision-avoidance, in addition to collision-mitigation, a systems approach to safety that has proven to be quite successful. (It is also important to note here that the Florida system will not include any freight traffic.) Newer generations of the TGV system include in-cab signal systems and passenger stations that are customized to service high speed trainsets only. The French TGV system has an exceedingly safe record, which is discussed in greater detail below.

The federal railroad statutes apply to all railroads, as defined in 49 U.S.C. 20102, including the FOX system proposed to be built in Florida. The only railroads excluded from FRA's jurisdiction are urban rapid transit railroads that are not connected to the general railroad system. The contemplated FOX system will clearly be intercity passenger rail, not urban rapid transit. Accordingly, the Florida system will be subject to FRA jurisdiction whether or not it is connected to the general railroad system. Moreover, FRA would consider a stand-alone intercity railroad line to be part of the general system, even though not physically connected to other railroads (as FRA has previously stated with respect to the Alaska Railroad; see 49 CFR part 209, Appendix A).

FRA has a regulatory program in place, pursuant to its statutory authority, to address equipment, track, operating practices, and human factors in the existing, conventional railroad environment. However, significant operational and equipment differences exist between the system proposed for Florida and existing passenger operations in the United States. In many of the railroad safety disciplines, FRA's existing standards of general applicability do not address the safety concerns and operational peculiarities of the proposed FOX system. Therefore, in order to assure the public that this new system will operate safely, minimum federal standards must be in place when FOX commences operations.

FOX and FDOT discussed their plans for the system in a series of meetings with FRA held throughout 1996. The purpose of the discussions was to explain to FRA the system that they plan to build in Florida, and for FOX and FDOT to understand more fully the applicable regulatory framework that would govern their operations. On February 18, 1997, FOX filed a petition for rulemaking (Petition) with FRA, which proposes standards that would apply to their system safety program, track, rolling stock, signal, operating practices, personnel qualifications, and power distribution. Since February, FOX has supplemented the Petition with additional information that is pertinent to the existing French operation or the one planned for Florida. (A copy of the Petition and supplemental submissions are available for public review in the docket of this matter, which is docket number HST–1, previously identified as docket number RM Pet. 97–1.) The FOX Petition attempts to incorporate the French practice in each safety discipline listed in the Petition, but also contains proposed standards that differ from practices in France. FRA understands these differences to reflect operational and environmental deviations between the system proposed for Florida and the TGV lines in operation in France.

FRA analyzed the Petition and supporting documentation, gathered background data that describe the French system, and now publishes this Notice of Proposed Rulemaking (NPRM), based on consideration of the available information and the expertise of the Agency's safety specialists. This NPRM constitutes FRA's initial response to the Petition and includes standards that are similar, but not identical, to those in the FOX Petition.

It is important to note at this juncture that any new standards which FRA adopts to address safety on the FOX high speed rail system would apply only to that system, and therefore will be issued in the form of a rule of particular applicability, rather than one of general applicability. Such a rule of particular applicability would not displace existing safety standards that apply to all other entities in the railroad industry, and would be enforced only against the FOX system. Also, it should be noted that FRA plans at this time to publish any final standards that pertain to the FOX system in the Code of Federal Regulations (CFR). For that reason, these proposed standards have been assigned Part number 243, and are organized into Subparts for each safety discipline.

Safety Characteristics of the French TGV System

As part of the process for determining appropriate rules for those aspects of the FOX system that will duplicate the French TGV system, it is logical to consider the safety record of the French high speed rail system.

In preparation for filing the Petition, FOX and the Florida Department of Transportation (FDOT) commissioned DLSF Systems, Inc. to complete a risk assessment to evaluate the relative safety of the FOX system vis-a-vis the French TGV system, and that predicted for the Amtrak 150-mph trainsets in the northeast corridor (NEC). (A copy of the Florida Overland eXpress Risk Assessment is available for public review in the docket of this matter, docket number HST–1.) The analysis set forth in the risk assessment provides a fairly extensive discussion of the safety of TGV high speed rail in France, and the numbers indicate an admirable safety record.

The risk assessment divides the analysis of the TGV system into two categories: those that are exclusive high speed lines, which include in-cab signaling, and passenger stations designed to service only high speed trains; and those that consist of a mixed high speed/conventional system in which high speed trains service conventional passenger stations, and use conventional trackside signaling. For the most part, the risk assessment deals with incidents that occurred between January 1, 1990 and June 30, 1996. The numbers are limited to post-1989 data because the Societe Nationale des Chemins de Fer Francais (SNCF), the quasi-governmental agency in France that oversees and operates TGV, does not have computerized records concerning events prior to 1990.

It is important to note that the accident figures discussed below occurred in a system that maintains high traffic density and passenger service: train-miles for this period totaled 204 million for all TGV service and 111 million for the exclusive high speed lines; passenger-miles on the high speed lines totaled 43,316,000; and the number of passengers served on TGV trains totaled 249,696. The TGV system operates at a maximum speed of 186 mph and runs approximately 184 trains per day.

On the exclusive high speed lines, only thirteen incidents have been recorded from January 1, 1990 through June 30, 1996. There have been no fatalities and no collisions between trains during this period. Of the thirteen recorded incidents, only three resulted in passenger injury. The first incident that caused injury did not involve casualties on board a TGV trainset. This incident, which caused 27 of the 30 total injuries, occurred when passengers waiting on a loading platform were sprayed with ballast that was kicked up by a derailed truck. The truck in this incident derailed due to a wheel slide failure that resulted in a flat wheel. The second incident that resulted in casualty involved two passengers who were slightly injured when a trainset derailed. The derailment occurred while traveling at 150 mph, due to track subsidence that was caused by heavy rains and a previously unknown World War I trench. The third event, in which one passenger was injured, was caused by human error. Fasteners were incorrectly tightened after a maintenance procedure, which caused a fairing to fall and break a window in a passenger coach.

The remaining ten incidents on the exclusive high speed lines did not involve passenger injuries. Five of the incidents recorded involved trainsets that struck an animal in the right-of-way. Two of the incidents consisted of fire on moving equipment: In one event the fire was located in the baggage compartment, cause unknown; and in the other it was located in the rear locomotive, due to rolling stock failure. Two of the thirteen incidents involved the operation of the passenger compartment doors. In one of these events, a trainset door opened and was pulled away by the force of the wind while the conductor was checking an air leak, and in the second event a passenger compartment door opened while the train was moving, due to rolling stock failure. Finally, in the last incident a trainset hit concrete covers of electrical cable conduits, which was attributed to vandalism.

In the second category, which includes all mixed high speed/

conventional lines, eight incidents have been recorded from January 1, 1990 to June 30, 1996. In this group of accidents, two fatalities occurred. The first involved a passenger who boarded the trainset, and then subsequently disembarked after departure was underway, and fell under the train. The second fatality occurred when a conductor attempted to board after train departure and fell between the train and platform. In another incident reported in this group, ten injuries occurred when a high speed trainset passed an absolute stop signal during a switching movement and hit a local train. The injuries occurred on the local, conventional train. In the final incident which involved injuries, a passenger standing on a platform was injured when a shock absorber between two passenger cars broke and kicked up ballast.

The remaining four incidents on the mixed lines occurred due to human error. In two instances, the locomotive engineer forgot to apply an immobilization brake after a switching movement, and in each case the trainset slowly hit another rail car. In one case, an engineer was distracted by another individual in the cab and released the brakes. The trainset slowly hit a bumper. In the last incident, a trainset rolled from a rolling stock repair facility unattended and hit a loading ramp.

Prior to 1990, one significant accident involving TGV equipment is noted, in which two fatalities and forty-four injuries occurred. A highway vehicle at a public grade crossing entered the railroad right-of-way and was struck by a TGV trainset. The TGV engineer and a passenger were killed and forty-four people were injured. (It is important to note here that the FOX high speed rail system will not contain any public grade crossings.) A second event is noted in the risk assessment concerning a terrorist attack in 1983 in which fatalities occurred, but no description of the incident is provided.

In summary, four fatalities have occurred on the TGV system from 1981 through June 1996, and none of these occurred on the exclusive high speed lines. FRA and, undoubtedly, the SNCF believe that any loss of life is one too many. However, given the traffic density, speed of travel, and passenger load that the TGV system supports, these figures are exceptional. The risk assessment calculates a TGV passenger risk of less than 0.99 per billion passenger-miles traveled.

It is difficult to make many meaningful comparisons between the French TGV system and existing passenger service in the United States because the operating environment, technology, data collection, and equipment differ in a variety of ways. However, the risk assessment computes fatality rates based on available information for the TGV system in France and the NEC, and those rates provide some context to the accident data. According to the risk assessment, the normalized passenger risk calculated in per billion passenger-miles for the TGV system in France is 5.9% of that for the 1994 NEC.

FRA understands that differences of opinion may exist concerning methodology or conclusions reached in the FOX/FDOT risk assessment. Moreover, as explained below, FRA's safety determinations about the FOX system are based on its own careful analysis of the proposed system and the existing French system. However, the Agency believes the document presents useful data concerning the general safety of the French TGV system.

FRA, in conjunction with the Volpe National Transportation Systems Center (Volpe), has studied the French TGV system extensively. FRA and Volpe technical staff visited France and Belgium in order to examine the TGV system in operation, to review the signal system testing as it is conducted, and to pose questions to representatives of the SNCF concerning details of the system.

FRA and Volpe staff visited a manufacturing plant in eastern France where the equipment is constructed, and met with the plant's staff to discuss equipment design, crashworthiness, operating characteristics, and construction. FRA and Volpe staff visited a central train dispatching center, and studied the practices and required procedures that train dispatchers follow to prevent train collisions. FRA and Volpe staff spent several days at the signal system test track in Belgium to review the test procedures and test results with SNCF personnel. In addition, FRA has maintained communications with personnel at the test site to follow the progress of the signal testing as it proceeds.

FRA and Volpe staff visited a TGV repair facility in order to analyze the existing facility design, and employee practices at repair facilities generally. At the repair site, Agency staff received training from SNCF personnel on the operation of the major components of the TGV rolling stock, and the inspection and maintenance frequencies that have been established over time by the SNCF.

Agency and Volpe staff met with representatives of the French government and the SNCF in a series of meetings, and discussed a variety of questions concerning governmental oversight of the TGV operation, annual safety reviews, the process by which the SNCF revises the TGV system safety plan, personnel qualifications, operating rules, track maintenance and repair, and the development of new equipment.

Personnel from Volpe have studied and prepared reports on the French TGV, which not only provide a broad overview of the system, but also examine individual components and operating practices of the system. This, in combination with Volpe's broad expertise in the area of high speed rail systems generally, aided the FRA team to make effective and rapid comparisons and assessments of the relative safety of all aspects of the French TGV as the comprehensive review proceeded. Based on its own review of all of the information received, FRA possesses a high level of confidence in the safety of many of the major elements of the French system that will be duplicated in Florida.

Safety Characteristics of the FOX System

The FOX system planned for development in Florida contains safety features that do not exist on the TGV system in France, and so presumably, FOX has the potential to surpass the level of safety that exists on the TGV high speed lines. The primary improvements include lower traffic density, no opportunity for mixed traffic, an expanded intrusion protection system, fewer underpasses and overpasses, an advanced technology signal system, and the addition of protective station platform doors. In addition, the FOX system includes several attributes that do not exist on passenger lines in the U.S., which are discussed below, that should also enhance the overall safety of the program.

The traffic density will be lower in Florida than that of the TGV system in France. FOX anticipates operating a maximum of eighteen trains per day in the first two years of operation, at a rate of approximately one train every thirty minutes. FOX plans to increase the number to twenty-six per day afterward. In France, approximately 184 TGV trains run per day. Traffic density has generally been associated with train accidents and incidents, and can impact the likelihood and severity of train accidents. The expanded train departure intervals on FOX are expected to reduce the risk of one train overtaking another or train-to-train collisions.

FOX will operate over a dedicated right-of-way that will not include freight

traffic or other types of passenger equipment. The high speed track in France is connected directly to conventional lines and so the risk of freight penetrating the high speed tracks exists. In Florida, the track will not be connected to rail lines that carry freight traffic. The only freight equipment that will be permitted on the FOX system is that involved in FOX maintenance or rescue operations. This is a significant factor that will eliminate or reduce a variety of risks. First, the likelihood of a freight-to-passenger trainset collision, and the high casualty rates that would accompany such a collision, will be nearly eliminated. Second, the absence of freight traffic will minimize track degradation that occurs with the transport of heavy loads, which in turn will reduce the risk of track defects that cause train derailments. Finally, train dispatchers will not manage districts that carry mixed passenger and freight loads, and so the stress and confusion that may result from freight and passenger route scheduling will be eliminated.

There will no public at-grade crossings on the FOX system, and so the risk of a highway-rail grade crossing accident will be eliminated. There are no public at-grade crossings on the TGV high speed lines in France, but highway-rail grade crossings are prevalent on the U.S. rail system, and account for many human injuries and fatalities. This aspect of the FOX system greatly reduces the risk of casualties to railroad employees, passengers, and road travelers along the FOX right-of-way.

FOX will install fencing that runs the length of the right-of-way to restrict unauthorized entry, which should minimize the risk of accidents involving trespassers and animals. In addition, the FOX system will include detection systems for intrusion, high wind, flood conditions, and rolling stock that contains dragging equipment. These detection systems will be connected to the signal system, and will notify the main dispatching center when hazardous events occur. Some of these features do not exist on the French TGV, and most do not currently exist on American railroads. It is expected that they will enhance safety for the FOX system.

The French TGV operates over a system that includes 490 overpasses and 676 underpasses. Current plans for FOX indicate that there will be approximately 100 overpasses and 60 underpasses. In addition, there will be no moveable bridges on the Florida system, structures that, like overpasses and underpasses, tend to increase the need for maintenance and the risk of incident.

FOX will utilize a new signal and train control system that is not currently in revenue service anywhere in the world. Trainsets in Belgium are testing the system, which is a form of Positive Train Control (PTC), and it is anticipated that before FOX commences revenue operations, the system will be certified and in use in Europe. Although FRA and others familiar with the system generally believe that this new variety of signaling will increase railroad safety, there may be some risk associated with the introduction of this new component to an operative railroad system. The risk assessment prepared for FOX and FDOT does not address this factor. However, FRA believes that this item deserves significant attention, given the ramifications of a signal system failure on high speed passenger lines. This issue deserves particular concern in Florida because of the significant risk that exists there of extreme weather conditions, *i.e.*, lightning strikes, hurricanes, and flooding which could require relatively frequent exercise of the safety-critical features of this signal system. As the risk assessment notes, these are conditions that do not exist in France. FRA must be very cautious in establishing standards for a system that has not been used in revenue service, and that will be expected to function without fail in a location where catastrophic weather conditions are not rare. Therefore, FRA proposes as a requirement in this NPRM, a process in which an independent entity with proven technical expertise will conduct a review of the safety of the safety-critical hardware and software microprocessor-based elements of the signal system, which will be submitted to FRA. The proposed standards include a brief acceptance procedure that would follow this submission and precede implementation of the signal system as finally configured. FRA anticipates that this sort of process will accompany certification of the system in Europe, which will likely predate FOX operations. Given the risks presented by a signaling failure on a passenger line traveling at speeds of 200 mph, the Agency believes it is necessary to implement standards that formalize such a peer review process for FOX in this country. This is very similar to procedures that FRA has required other entities to follow concerning signal systems. However, FRA invites comment on this and all other proposals set forth in the NPRM from interested and expert parties, particularly as to the criteria that should be addressed in the peer review, or other avenues of achieving the same end.

Although FRA does not currently enforce safety standards concerning passenger stations, it is important to note that the FOX system will include protective doors on the station platforms to prevent the risk of injury from loose equipment or flying debris. As the TGV safety record discussed above points out, passengers waiting to board face the risk of injury unless shielded by the sort of protection that will be included in the FOX system.

There are certain advantages to building this new railroad system, particularly relating to roadbed and infrastructure, that accrue simply because construction will be designed to suit all components of the system. For instance, the right-of-way may be selected to suit the needs of the track and signaling system. Track curves will be minimized during track layout and designed to accommodate speeds in excess of the maximum revenue service speed of 200 mph. However, it is important to acknowledge, as the risk assessment does, that unique system aspects such as sink holes are an ever-present, potential problem in Florida, and decrease the safety of the FOX system unless mitigated. FOX plans to use geotechnical analysis to look for indicators of sinkhole activity prior to installing the track infrastructure. FRA's proposal includes a proviso that any abnormalities which arise in the construction phase of development must be recorded, and that all actions taken in response to the abnormality must be documented. Also, this hazard must be accounted for in the FOX system safety plan, which will be developed prior to commencing construction. FRA seeks comment from interested parties and experts on this subject to determine other methods for managing this risk effectively.

There are two other potential areas of risk that warrant particular attention. Neither is fully addressed in the FOX/FDOT risk assessment. The first involves the increase in TGV speed from a maximum of 186 mph, which is currently used in French operations, to 200 mph, which is proposed for Florida operations. The risk assessment states that French TGV plans to increase the operating speed to 200 mph, and a safety record will have developed in France prior to FOX operations in Florida. Unfortunately, FRA finds itself in the position of writing safety standards for the system at this juncture, when the appropriate safety record concerning these enhanced speeds is unformed. As is also noted in the risk assessment, higher train speed tends to

increase the severity of accidents. The FOX system safety plan must address this issue, but we also seek comment from interested parties and experts as to the enhanced risk involved, if any, and other viable methods of addressing it.

Second, FRA believes that there is a risk, however intangible, that arises from moving this European system to a new culture where the pertinent institutional knowledge is not abundant and the role of the government in supporting operations is quite different. For instance, rolling stock maintenance personnel on FOX will be expected to inspect and maintain equipment using unfamiliar tools, in dramatically different repair facilities, on equipment that utilizes computers to achieve what is traditionally done in the U.S. by visual and manual means. No amount of training can achieve the level of professional insight that fifteen years of experience on the equipment would produce. The risk assessment alludes to this factor in passing, and seems to indicate that so long as the TGV equipment, inspection frequencies, and procedures are implemented on FOX, nothing is lost and no risk ensues.

FRA agrees that it is very difficult to quantify the value of institutional knowledge in a system as large as the French TGV or FOX. However, this is not a factor that the Agency can or desires to overlook. In discussions with FRA, FOX and FDOT have indicated that they plan to bring TGV professionals into the training, maintenance, and operation of the system. However, it is impossible to know at this point whether or to what extent that participation will occur, as revenue operations are not planned to commence until 2004. A variety of events may occur between now and then to make those plans difficult or impossible to achieve.

Also factored into this issue of risk, is the knowledge that the TGV has a different cost accounting structure, in which the daily safety of the operation is not compromised by short-term operating costs and long-term capitol costs. The SNCF may be able to make purchases and decisions that a private entity would be unable to accomplish. FRA is certain that all reputable transportation companies have as their first priority the safety of passengers and employees. However, the need to be profitable in a privately financial context undeniably plays a role in decision making that on occasion impacts safety. FRA believes that there may be a connection between the TGV's superb safety record and the degree to which the system is financially supported that will not exist on the FOX system. There is no way of knowing with certainty whether TGV safety is due in some measure to its financial structure. Similarly, there is no way of ascertaining at this point whether the loss of comprehensive institutional knowledge that is bound to occur in Florida will impact the safety of the operation. However, FRA believes that the potential for these safety risks is sufficient to make preventative measures sensible.

In this proposal, FRA seeks to address these concerns with standards that provide a very high level of safety in areas where FRA believes French TGV safety cannot or will not be met in Florida. FRA anticipates that the petitioner may object to the imposition of certain of the proposed standards that require more than is currently the practice in France. However, given the risk factors outlined above, the grave potential for human loss in the event of an accident, and the flexibility that is incorporated into the proposal, FRA believes at this time that any perceived burdens are justified.

System Safety

System safety is the cornerstone of the French TGV, and as proposed in these standards, the heart of the FOX high speed rail system. The systems approach to safety is used pervasively in a variety of industries to reduce the likelihood and occurrence of accidents and injuries. FRA has discussed the need for this approach to safety in two recent rulemakings, Passenger Train Emergency Standards, 62 FR 8330 (February 24, 1996), and Passenger Equipment Safety Standards, 62 FR 49728 (September 23, 1997). This concept requires an organization to identify, evaluate, and reduce or eliminate safety hazards that exist in any portion of the organization's ''system,'' or may be caused by interrelationships between various components of that system, and create a system safety plan to reflect those evaluations. Where possible, the development of a system safety plan precedes the design, construction, and operation of the system, so that potential risks are eliminated at the earliest possible opportunity. Once in place, system safety plans are viewed as living documents, which should be updated as circumstances change, new information becomes available, or goals shift. Therefore, incremental changes may be made on a daily basis, if appropriate, to reflect the safety needs of the organization. Typically, system safety plans should be formally updated on an annual basis, in order to maintain their utility in advancing safety with the best information available.

The French TGV utilizes a system safety approach whose primary goal or philosophy is to avoid collisions. This varies from an accident-mitigation philosophy, which seeks to maximize protection for employees and others at risk in the event of an accident. The FOX system, as planned, will operate under the theory of collision-avoidance. Examples of this philosophy at work in the design of the system are: the grade separated right-of-way that excludes public at-grade crossings; double track that will facilitate train movements side-by-side rather than end-to-end; and the PTC-style signal system that will prevent trains from being routed on collision courses, whether meeting or overtaking.

Subpart B of the NPRM requires FOX to prepare a system safety plan. For the most part, these proposed standards parallel the FOX Petition, and address every phase and component of the FOX system. However, FRA's proposal also includes the proviso that FOX submit the system safety plan to FRA for approval one year after the effective date of the final rule in this matter, and that the plan be updated at least annually. Based on the philosophy of systems planning, FRA believes that initiating this process prior to design and construction is critical to the development of a complete system safety plan and a safe high speed rail system. FRA understands, however, that this rulemaking proceeding predates much of the work involved in the Florida project, and so filing a complete system safety plan within one year of the final rule may be difficult. FRA seeks comment on this proposal, including suggestions for other methods of addressing this issue. For instance, perhaps the standard should impose a tiered completion date for portions of the system safety plan. On the other hand, a tiered system may undermine the purpose and philosophy of the system safety approach. FRA would find it helpful to know exactly when FDOT and FOX plan to initiate the final design, based on the specific right-of-way chosen, and the construction of the system. This information would likely inform the Agency's decision on the appropriate timing for submission of the system safety plan. It is important to note, however, that while FRA has not predetermined the specific outcome of this issue, the Agency believes in general terms that a fairly comprehensive system safety plan should precede the design and construction phases of the FOX system.

FRA's Proposal

FRA has made every attempt in this NPRM to facilitate the transfer of the excellence of the French equipment and operation, by proposing standards that would permit the TGV equipment and procedures to operate in the U.S. in the same fashion as is done in France. However, in several areas, FRA has gone beyond or varied from the French standards and practices where the Agency believed it necessary to do so in order to ensure the highest level of safety. FRA's proposal includes requirements, organized in chapters by subject matter, to address general legal principles, system safety, signaling, track, rolling stock, operating practices, system qualification testing, personnel qualifications, and power distribution. In addition, the proposal adopts and incorporates by reference several existing regulations that apply generally to all railroads operating in the U.S. These are listed specifically in Subpart A of the NPRM, and constitute areas in which FOX needs no special treatment. In other words, for these safety disciplines, FOX is so similar to the general railroad industry that no new standards are necessary. For instance, FRA's alcohol and drug regulations impose no burdens that are inherently impossible for FOX to meet or that are inconsistent with the FOX operation, and so these standards and any future amendments to them would apply to FOX.

FRA's proposal is similar in many ways to the Petition FOX filed. The FOX consortium includes entities that have been involved with the design, construction, and operation of the TGV equipment, and so FRA has made every effort to study their submission and replicate it in proposed standards where appropriate. Their assistance in this rulemaking proceeding is, and will continue to be, quite informative and helpful. However, it is important to note that railroads in the U.S. operate under a different legal framework than exists in France, and the differences are relevant in understanding why FRA changed some standards in the NPRM that were not in the Petition.

The French government has issued laws which broadly call for a safe railroad system, but which delegate that responsibility, in large measure, to the SNCF. Therefore, the SNCF, or TGV operator, establishes its own safety parameters and implements them. Each year, the SNCF files a report with the government that outlines the safety record of the previous year, emerging trends, and proposed changes to the operation. However, there are no government-issued regulations that mandate TGV activities or authorize enforcement of rules. There is no relationship equivalent to this in the U.S. regulatory or transportation system. There are political, legal, cultural, and financial differences at work here, and the result is that the FOX Petition omitted some internal SNCF guidelines that FRA believes would or should be regulations in the U.S. system. For instance, some of the FOX supplemental materials include a list of rolling stock components that are inspected at specified intervals in France. These intervals and items developed internally at SNCF over years of operational experience. Although FOX has expressed the intention to follow the SNCF internal guidelines in Florida, FRA believes that these guidelines should be part of the minimum Federal standards for the FOX system. Similarly, FRA has included a proviso in the Operating Practices Subpart that requires FRA approval of the FOX safety-critical operating rules prior to commencing operations. This was not part of the Petition, but FRA proposes it in the interest of ensuring that the internal, and at this time, undisclosed, SNCF–TGV operating rules will be followed on FOX. FRA values the internal guidelines that have developed in France over many areas, believes that they may be equivalent to U.S. Federal safety standards, and desires to incorporate them into the minimum Federal standards.

In addition to the reasons discussed above, the NPRM takes a different approach on some issues from that found in the Petition, based on the regulatory program that exists in this country, which has governed railroad operations for decades. FRA has a mandate to devise standards that protect the public, have a rational basis, and do not impose needless cost. FRA's existing regulatory program achieves these goals, and therefore, it would be unwise to vary from it greatly unless the subject matter requires a substantially different treatment given the nature of the FOX system. If FRA were to stray significantly from the existing U.S. safety standards in this proceeding, despite the fact that it will only apply to FOX, serious questions might be raised concerning the appropriateness of this proposal.

It is important to note that this proposal and many individual standards in it would be inappropriate for any other U.S. passenger or freight operation. The safety features of the FOX system, taken as a whole, do not exist in combination on any other railroad in this country. This uniqueness is the basis on which the proposal is made, and the treatment of any specific issue here should not be viewed as a regulatory trend for passenger operations generally. In this proposal, FRA has relied to a great extent on the operating environment in which FOX will exist, and unless that environment is duplicated in identical fashion elsewhere, these standards would not be suitable.

FRA believes that this proposal includes a reasonable and effective blend of proven practices and procedures from both the French TGV system and American railroading. However, with publication of this NPRM, FRA invites comment from all interested parties on each standard proposed. FRA requests comments on whether less or more permissive standards should be adopted, with supporting rationale; whether inspection frequencies should be increased or decreased, or are sufficient as written, with supporting rationale; whether FRA should widen or narrow the scope of subject matters covered by standards for the FOX system, and the reasons for such a change; whether FRA has assessed accurately the safety of French TGV and the risks that may arise on the FOX system in Florida; and any other areas that commenters deem necessary in order to produce final safety standards that are effective.

* * * * *

Section-by-Section Analysis

Subpart A—General Requirements

Section 243.1 Purpose and Scope

Paragraph (a) states that the purpose of this proposal is to prevent accidents, injuries, and property damage that could result from operation of FOX, or ''Railroad,'' as the system is called throughout the rule text. Also, this section explains that the scope of the Part is to provide minimum Federal safety standards for the Railroad. The Railroad may adopt more stringent requirements so long as they are not inconsistent with this rule.

Section 243.3 Applicability

Paragraph (a) of this section explains that this Part would apply only to the FOX system in Florida, and not to any other railroad operating in the U.S. Also, this paragraph restricts the FOX operation to the specific boundaries that are described in the system description, § 243.13 of the rule, unless FOX obtains prior approval from FRA. Therefore, if FOX desires to build a new line in the future, the Railroad would have to receive FRA approval prior to commencing operations on that line.

(The term ''approval'' is used loosely here. Conceivably, FOX could file a Petition for Rulemaking amending the system description to include the new line, and FRA's issuance of the new section would achieve the desired result.) FRA believes that such approval would be necessary to ensure that the new line meets all of the appropriate standards that exist in this Part. For instance, there could be no grade crossings or mixed traffic on the line. The TGV equipment is structurally different than passenger equipment currently in use in this country, and would not respond to a collision with a freight train in the same manner. The standards in this proposal permit 200 mph travel with this equipment because of the other operating conditions that exist on FOX, and FRA must ensure that those conditions also exist on any new lines that develop. Paragraph (a) reflects the fact that the standards in this proposed rule of particular applicability are appropriate for the FOX system only when all of the system elements are present; the systems approach demands this result. If an integral portion of the system disappears, all of the standards would have to be reevaluated.

Paragraph (b) of this section states that Part 243, rather than the general safety standards currently found in Title 49 of the Code of Federal Regulations (CFR), would govern the FOX system. However, in recognition of the fact that the FOX system is similar or identical to conventional railroad operations in certain areas, this paragraph also states that some of the general standards, which are adopted and incorporated in paragraph (c), shall apply to FOX. Paragraphs (b) and (c) work in conjunction with one another, so that the two taken as a whole constitute all of the railroad safety regulations that would apply to FOX at this time. Therefore, any regulations found in Title 49 of the CFR that have not been adopted and incorporated in paragraph (c) do not apply to FOX.

Paragraph (c) of this section lists the general railroad safety standards found in Title 49 of the CFR that apply to the FOX system. The subject areas are: Part 209, Safety Enforcement Procedures; Part 210, Railroad Noise Emission Compliance Regulations; Part 211, Rules of Practice; Part 212, State Safety Participation Regulations; Part 214, Railroad Workplace Safety; Part 216, Special Notice and Emergency Order Procedures; Part 218, Railroad Operating Practices; Part 219, Control of Alcohol and Drug Use; Part 220, Radio Standards and Procedures; Part 225, Railroad Accidents/Incidents: Reports, Classification, and Investigations; Part 228, Hours of Service of Railroad Employees; § 135 of Part 229, Event Recorders; Part 235, except § 235.7, Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System or Relief from the Requirements of Part 236; Part 240, except §§ 240.227 and 240.229, Qualification and Certification of Locomotive Engineers; Part 215, Railroad Freight Car Standards, Part 229, Railroad Locomotive Safety Standards, Part 232, Locomotive Inspection, Part 231, Railroad Safety Appliance Standards, and Part 232, Railroad Power Brakes and Drawbars shall all apply to the FOX conventional equipment; and FRA's proposed Passenger Train Emergency Standards, which will be codified when finalized in 49 CFR Part 239. Because these standards are suitable to apply to the FOX system as they are currently written, FRA is adopting and incorporating them to avoid massive reprinting. As has been stated earlier in this proposal, each of these standards address safety issues in a manner that is consistent with the FOX operation.

While the relevance to FOX of most of the incorporated rules is clear, the relevance of some CFR parts and the reasons that some sections are specifically not adopted requires some discussion. First, 49 CFR 235.7 of the signal modification standards permits a railroad to forego filing an application for approval concerning certain signal modifications. FRA believes that the more prudent approach would be to require FOX to apply for any modifications of its signal system for several reasons. The system FOX plans to utilize does not possess a long revenue service safety history for which future events are predictable. As planned, the system will carry thousands of passengers each year, and the cost in human lives for a signal failure could be catastrophic. FRA believes that these factors point to the need for Federal oversight concerning any modification of the FOX signal system. Accordingly, 49 CFR 235.7 will not apply to FOX. Instead, any modification of the Railroad's signal system must be accounted for in the system safety plan and be done cautiously in order to enhance the integrity of the system safety approach.

Second, the Petition did not include Part 240 in the list of regulations to be incorporated by reference in this rule. As FRA understands it, FOX plans to identify the personnel who will operate the power cars on the system as ''enginemen'' and so they object to Part 240 and its pervasive use of the term ''locomotive engineer.'' FRA chose this term in Part 240 for a variety of reasons, none of which relate to the gender, union status, or other extraneous background details of the in-cab personnel who direct locomotive movements. The term is a functional distinction that applies to the performance of a locomotive engineer, power car driver, or engineman. Therefore, FRA finds no merit in reissuing Part 240 in this proceeding in order to change the title of a cadre of employees. FRA has no interest in mandating the use of any occupational title on any railroad. However, the Agency does have an interest in and obligation to use language that is gender-neutral and consistent with existing terminology, to the fullest extent possible.

It is also important to note that FRA's proposal does not incorporate 49 CFR 240.227 and 49 CFR 240.229 for application to FOX. These sections relate to joint operations with Canadian railroads, and with other railroads in the U.S. Neither of these scenarios can occur on the FOX system for reasons of geography and more importantly, safety, and therefore, it is important to exclude these sections explicitly from application to FOX.

Third, FRA's proposal includes the adoption of several existing standards that govern the maintenance, inspection, and operation of conventional freight equipment (Parts 215, 229, 230, 231, and 232). FRA believes that these requirements must be included here in order to protect employees and the public in instances where conventional equipment must be used on the FOX operation. As FRA understands it, FOX will likely have in its fleet conventional railroad equipment to facilitate maintenance and rescue operations in yards and along the right-of-way. FRA believes that where these limited operations arise, the existing safety standards should apply. There is nothing in the Petition or background information concerning FOX that would make application of these standards inappropriate or deleterious to safety. Moreover, the employees involved with the movement of conventional equipment must possess all of the protections that accompany conventional operations on other properties.

Fourth, FRA has adopted safety standards relating to emergency preparedness for application on the FOX network. FRA does not understand FOX to object to imposition of these standards, but because they were in proposed, rather than final, form at the time of Petition filing, FOX did not list them among the standards incorporated.

In this proposal, FRA adopts the emergency preparedness standards as proposed at this time, and ultimately as they appear in final form. FRA anticipates that these standards will be finalized in the very near future and codified at 49 CFR part 239.

Finally, FOX expressed the desire to adopt and incorporate by reference the existing general safety standards without also adopting future amendments to these standards. FRA does not agree with this approach to the general safety standards. By their very nature, these standards address subject matters that present no need for special treatment on FOX. Following this logic to its natural conclusion, FRA presumes that amendments to these same subject matters will not present the need for special proceedings or considerations for FOX. If proposed amendments give rise to safety concerns on the FOX system, FOX will have every opportunity, as a vital and responsible member of the U.S. railroad system, to provide comments in the normal course of regulatory process in those areas.

Paragraph (d) states that FOX is a railroad, pursuant to the definition set forth by statute, which includes, in pertinent part ''high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads * * *'' Therefore, all of the railroad safety statutes (including those pertaining to hours of service) apply to FOX, except portions of the former Safety Appliance Acts, from which FRA proposes that FOX be exempted due to the advanced technology in use that makes those requirements unnecessary. (The issue of new technology and safety appliances is discussed in detail in the analysis of § 243.15 below.)

Paragraph (e) states that the measurement values provided in the rule are in metric form, which is due to the fact that the TGV equipment was designed abroad according to metric standards. The NPRM includes the U.S. equivalent to provide an adequate frame of reference for interested parties. FRA has some concern that the American workforce, which maintains and inspects conventional railroad equipment using tools and measurements in U.S. standard values, may experience a period of adjustment in converting to the metric system. The FOX personnel qualification program, set forth in Subpart H, must address this potential safety factor.

Section 243.5 Definitions

As a general rule of regulatory construction, definitions provide clarity and understanding to the reader. Definitions should not include legal requirements, and should not somehow hide the true meaning of a standard. FRA's proposal makes changes to many definitions that were provided in the Petition where those definitions were unclear, contained legal requirements, or limited the scope of a standard's application. In addition, FRA has added to the list of definitions included in the Petition where necessary, and deleted those that involved terms not used in the proposed standards.

Most of the definitions included in this section have been published in other rulemaking proceedings, or have straightforward meaning, and so additional discussion on them is unnecessary. However, a few terms should be explained.

FRA would like to emphasize that the term ''employee'' used throughout the proposed rule includes Railroad employees, as well as the employees of contractors engaged by the Railroad. Therefore, contractors must comply with the requirements of the rule, and FOX may not avoid the Railroad's compliance with the standards through the use of contracting entities.

The terms ''in passenger service'' and ''in revenue service'' have identical meaning, and include all trains, trainsets, and passenger equipment that are carrying or are available to carry passengers. The determination as to whether a fare has been paid is not relevant to establishing the status of the equipment. The term ''in service'' includes equipment that is in revenue or passenger service, as well as other passenger equipment, unless the equipment falls into one of three categories: it is being handled as defective under § 243.15 of the proposal; or it is in a repair shop or repair track; or it is on a storage track without passengers. Generally, the Railroad will be subject to civil penalty for any equipment that is ''in service'' in noncomplying condition.

The term ''power car'' refers to a type of locomotive used on the TGV system that is typically positioned at the beginning and end of a passenger trainset. Power cars contain a cab in which the locomotive engineer controls the train's movement. As proposed for FOX, every passenger trainset will contain a power car at each end with eight trailer cars between them. FOX proposed a definition that would have set power cars apart from locomotives, but FRA finds no reason to define the term in that way. Also, it is important to note that the power cars and trailer cars are articulated and connected in such a way as to resist buckling in the event of a derailment. The term ''semi-permanent connectors'' describes the connections that exist among and between the trailer and power cars of a TGV trainset. These connections are significantly different from couplers that exist on conventional equipment. These connections are designed so that they may be disconnected only by use of special tools, and only in repair facilities. Because of this design, employees will not be involved in coupling or uncoupling at locations where they would face the risk of injury that arises from working between rail equipment. Conventional couplers will only be present on the leading or trailing ends of each trainset, and will be used primarily for attachment during rescue operations. Section 243.431 of the proposal sets forth the requirements that govern the use of conventional couplers and semi-permanent connectors.

FRA has revised the speed definitions that the Petition contained. Many of the definitions appeared to be circular in their use of terminology and so would not provide sufficient clarity and notice to the public. As FRA understands it, some of the speed definitions would be pertinent to a matrix that will be developed for use in the system safety plan, concerning train speed and braking capacity. Until such chart exists, the definitions serve no purpose and may ultimately be erroneous or inconsistent with the signal system. Therefore, FRA proposes a simplified approach. ''Maximum authorized speed'' is defined as the maximum speed at which trains may operate safely, taking into account all right-of-way, rolling stock, weather, and other operating conditions. ''Maximum revenue service speed'' is 200 mph, which cannot be exceeded under any circumstance. ''Maximum safe operating speed'' is the maximum speed at which braking can occur without damage to the discs or wheels. ''Slow speed'' is any speed less than 20 mph, and ''restricted speed'' is a speed that is less than 20 mph that will facilitate stopping within half the range of vision of the locomotive engineer.

FRA requests comments on these changes to the FOX proposed definitions, as well as all definitions proposed in this NPRM. FRA also requests comment on whether additional definitions should be provided in the rule text that FRA may have overlooked in preparing this proposal.

Section 243.7 Responsibility for Compliance

This section sets forth the compliance and liability requirements that will govern FOX operations. Paragraph (a) proposes that the Railroad will be strictly liable for all violations of the standards set forth in this rule, except where equipment is not ''in use'' or with respect to violations of the track standards. To establish a violation of the equipment standards, FRA must demonstrate that the equipment was in use, but need not demonstrate any level of knowledge on the part of the Railroad or other violator. To establish a violation of the track standards, FRA must show a failure to exercise reasonable care.

Paragraph (b) states that passenger equipment will be considered ''in use'' before a train has departed, but after the equipment has received or should have received the appropriate inspection. This proposal mirrors the approach taken in FRA's proposed rule on Passenger Equipment Safety Standards. 62 FR 49728, 49756. The result of this language is that FRA need not wait for a train to depart a terminal before issuing a citation for a defective condition. FRA believes that this authority is consistent with the purpose of our safety program—to reduce railroad accidents and injuries, and is prudent in its application to FOX.

Paragraph (c) states that this rule is applicable to the Railroad and to any person performing functions required by the rule. Although the proposal expresses the duties imposed by the rule in terms of the Railroad, FRA wishes to make clear that any person who performs on behalf of the Railroad an action that is covered by the proposed rule is required to perform that action in the same manner as required of the Railroad.

Paragraph (d) relates to track and states that the Railroad operator is responsible for compliance with all track safety provisions set forth in Subpart D of the proposal. FRA proposes this language to avoid any questions of track ownership, which are particularly important here because FRA does not know at this juncture which entity will purchase and own the right-of-way to be used for the FOX system. This language is different from the approach taken in 49 CFR part 213, FRA's existing track standards, which permit an owner to assign responsibility for operation of the track system to another entity. FRA obviates the need for the assignment process set forth in 49 CFR 213.5 by proposing that the Railroad operator, rather than the right-of-way owner, shall be responsible for track safety requirements.

When the Railroad operator has knowledge, or a reasonable person exercising reasonable care would have knowledge, that the track does not comply with the regulations, the Railroad operator has four options: it may bring the track into compliance; it may halt operations over the track; it may continue operations over the noncomplying track at 10 mph, for 30 days, under the authority of qualified personnel; or it may operate under the operational limits established for track classes 1–5, as set forth in 49 CFR part 213.

The Petition did not provide this level of flexibility for operations when track noncompliance occurs, and on occasion was silent or unclear concerning ameliorative action. For instance, the Petition called for ''immediate remedial action'' for some defects, but failed to specify the required actions. Also, the Petition established time periods for certain defects, in which conditions could go uncorrected. FRA believes that the options established in this section greatly enhance safety, provide clarity, and increase flexibility for the Railroad. There must be some provision in the standards for moving equipment that carries passengers to their final destination when a noncomplying event occurs on the Railroad track. FRA prefers to include these options rather than dictate one response, in order to allow the Railroad to choose the best alternative, given the existing operating conditions. This proposed section grants the Railroad broader and more comprehensive alternatives than were included in the Petition. FOX has stated that the French TGV track rarely reaches the condition that would warrant any of the measures discussed here. FRA is hopeful that will also be the case in Florida, but the Agency must provide a rational and safe response in the event of noncomplying track conditions.

Section 243.9 Enforcement

This section describes the civil penalties that FRA may impose on any person, including the Railroad or an independent contractor providing goods or services to the Railroad, that violates any requirement of this rule. These penalty provisions parallel the civil penalty provisions in numerous other railroad safety regulations, and are authorized by 49 U.S.C. 21301, 21302, 21303, and 21304. Any person who violates a requirement of this rule may be subject to a penalty of $500 to $10,000 per violation. Individuals may be subject to penalties for willful violations only. Where a pattern of repeated violations, or a grossly negligent violation creates an imminent hazard of death or injury, or causes death or injury, penalties of up to $20,000 may be assessed. In addition, each day a violation continues constitutes a separate offense. Finally, a person may be subject to criminal penalties under 49 U.S.C. 21311 for knowingly and willfully falsifying reports required by these regulations. FRA believes that inclusion of the penalty provisions is important in ensuring that compliance is achieved.

The final rule will include a schedule of civil penalties as Appendix A. Penalty schedules are considered statements of agency policy, and so notice and comment are not required prior to their issuance. See 5 U.S.C. 553(b)(3)(A). Nevertheless, FRA invites comment on proposed penalty amounts.

Section 243.11 Preemptive Effect

This section informs the public as to FRA's views regarding what will be the preemptive effect of the final rule in this proceeding. The presence or absence of this does not, in itself, affect the preemptive effect of a final rule, but it does inform the public concerning the statutory provision which governs the preemptive effect of a rule. Section 20106 of title 49 of the United States Code provides that all regulations prescribed by the Secretary relating to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. With the exception of a provision directed at an essentially local safety hazard, 49 U.S.C. 20106 will preempt any State regulatory agency rule covering the same subject matter as the regulations proposed today when issued as final rules.

Section 243.13 System Description

This section describes the FOX system components. In addition, and more importantly, this provision requires FOX to include all of the elements and practices listed in this section when revenue operations begin. FRA has determined that the items discussed in this section are so integral to the overall safety of the FOX program, that all standards contained in this NPRM would have to be reevaluated if FOX failed to include, construct, or meet any of these system elements.

FRA's existing regulatory program does not include this sort of requirement in any other safety

discipline or context. However, due to the nature of the system safety, accident-avoidance philosophy that FOX has adopted in the design of the system, which FRA reflects in the proposed standards, FRA believes that it is necessary to include these requirements. It is important to note here that many of the standards proposed for FOX, if adopted separately, might lead to unsafe conditions in other operating environments. In fact, many of these standards would be wholly inappropriate on other railroads in this country where the full panoply of accident-avoidant measures are not also present. Therefore, FRA must ensure that the key system elements of this operating environment, on which all of the standards are ultimately based, remain in the system as finally configured. FRA's enforcement authority extends to this section as it does to all others in the rule, and the Railroad's failure to meet any condition specified in this section will be subject to civil penalty or other appropriate remedy. The FOX Petition contained a system description section, and it included most of the components enumerated here in FRA's proposal. However, FRA has deleted some unnecessary detail, and added a few proposals that were not contemplated by the Petition.

Paragraph (a) sets forth the general parameters of the FOX system. Paragraph (a)(1) establishes the geographic limits of the system, which are Miami to Tampa via Orlando. Operations beyond these limits are prohibited without prior FRA approval. FRA believes that it is extremely important to restrict the high speed operations to the right-of-way that is known at this time. For instance, if the Railroad chooses to expand its operation to cover track that includes freight traffic or grade crossings, many of the safety standards in this proposal would not adequately protect passengers. If FOX decides to increase the boundaries of the system, that should be accomplished through a thoughtful, methodical process that includes FRA oversight and public comment. FOX may accomplish this by filing a petition for rulemaking to develop new standards, or a petition to amend this section of the rule, if adopted in this form in the final standard in this proceeding.

Paragraph (a)(2) states that trains may not under any circumstance exceed a speed of 200 mph, and that the Railroad must operate at all times in accordance with the requirements of the rule. This language is meant to cover those situations in which conditions warrant certain speeds that may not be at or near 200 mph. For instance, if severe weather causes flooding or high wind, the FOX operating rules would require significant speed restrictions. This language makes clear that FOX must adhere to the speed restrictions, regardless of the maximum system capability of 200 mph.

Paragraph (a)(3) prohibits the transport of any hazardous material on the FOX high speed rail system. Although the Petition did not contain this restriction, FRA believes that safety demands it. An accident involving passengers at high speed would be catastrophic alone; adding hazardous materials to the mix would greatly reduce safety for the passengers, the surrounding environment, and local residents.

Paragraph (a)(4) prohibits smoking on trains while they are used in passenger service. FRA believes that fire safety is a key component for any passenger operation, and by prohibiting smoking, the potential for fire in passenger compartments is greatly reduced. In other sections of this proposal, FRA requires passenger equipment to include flame-retardant materials and fire detection systems, and FRA believes that all requirements are necessary to protect the public from fire hazards on passenger trains. Flame-retardent materials and detection systems greatly minimize the risk of injury due to fire and smoke inhalation. A ban on smoking further increases the level of passenger safety by eliminating a prime causal factor from the equipment altogether. The U.S. airline industry has adopted this approach with little or no passenger complaint, and FRA believes that nonsmoking high speed rail service will experience a similar outcome. Nonsmokers and employees would be protected from the hazards and discomfort of second-hand smoke, and smokers would have a relatively short trip—approximately 150 minutes from Miami to Tampa, without the opportunity to smoke. This item was not included in the Petition, but FRA believes that its safety interest in protecting employees and the traveling public makes this proposal a valid and important one.

Paragraph (b) describes the proposed requirements for the FOX right-of-way. This section requires FOX to operate over dedicated track, and prohibits any joint operations with freight or other passenger service. The Railroad would be permitted to operate conventional vehicles of its own to facilitate maintenance and rescue operations, but no other mixed freight or passenger service could occur. Paragraph (b)(2) prohibits public at-grade crossings throughout the right-of-way, and states that animal and equipment crossings not controlled by the Railroad must be accomplished by an underpass or overpass. As previously discussed, this characteristic of the FOX system greatly enhances railroad safety, and must be a part of the system as finally configured, if all other safety standards are to remain in place. The right-of-way may include private grade crossings that are for the exclusive use of the Railroad. FRA believes that this is necessary for the Railroad to complete repairs, inspections, construction, rescue movements, or other normal internal operations.

Paragraphs (b)(3), (4), and (5) require a permanent fence along the entire right-of-way; require intrusion, flood, high wind, hot box, and dragging equipment detectors along the right-of-way where deemed necessary by the system safety plan and Chapter 3 of this proposal; and limit access for Railroad employees to certain intervals along the right-of-way. FRA expects that these aspects of the FOX plan will enhance safety by reducing or eliminating the incidence of animals, trespassers, highway vehicles, and undesirable or unexpected events that could interrupt or impact safe train operation. However, FRA requests additional information from FOX as to the type of fencing that will be utilized along the right-of-way. Certain fences are designed to eliminate entirely the risk of unathorized entry and would enhance railroad safety greatly. However, these fences may be unnecessary along portions of the right-of-way where the system safety plan determines that the risk of entry from individuals, vehicles, or animals is negligible. Fences used along highways are generally designed to prevent cars from leaving the highway right-of way, rather than to restrict intrusion from individuals or animals. Therefore, typical highway fencing may not be effective in populated areas along the FOX right-of-way. In short, there are a variety of factors that must be considered in determining the appropriate design and strength for fencing along the FOX right-of-way. As FRA understands the situation, FOX has not yet finalized the location of the right-of-way, and so it may be premature to dictate strict guidelines concerning fencing. However, FRA will consider the risk factors presented and whether establishing specific fencing requirements would be appropriate in this proceeding. FRA requests a description from FOX as to what is planned in the way of fencing, and

invites comment from interested parties on appropriate fencing standards.

Paragraph (b)(6) provides that the Railroad will build walkways along the right-of-way, which will be used primarily for inspection activities or rescue operations. In order to ensure the safety of workers and rescue personnel, the walkways must be built at a safe distance from the track, which the proposed standard sets at a minimum of 7.87 feet from the outside rail. This means that the Railroad's walkways must be built at least 7.87 feet from the field side of the rail, or in other words, the rail that is farthest from the Railroad's double track. Due to the track centerlines that have been proposed in paragraph (d) of this section and the requirement that any walkway be at least 7.87 feet from the outside rail, the Railroad cannot build walkways between the double track. Such a scenario could lead to hazardous conditions for employees or rescue personnel forced to work between the Railroad's two tracks, in close proximity to moving, high speed equipment.

Paragraph (b)(7) requires the Railroad to design the right-of-way so that it will accommodate high speed travel, meaning curves should be avoided or large, so that the risk of derailment and excessive braking is reduced. Paragraphs (b)(8) and (9) require the Railroad to record all difficulties or abnormalities discovered during the construction phase of this project, and make available to FRA the track layout drawings that must include specified information. FRA believes that this section is critical to the safety of the FOX infrastructure and high speed operations. As discussed earlier, sink holes and other potentially dangerous sub-grade formations and conditions are prevalent in Florida, and create serious risks for FOX unless mitigated. One of the most serious high speed accidents in France occurred because an unknown, underground World War I trench collapsed under the weight of a TGV trainset. FRA proposes in this section to eliminate the risk that such an accident could occur in Florida. This section was also included in the FOX Petition.

Paragraph (b)(10) proposes that all highway bridges that cross the right-of-way be constructed so that drivers of motor vehicles will have a clear view of the right-of-way, and so that the potential for vehicles falling into the right-of-way are minimized to the fullest extent possible. It is also important to note that this proposal is bolstered by the fall intrusion detection systems that are required by Subpart C. The detection systems will alert the Railroad to any vehicles that enter the right-of-way, but this section requires an additional level of safety by mandating highway overpass design that will minimize the risk of a vehicle entering the right-of-way in the first place. Similarly, paragraph (b)(11) requires the Railroad to protect railroad bridges, if they are necessary, from impact. Railroad operations are vulnerable to accident when railroad bridges are struck by road or water transport. The track or signal systems on the bridge may be disturbed to such an extent that a derailment or signal malfunction occurs. This proposal seeks to avoid that by requiring FOX to erect a barrier or other device that will protect the bridge structure from a sudden strike or movement. If tunnels become necessary on the FOX right-of-way, paragraph (b)(12) requires the Railroad to design and construct them to minimize the safety hazards connected with excessive air pressure in the tunnel created by the operation of trains.

Paragraph(b)(13) restricts track crossings in areas where operating speeds reach 100 mph to locations where designated track crossing devices are installed. The track crossing devices must be installed where frequent crossing by employees is anticipated, such as turnouts and substations. Paragraph (b)(14) requires the Railroad to install emergency traffic stop or slow devices at certain intervals along the right-of-way, and at special locations such as turnouts, substations, block section limits, or autotransformers. These devices will be connected to the signaling system and create a communication link with the Railroad's central traffic control. All of the proposals in paragraph (b) were included in the Petition. However, FRA omitted one of the Petition's paragraphs which related to roadway worker protection. FRA has adopted and incorporated the existing roadway worker protection standards, 49 CFR part 214, and so additional language concerning this topic is unnecessary and potentially conflicting. The FOX Petition also adopted 49 CFR part 214 for incorporation on the FOX system.

In considering the appropriate standards for FOX to adhere to vis-a-vis the system description and the Railroad's right-of-way, it is important to determine whether the FOX high speed trainsets will travel on lines that are parallel to freight or conventional passenger operations, and if so, how close those lines will be to the FOX track. The presence of heavy, conventional rail equipment on parallel track, in close proximity to the FOX trainsets, would introduce risk factors that greatly detract from the system's overall safety, and might require a reevaluation of some of the standards in this proposal. A derailment on the conventional line could result in an accident between FOX trainsets and conventional equipment, which could bring about the sort of grave damage that the system, as planned, is designed to prevent. Therefore, FRA requests additional information from FOX concerning the clearance distances that are required to maintain the accident-avoidant systems approach that FOX has adopted, if the Railroad ultimately utilizes a right-of-way that runs parallel to conventional operations. FRA does not intend in this inquiry to preclude altogether a FOX right-of-way that runs parrallel to traditional rail operations. However, such a scenario may undermine the safety of the system, as it has been described to FRA and as is reflected in this proposal, and so, additional safety measures might be warranted. Similarly, the proximity of a highway right-of-way and traffic to the FOX lines is a matter that deserves attention. There is a ''startle'' factor associated with the sudden appearance of high speed trains next to highway traffic that should be minimized, to the extent possible, in the design and location of the FOX right-of-way. The Agency invites comment on all of the issues raised by this topic from interested parties. Also, FRA asks FOX to provide additional information that describes the proximity of conventional rail lines and highway traffic to the FOX track, and any additional measures needed to ensure the safety of the FOX right-of-way. Based on this information, FRA will consider whether further appropriate measures are necessary in order to ensure the integrity of the dedicated track system that FOX has planned for Florida.

Paragraph (c) contains proposed requirements for all of the Railroad's system components: system safety program; inspection, testing and maintenance procedures and criteria; operating practices; emergency preparedness plan; personnel qualification requirements; and system qualification tests. These items are proposed in the system description section of the proposal in order to underscore their importance in the overall FOX system. Although the primary requirements of these substantive areas are set forth in later Subparts of the proposal, their presence in the FOX system is mandated by the requirements of paragraph (c) of this section.

Paragraph (d) of this section sets forth the required primary elements of the Railroad's track and infrastructure. This

paragraph works in conjunction with Subpart D of the proposal, which contains the specific performance standards and inspection procedures that the Railroad must adhere to concerning track and infrastructure. This paragraph requires the Railroad to install and operate over standard gage track (56.5 in.). Paragraph (d)(3) requires the Railroad to install and operate over double track throughout its entire right-of-way. FOX plans to use each track for a single direction, except during certain maintenance operations, which will dramatically reduce the risk of head-on collisions between trains. As planned, trains will depart in 30-minute intervals, and so the risk of one train overtaking another is also minimized. Crossover connections are to be installed at each station, to facilitate change of direction for trains or the removal of disabled trains. In addition, crossovers will be located throughout the right-of-way in order to provide flexibility and emergency rescue.

Paragraphs (d)(4) and (5) require the Railroad to install continuous, shop-welded rail, and concrete ties. These items enhance the stability of the track and add to the system's safety. Paragraph (d)(6) requires the Railroad to use ballast that will support the track structure, but that will not degrade in combination with concrete ties. Some forms of ballast in use in the railroad industry are known to deteriorate when used with concrete ties. FOX may not use any of these forms of ballast. Paragraphs (d)(7)–(10) set forth standards for the substructure layer. Paragraph (d)(11) states that FOX must utilize moveable frog turnouts that are identical to those used along the TGV lines in France. FRA proposes this to ensure that alternate devices, which may decrease safety, are not substituted in Florida. Paragraph (d)(12) proposes that the Railroad may reduce the thickness of ballast in yards and maintenance facility operations, where speeds are generally low. The proposed requirements of paragraph (d) were included in the FOX Petition.

Paragraph (e) sets forth requirements for the integral portions of the Railroad's signal system. This paragraph works in conjunction with Chapter 3 of the rule, which sets standards for the specific performance of the signal system components and procedures. Paragraph (e)(1) explains that the Railroad's signal system shall include automatic train control (ATC), interlocking equipment, wayside detectors, and central traffic control. Paragraphs (e)(2)–(6) describe the basic function and design that must exist with respect to the ATC system. The system must interface with the interlocking system and train braking systems. The on-board equipment must include multiple processors, software for braking distance-to-go determinations, and decoders that receive messages from track beacons and short cable loops that provide notification of upcoming curves, gradients, speed restrictions, and track occupancy. The on-board equipment will also calculate braking curves, continuously monitor speed, and initiate braking in the event the locomotive engineer exceeds maximum authorized speed. The on-board computers are constructed on a two-out-of-three voting architecture, which fails safe in the event of an equipment failure. Paragraph (e)(7) requires the Railroad's braking profiles to comply with speed restrictions and maximum authorized speed. Paragraph (e)(9) sets basic requirements for the track circuits: those on main line must provide jointless audio frequency, which reduces the chance of intermittent of broken connections; those in crossovers may be combined with sequential release logic in the interlocking controllers to ensure protection against poor wheel-rail contact on the seldom-used rail; those in yards and maintenance facilities may be jointed high-voltage impulse.

Paragraph (e)(10) describes the function and design of the Railroad's interlocking system. The interlocking must: Interface with the wayside signal equipment, track circuits, switch machines, and wayside signals; monitor all track circuits; interface with the ATC; exchange supervisory control and status information with central traffic control; provide back-up control at each interlocking; and control switch machines and monitoring devices used to verify switch positions. Paragraphs (e)(11) and (12) require that the interlocking's vital logic processor shall utilize two processors that operate simultaneously in a redundant fashion, and that all wayside detectors interface with the train control system. Finally, paragraph (e)(13) requires that the Railroad's central traffic control shall monitor and regulate all train routes and movements. As FRA understands the current, proposed configuration for the FOX central traffic control system, there is no built-in redundancy for the CTC processors. The wayside processors are built with a two-out-of-three architecture, but it is presumed that the signal system will shut down and trains will come to a safe stop if the CTC processors fail. FRA requests clarification from FOX as to whether this is an accurate assessment of the system's operation. If this is not the case, FRA may consider further appropriate standards to ensure the safety of the system in the event that the central traffic control system fails.

Paragraph (f) describes the key communication systems and components for the Railroad. The Railroad must install a dedicated, fiber-optic system along the right-of-way to transmit data, and telephone and radio communications. In addition, the system must have back-up systems in place in the event of failures. For train operations, the system must include a dedicated telephone system with fixed telephones and field sockets along the track, yards, and platforms; a portable radio system; and a train radio to facilitate communication among trainsets and central traffic control.

Paragraph (g) addresses the primary elements of the Railroad's power distribution system. This paragraph works in conjunction with Chapter 9 of the rule, which sets forth minimum standards for the operation of the power distribution system. The system will include a 25 kV overhead catenary electrification system, which the Railroad must protect from the potentially unsafe consequences of lightning strikes. FRA anticipates that the Railroad's system safety plan will address this potentially serious risk to the overall safety of the system, and that the Railroad will devise protective measures in the design, construction, and equipment used for the catenary system and power distribution center. All power stations along the right-of-way will include remote control operating features that facilitate operation from a central control center. In addition, supervisory control equipment at remote locations and power substations must have battery-powered back-up capability in the event of a power system failure.

Paragraph (h) describes the primary elements of the Railroad's rolling stock. This section works in conjunction with Subpart E of the proposal, which sets forth equipment design, operation, and maintenance standards. Much of this paragraph is self-explanatory, but it is important to note that the FOX trainsets will mimic the basic elements of French TGV design, and so will consist of articulated, fixed-consist trains. This formation resists buckling and twisting, and tends to stay in an upright position in the event of a derailment, which greatly enhances passenger safety. The FOX trainsets will be capable of traveling in either direction because a power car will be positioned at either end of each trainset. The passenger cars and power cars will be connected with

semi-permanent connections that can be disconnected only with special tools and procedures. These semi-permanent connectors between each trailer car, and between the power cars and trailer cars, are not couplers. Therefore, the FOX trainsets will not and cannot be coupled or uncoupled in yards or along the right-of-way, a process which presents many safety risks for employees who work with conventional equipment. As an additional safety feature, couplers will be present and are required at the leading and trailing end of each trainset, in case a rescue operation requires attaching disabled high speed trainsets to operative equipment.

Paragraph (h)(3) requires each truck of the trainset to be continuously monitored by the on-board computer system, which will alert the locomotive engineer to any malfunction, including hunting oscillations, brake defects and wheelslide. This feature will greatly enhance the engineer's ability to prevent an accident or incident by bringing the train into proper operating condition, if possible, or slowing the train, as soon as possible. This may also restrict potential brake system degradation, because the corrective action can occur before the equipment deteriorates altogether. However, FRA is uncertain about the redundant capabilities of the on-board computer monitoring system. The system description section of the Petition states that the main cab microprocessor is ''backed up by a separate standby unit.'' It is unclear from the language provided as to whether this unit is designed to work redundantly and will fail safe in operation. Therefore, FRA requests additional information from FOX that describes in detail how the power car microprocessor, which continuously monitors the equipment, is supported by the other ''standby unit.'' For instance, FRA would like to know whether all circuits are redundant, if two-out-of-three voting architecture is employed, and all other pertinent information concerning the computer's resistance to failure in operation. Section 243.425 of Subpart E, Rolling Stock describes the requirements of the automated monitoring system further. However, because FRA is unsure as to whether this monitoring is redundant and will fail safe, FRA proposes in § 243.425 that the Railroad address a complete failure of the automated monitoring system in the system safety plan, and through appropriate operating rules. Based on the information that FRA receives from FOX concerning this issue, FRA may determine that an alternative method of addressing this risk would be preferable, or that the risk is adequately covered by the design of the equipment.

Paragraph (h)(4) requires each trainset to possess operative wheelslide control, independent trucks, and fault-tolerant braking. These devices enhance the overall system safety by permitting trainsets to stop within shorter distances, to slow or stop with certainty, and to continue operating safely with defective conditions. The wheelslide control system is designed to adjust the braking force on each wheel to prevent sliding during braking, and prevents flat wheel conditions to arise, which can occur when wheels lock during braking.

This proposal deals with fire safety in a variety of ways. Paragraph (h)(5) requires all FOX trainsets to possess operative smoke and fire detection systems, which will increase the likelihood that passengers will know of the existence of fire and smoke in sufficient time to exit the equipment. As stated earlier, FRA also proposes to prohibit smoking on FOX trainsets, which further enhances passenger safety. In addition, FRA proposes to adopt FRA's emergency preparedness regulations, which address fire safety and fire protection for railroad passengers. Finally, the system safety plan that FOX develops must address the likelihood of fire, the risks presented, and effective methods of eliminating or reducing those risks.

Paragraph (h)(6) permits FOX to operate vehicles other than the high speed equipment on the right-of-way. However, these vehicles are limited to maintenance and rescue equipment, such as a grinding train, a tamping machine, a track stabilizing machine, track inspection vehicles (Mauzin car and Melusine car), an ultrasonic test car to measure the integrity of the rails, a ballast-plowing railway car, and electric and diesel locomotives for shunting and rescue purposes. All other rail vehicles are prohibited by the rule. If FOX believes that other vehicles are necessary for the safe operation of the system, those should be listed, with rationale, in any comments that FOX may have to this proposal. FRA seeks to minimize the number and type of vehicles that operate over the right-of-way, for a variety of reasons that have been discussed previously. Unless required to advance safety or move passengers to their final destination, FRA believes that the operating environment would not support additional or mixed equipment on the FOX lines.

Paragraph (h)(7) requires the Railroad to equip fully each repair facility and employee with the appropriate tools needed to maintain the equipment. Paragraph (h)(8) requires the power cars to incorporate crash energy management that will protect the locomotive engineer to the maximum extent possible. The TGV equipment that FOX will use embodies this requirement. Additional, more specific structural standards are set forth in Subpart E of the proposal.

Paragraph (h)(10) requires the locomotive engineer cab to facilitate ease of movement, vision and access to all sensors, controls, and indicators, and to control climate and noise. FRA believes that these issues have an impact on employee performance and railroad safety, and so proposes that the cab be designed to maximize employee performance. The TGV equipment that FOX plans to use incorporates this principle.

Paragraph (h)(11) describes the critical components of the passenger equipment brake system. Each trainset must be equipped with an electro-pneumatic brake system that maintains the independence of each truck's response to a brake demand. The locomotive engineer's automatic brake valve in the leading cab controls the brake pipe pressure. Each of the following devices must be capable of initiating an emergency brake application: the ATC, the deadman control, two emergency brake valves located in the cab, and emergency brake valves located in two trailer cars of each trainset. Each powered truck shall be independently controlled by the brake pipe, and will have electric braking that is battery-operated in the case of a main power failure. The brake system will be arranged so that the electric brake has priority over others. During emergency braking, relays will check the level of electric braking, and will apply the friction brake if a failure is detected. The locomotive engineer will have control of the powered truck electric brake through the traction-braking master controller to slow the trainset or maintain low speed. The braking functions on each powered truck will be controlled by separate microprocessors. Also, microprocessors will continuously monitor all of the power brake systems. The microprocessors will store all brake failures and notify the locomotive engineer of failures in any of the following areas: reception of cab and train control signals, truck hunting, electric brake, friction brake, fire detection system, head end power system, alerter, horn, and wheel slide. The braking system must be designed and operated in a failsafe manner, and include fault tolerant redundancy and notification of failures as they occur.

Also, paragraph (h)(11) requires the Railroad to prepare, in conjunction with its system safety plan, a matrix of authorized train speed and braking reductions that correspond to potential brake failures that may occur en route. This matrix is required by Subparts B and E, and this section, and is an extremely important safety feature of the FOX system. This document, and the planning it reflects, will guide the movement of equipment in passenger service when brake failures occur en route, after the daily inspection. Without this plan in place, the Railroad may be forced to return to the more draconian and less effective option of moving the defective equipment to the next repair facility. (See full discussion below in § 243.15 concerning the movement of defective equipment for additional information on this topic.) The French TGV operates under a braking matrix plan that is devised specially for each route taken throughout their system. FOX plans to replicate this process in Florida. FRA requires development of and adherence to the matrix in this NPRM, but believes that it would be unwise to dictate the specific speed reductions and corresponding brake failures in this proposal. The right-of-way has not yet been chosen and many subtle operating conditions are unknown at this time. FRA believes that the most appropriate course is to require FOX to prepare and test the braking matrix as part of the overall system safety planning and development called for by the proposal. However, FRA seeks comment from FOX and other interested parties on whether these safety standards should require the Railroad to automate the enforcement of the braking matrix. Given the technological capacity of the equipment and the importance of the correct train speed in the event of brake failure, FRA is considering imposing such a requirement.

Finally, paragraph (h)(12) states that the Railroad must install and maintain hot box detectors throughout the right-of-way, which sense journal bearing temperature and alert central traffic control of any potentially defective equipment.

All of these provisions relating to the braking system were included in the FOX Petition, and reflect the state of modern braking systems for passenger equipment.

Section 243.15 Movement of Defective Equipment

This section requires the Railroad to meet certain conditions prior to moving defective equipment or continuing with it in revenue service. Paragraph (a) provides that any equipment containing a condition that does not comply with § 243.433(f)(1) of the proposal may be moved only after the Railroad has completed a series of actions to ensure the safety of the movement. In order for the movement to proceed, a qualified person must determine that the equipment can be moved safely; the qualified person must inform the locomotive engineer and crew of the non-complying condition, the maximum authorized speed and other appropriate restrictions; and the qualified person must affix a tag to the control cab of the trainset that contains specified information concerning the defect. Section 243.433(f)(1) is a daily inspection requirement contained in the rolling stock chapter of this proposal, which includes a list of several items that must be operating as intended when the inspection is done in order for the equipment to depart. Therefore, paragraph (a) covers any defect that occurs after the daily inspection has been completed, and the trainset was determined to be in compliance and released for revenue service.

Paragraph (b) provides that a trainset which develops a non-complying condition en route, or in other words, after the daily inspection required by § 243.433(f)(1), may continue in revenue service until the next inspection required by the rule, only if the Railroad has accomplished the tasks required by paragraph (a). Paragraph (b) also states that, if brake defects arise en route, the requirements of § 243.409 of the proposal apply. The pertinent portions of § 243.409 state that the Railroad must develop and adhere to speed restrictions that correspond to varying levels of brake defects or failure, and that the locomotive engineer must notify the central traffic control of any brake failure that occurs within one trip.

Paragraph (c) permits the movement of defective equipment in a yard, so long as there are no passengers in the equipment, the movement does not exceed a speed of 10 mph, and the movement is made solely for the purpose of moving to a repair facility.

The movement of defective equipment is a topic that deserves considerable discussion as it relates to power brakes and other safety appliances, given the safety risks involved and the statutory background implicated. FRA's proposed Passenger Equipment Safety Standards, published on September 23, 1997 (62 FR 49728) provide a thorough explanation of the factors and conclusions involved, which is summarized here.

FRA's existing regulations do not contain requirements pertaining to the movement of equipment with defective power brakes. The movement of equipment with these defects is currently controlled by a statutory provision (originally enacted in 1910 as part of the laws formerly known as the Safety Appliance Acts), which states:

> (a) GENERAL—A vehicle that is equipped in compliance with this chapter whose equipment becomes defective or insecure nevertheless may be moved when necessary to make repairs, without a penalty being imposed under section 21302 of this title, from the place at which the defect or insecurity was first discovered to the *nearest available place at which the repairs can be made*—
>
> (1) on the railroad line on which the defect or insecurity was discovered;
> or
>
> (2) at the option of a connecting railroad carrier, on the railroad line of the connecting carrier, if not further than the place of repair described in clause (1) of this subsection.

49 U.S.C. 20303(a) (emphasis added).

Although there is no limit contained in 49 U.S.C. 20303 as to the number of cars with defective equipment that may be hauled in a train, FRA has a longstanding interpretation which requires that, at a minimum, 85 percent of the cars in a train have operative brakes. FRA bases this interpretation on another statutory requirement that permits a railroad to use a train only if ''at least 50 percent of the vehicles in the train are equipped with power or train brakes and the engineer is using the power or train brakes on those vehicles and on all other vehicles equipped with them that are associated with those vehicles in a train.'' 49 U.S.C. 20302(a)(5)(B). As originally enacted in 1903, section 20302 also granted the Interstate Commerce Commission (ICC) the authority to increase this percentage, and in 1910 the ICC issued an order increasing the minimum percentage to 85 percent. See 49 CFR 232.1, which codified the ICC order.

As virtually all freight cars are presently equipped with power brakes and are operated on an associated trainline, the statutory requirement is in essence a requirement that 100 percent of the cars in a train have operative power brakes, unless being hauled for repairs pursuant to 49 U.S.C. 20303. Consequently, FRA currently requires that equipment with defective or inoperative air brakes constitute no more than 15 percent of the train and that, if it is necessary to move the equipment from where the railroad first discovered it to be defective, the defective equipment be moved no further than the nearest place on the

railroad's line where the necessary repairs can be made.

The requirements regarding the movement of equipment with defective or insecure brakes noted above can create safety hazards and operational difficulties in passenger operations. As the provisions regarding the movement of defective brake equipment were written almost a century ago, they do not address contemporary realities of these operations. Strict application of the requirements has the potential of causing major disruptions of service, which could create serious safety and security problems. For example, requiring repairs to be made at the nearest location where the necessary repairs can be made could result in discharging passengers between stations where adequate facilities for their safety are not available, or onto overcrowded station platforms. In addition, strict application of the statutory requirements could result in trains with defective brake equipment moving against the current of traffic during high traffic hours. Irregular movements of this type increase the risk of collisions. Furthermore, like many passenger operations, FOX may operate trains that include eight or fewer cars. Consequently, the necessity to cut out the brakes on one or more cars can easily result in noncompliance with the 85-percent requirement for hauling the car for repairs, thus prohibiting train movement and resulting in the same sort of safety problems noted above.

FRA has attempted to recognize the nature of passenger operations, and the importance of passenger safety, and to avoid disrupting service when applying the requirements regarding the movement of equipment with defective brakes. FRA believes that speed restrictions can readily be used to compensate for the loss of brakes on a minority of cars. FRA believes that affirmatively recognizing appropriate movement restrictions would actually enhance safety, because compliance with the existing restrictions is potentially unsafe.

FRA recognizes that some of the proposed standards in § 243.15 are not in accord with the requirement contained in 49 U.S.C. 20303(a) that cars with defective or insecure brakes be moved to the ''nearest'' location where the necessary repairs can be made. However, FRA does have authority under 49 U.S.C. 20306, entitled ''Exemption for technological improvements,'' to establish the restrictions proposed in § 243.15. Section 20306 provides:

> [T]he Secretary of Transportation may exempt from the requirements of this chapter railroad equipment or equipment that will be operated on rails, when those requirements preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations under existing law.

This provision was originally enacted as a part of the Rock Island Railroad Transition and Employee Assistance Act to authorize the use of certain trailers as freight cars. See Public Law 96–254 (May 30, 1980). FRA believes that the use of the provision as contemplated in this proposal is consistent with the authority granted the Secretary of Transportation in 49 U.S.C. 20306. As noted previously, the statutory requirements regarding the movement of equipment with defective brakes were written nearly a century ago, were focused largely on the operation of freight equipment, and did not contemplate passenger train operations currently prevalent throughout the nation and that will exist on FOX. Since the original enactment in 1910 of the provisions now codified at 49 U.S.C. 20303(a), there have been substantial changes in the nature of the operations of passenger trains, and the technology used in those operations.

Contemporary passenger equipment incorporates many types of advanced braking systems; in some cases these include electrical activation of brakes on each car (with pneumatic application through the train line available as a backup). Dynamic brakes are also typically employed to limit thermal stresses on friction surfaces and to limit the wear and tear on the brake equipment. Furthermore, the brake valves and brake components used today are far more reliable than was the case several decades ago. In addition to these technological advances, the brake equipment used in passenger train operations incorporates advanced technologies not found with any regularity in freight operations. These include:

- The use of brake cylinder pressure indicators which provide a reliable indication of the application and release of the brakes;
- The use of disc brakes which provide shorter stopping distances and decrease the risk of thermal damage to wheels;
- The ability to effectuate a graduated release of the brakes due to a design feature of the brake equipment which permits more flexibility and more forgiving train control;
- The ability to cut out brakes on a per-axle or per-truck basis rather than a per car basis, thus permitting greater use of those brakes that are operable;
- The use of a pressure-maintaining feature on each car which continuously maintains the air pressure in the brake system, thereby compensating for any leakage in the trainline and preventing a total loss of air in the brake system;
- The use of a separate trainline from the locomotive main reservoir to continuously charge supply reservoirs independent of the brake pipe train line; and
- Brake ratios that are 2½ times greater than the brake ratios of loaded freight cars.

Although some of the technologies noted above have existed for several decades, most of the technologies did not become prevalent until 1980. Furthermore, most of the noted technological advances have been integrated into one efficient and reliable braking system only within the last decade. Consequently, the technology incorporated into the brake equipment used in contemporary passenger train operations, including FOX equipment, increases the reliability of the braking system and permits the safe operation of the equipment for extended distances, even where a portion of the braking system may be inoperative or defective.

In the face of these technological advances, FRA believes it is appropriate to utilize the authority granted by 49 U.S.C. 20306 and exempt certain passenger train operations from the specific restriction contained in 49 U.S.C. 20303(a) requiring the movement of equipment with defective or insecure brakes to the nearest location where necessary repairs can be made. FRA proposes restrictions on the movement of this type of equipment that are more conducive to safe operations. Under this proposal, the Railroad could move such cars only at reduced speeds and only until the next required inspection of the equipment.

In utilizing the authority granted pursuant to 49 U.S.C. 20306, the Secretary is required to make ''findings based on evidence developed at a hearing,'' unless there is ''an agreement between national railroad labor representatives and the developer of the new equipment or technology.'' FRA is confident that, after notice and opportunity for oral and written public comment, the record will support a finding that the proposed provisions are ''in the public interest and consistent with railroad safety,'' the test required in order to waive safety requirements issued under other, general provisions of the code. *See* 49 U.S.C. 20103(d). It should be noted that the exemption granted to the movement of equipment

on FOX with defective brakes would not include an exemption from 49 U.S.C. 20303(c), which contains the liability provisions attendant with the movement of equipment with defective or insecure safety appliances, including power brakes. Consequently, the liability provisions contained in 49 U.S.C. 20303(c) will be applicable to the Railroad when hauling equipment with defective or insecure power brakes pursuant to the requirements proposed by FRA in this notice.

FRA also proposes to exempt FOX passenger train operations from its longstanding interpretation, based on 49 U.S.C. 20302(a)(5)(B) and 49 CFR 232.1 noted above, prohibiting the movement of a train if more than 15 percent of the cars in the train have defective, insecure, or inoperative brakes. As discussed above, such a limitation is overly burdensome and has the potential of creating safety hazards, due to the short length of the trains commonly operated in FOX passenger service.

Based on the preceding discussion, FRA proposes in this NPRM to permit FOX trainsets to move under speed restrictions if brake defects occur en route. This proposal incorporates procedures used in France on the TGV that will guide the establishment of those speed restrictions. As is discussed above, the Railroad shall devise a matrix, in which speed levels are established to correspond to certain brake defects that will facilitate the safe movement of the equipment. The development of this matrix must be accomplished in conjunction with the development of the Railroad's system safety plan, which requires FRA approval. FRA believes that this approach will ensure a high level of safety by taking into account advanced technology, the proven TGV procedure, and the system safety concept of planning to minimize or eliminate hazards.

Subpart B—System Safety Program and Plan

Section 243.101 General System Safety Requirements

This Subpart proposes system safety program requirements that FOX must develop and follow. System safety is the concept that forms the foundation for the proposed rule, as it does for TGV operation in France. As discussed earlier in this document, system safety means the application of design, operating, technical, and management techniques and principles throughout the life cycle of a system to reduce hazards and unsafe conditions to the lowest level possible, through the most effective use of available resources. In this process, FRA proposes that the Railroad implement a system safety program to identify and manage safety risks, and generate data for use in making safety decisions.

The proposed requirements for the Fox system safety program are very similar to the requirements proposed for high speed (Tier II) passenger equipment, which were published on September 23, 1997 in the **Federal Register** (62 FR 40728). However, the Tier II system safety standards were developed to cover only the trainset, and not the remaining railroad system elements. The system safety program proposed for FOX covers the design, development, testing and operation of the entire railroad system, which includes track, signal, rolling stock, operating practices, power distribution, personnel qualification requirements, and system qualification tests.

Paragraph (a) of § 243.101 requires the Railroad to adopt a system safety program using MIL–STD–882(C) as a guide. MIL–STD–882(C) is a standard issued by the Department of Defense that describes system safety planning and system safety programs used by the U.S. military for procuring and operating weapon systems. This standard is often used as a form or reference for system safety planning. FRA does not intend in this proposal to dictate how the Railroad should apply this guidance, but FRA believes that the Railroad should tailor application of the guidance to FOX's unique safety needs and operating scenarios. FRA envisions that the system safety plan will be a living document that evolves as new information and knowledge become available. Therefore, this section requires FOX to update the system accordingly in the course of operations, and to change practices that prove to be unsafe.

Due to the critical role that the system safety plan plays in this rule, FRA proposes that FOX submit the initial plan for FRA approval, and brief FRA annually on any changes made to it. The Petition contained language that provided for FRA ''audits'' of the system safety plan, rather than a clear approval process. However, given the fact that so many safety features in the FOX system are controlled by development of the system safety plan, FRA believes that anything short of approval would be an abdication of the Agency's responsibility to promulgate clear, enforceable, and effective safety standards. For instance, one of the safety features relied upon in the FOX risk assessment and Petition involve a series of wayside detection systems, which will greatly enhance the safety of the system and have led to standards in this proposal that permit 200 mph speeds and lighter equipment. However, these detection systems, as proposed, will not be placed at regular intervals throughout the right-of-way; rather, they will be placed, for the most part, where the system safety plan indicates safety risks exist. If FRA has no approval authority over the placement of the detection systems and the thought process that determined the placement, the detection system could conceivably be used ineffectively, and ultimately have no impact on improving safety. A similar analysis can be made concerning the braking system matrix that will define operating procedures for passenger equipment with defective brakes. Clearly, the Railroad braking system is key to the safety of the high speed trainsets, and a matrix that establishes rational speed restrictions is mandatory, for safety and statutory reasons. FRA believes that the Agency must have an approval mechanism in place to ensure that such a matrix is in place. FRA understands that FOX has the desire and capacity to operate the system safely, and FRA does not intend to interfere unnecessarily in the system safety process that will be undertaken in Florida. However, FRA believes that the basis of this rulemaking would be undermined if Federal oversight of the FOX system safety plan does not take place.

This paragraph also requires FOX to submit the initial system safety plan to FRA for approval no later than one year after the rule takes effect. The Petition contained a less certain time frame, related to the design and construction phases of the project. However, FRA believes that the system safety plan must be used as a guide in the earliest conceptual stages of the project. Thus, it should be available earlier in the program than initially proposed by FOX. As discussed previously in this document, FRA seeks comment from FOX and other interested parties concerning alternatives to this proposal. Commenters are asked to consider the relative merits of a tiered system safety plan submission schedule, that would permit FOX to produce the system safety plan in stages, rather than as one complete package. However, commenters should also address the risk that such a tiered schedule would lead to a system safety plan that is incomplete or inaccurate because it does not address all potential hazards at the earliest possible opportunity.

FRA also requires FOX to brief the FRA annually on the status of the

system safety program and on any proposed changes to the system safety plan. FRA believes this process will permit FRA to assess how effectively the system safety plan works, and how FOX identifies and resolves safety risks.

Paragraph (b) of § 243.101 makes clear that the system safety plan must address the design, construction, maintenance, operation, and overhaul of the system as a unit. The plan must address how individual components of the system operate, as well as how those components operate once integrated into the system. For instance, a particular appurtenance may perform well in tests or other operations, but that same component may not perform suitably when integrated into the FOX system. The plan must evaluate components in this light in order to ensure the ultimate safety of the system. Also, this paragraph requires FOX to consider safety at least as important as cost and performance in assessing design, construction, operation, maintenance, and overhaul of the Railroad system.

Paragraph (c) describes the various elements that must be included in the plan. FRA proposes, at a minimum, that the system safety plan specifically address fire protection; software safety; inspection, testing, and maintenance; training and qualifications; emergency preparedness; pre-revenue service qualification testing; hazard identification and reduction; operating procedures for defective equipment in passenger service; identification of safety-critical subsystems; and relationships between safety-critical subsystems. FRA places emphasis on these elements of the Fox system because they tend to be overlooked when a less formal, non-systems approach to safety analysis is taken. Each of these elements of the system safety program is discussed in greater detail below.

Paragraph (d) sets forth the approach and process FOX must take in order to develop the system safety program. FRA intends the program to be a formal step-by-step process that includes: identification of all safety requirements that govern the operation of the system; evaluation of the total system to identify known or potential safety hazards that may arise over the life cycle of the Railroad; identification of all safety issues during the design phase of the process; elimination or reduction of the risk posed by the hazards identified; resolution of safety issues presented; development of a process to track progress; and development of a program of testing and analysis to demonstrate that safety requirements are met.

Paragraph (e) requires the Railroad to document how the system design meets safety requirements, and to monitor how safety issues are raised and resolved. This is very important in system safety philosophy; if risks are not identified, eliminated or mitigated, the system is inherently unsafe.

Paragraph (f) requires the system safety plan to describe how operational limitations would be imposed if the FOX system design cannot meet certain safety requirements. FRA anticipates that this section would include an initial determination from FOX that operational limits can effectively address the hazard, and if not, a design change will be put in place to accommodate the risk. Operational limits are considered the least desirable option in system safety planning, and thus, the last means utilized to reduce a safety risk.

Paragraph (g) requires the Railroad to facilitate FRA inspection of the system safety plan and documentation required by paragraph (e). FRA must have access to this information in order to determine the Railroad's compliance with the requirements of this Chapter.

Section 243.103 Fire Protection Program

As part of the system safety program, paragraph (a) requires the Railroad to address fire safety considerations in the design stage of the project, and to reduce the risk of harm caused by fire on the equipment to a level established in MIL–STD–882(C) as acceptable. Paragraph (b) requires the Railroad to make a written analysis of the fire protection problem, and lists a series of factors that the Railroad must complete and consider concerning fire protection. These paragraphs require the Railroad to ensure that good fire protection practice is used during the design and operation of the equipment. FRA's primary concern is to protect passengers from the risk of fire and smoke inhalation, and to ensure that they can evacuate quickly and safely if a fire erupts.

Elements of this analysis correspond to required action under § 243.413 of the rolling stock provisions in the rule: Overheat detectors; a fire or smoke detection system; a fixed, automatic, fire-suppression system where the Railroad's written analysis determines they are required; and compliance with the Railroad's written procedures for the inspection, testing, and maintenance of fire safety systems and equipment that the procedures designate as mandatory. [See § 243.413(c)–(f)].

Paragraph (c) requires the Railroad to exercise reasonable care to assure that the design criteria are followed and that the tests required by this program are performed. To fulfill this obligation in part, the Railroad must include fire safety requirements in all contracts for new equipment purchases.

Section 243.105 Software Safety Program

This section proposes requirements for the software portion of the system safety program. Paragraph (a) requires the Railroad to develop and implement a software safety program to guide the design, development, testing, integration and verification of FOX system software. Software plays a key role in the overall performance of the FOX system, and safety demands that the Railroad place a strong emphasis on the system's software safety.

Paragraph (b) sets out the proposed required elements of the software safety program. The program must treat software that controls or monitors safety functions as safety-critical, unless a completely redundant, failsafe, non-software means to provide the same function is provided as part of the design. Paragraph (b) also specifies the steps required to develop a comprehensive software safety program, which must culminate in a demonstration of overall software safety as part of the pre-revenue service system qualification tests of the FOX system.

Paragraph (b) also requires the Railroad to include a hazard analysis in its software design and implementation that will, to the fullest extent possible, prevent unauthorized penetration on all computerized systems in use. As the railroad industry embraces new technology and increases reliance on electronic information systems, there must also be development and adherence to effective methods of preventing intrusion from unauthorized railroad personnel and other individuals or entities. The FOX system relies on many computerized systems and sub-systems, the largest being the Railroad's signal system. Clearly, any opportunity for infiltration of the signal system by outsiders would expose the passengers, employees, and those along the right-of-way to grave risk. Therefore, FOX must develop and implement in its system safety program a method to prevent cyber threats and alleviate these risks.

Paragraph (c) requires the Railroad to adhere to the requirements of the software safety program. To fulfill this obligation the Railroad must include software safety requirements in procurement contracts that involve design or purchase of software components.

Paragraph (d) requires the Railroad to follow the process and procedures of the software safety program.

Section 243.107 Inspection, Testing, and Maintenance Program

This section contains the requirements for the Railroad's program for inspecting, testing, and maintaining the FOX system. FRA's goal is a set of standards that will ensure that the Fox system remains safe as it wears and ages, and will protect workers who perform the inspection, testing, and maintenance tasks. These proposed requirements are based on FRA's knowledge of inspection, testing and maintenance programs generally, and the French TGV practices.

Paragraph (a) requires the Railroad to provide to FRA particulars concerning the inspection, testing, and maintenance program for the system, including: Safety inspection procedures, intervals and criteria; testing procedures and intervals; scheduled preventive maintenance intervals; maintenance procedures; and employee training.

In this proposal, FRA does not dictate specific program contents, and so the Railroad retains much flexibility to tailor the program to its needs and experience. However, FRA believes this provision is an important element of the overall Railroad system, and should be designed to maximize safe operations and protect safety-related components of the system from deterioration over time.

Paragraph (b) defines broadly the conditions that can endanger the safety of the crew, passengers, or equipment, which the inspection, testing, and maintenance program should prevent, or detect and correct. Paragraph (c) establishes a link between scheduled maintenance intervals and the system safety program. Scheduled maintenance intervals should be set so that worn parts are replaced before they fail. Initial intervals should be based on manufacturer's recommendations or operating experience. As more operating experience is gained, FRA believes that accumulated reliability data should be used as the basis for changing preventive maintenance intervals on safety-critical components. This standard should encourage the Railroad to keep reliability records on safety-critical components, which will provide confidence that any safety or economic trade-offs have a firm basis.

Paragraph (d) requires the Railroad to adopt standard operating procedures, in writing, that explain how all safety-critical inspection, testing, and maintenance tasks will be performed. This provision is intended to provide protection to the workers who perform maintenance and inspection duties, many of which are inherently dangerous. FRA does not intend to prescribe how these tasks should be performed. Rather, this proposal requires the Railroad to devise a program that will ensure employee safety in each individual setting that may arise in the maintenance of all of the Railroad's equipment. FRA believes that standard operating procedures are often a key component in a successful program to train employees to perform their employment duties safely.

Section 243.109 Training, Qualification, and Designation Program

This section requires the Railroad to develop and implement a training, qualification, and designation program for workers who perform inspection, testing, and maintenance tasks. FRA believes that employee training, qualification, and designation are central to maintain safe railroad equipment and a safe workforce. Paragraph (a) requires the Railroad to establish and comply with a training, qualification, and designation program for employees and contractors who perform safety-related inspection, testing, or maintenance tasks in this rule.

Paragraph (b) lists the steps that must be followed in developing the Railroad's training, qualification, and designation program. This paragraph lists the general requirements that the Railroad's training, qualification, and designation program must do to ensure that employees know how to keep the system operating safely. The SNCF has a training program in place for operation of TGV equipment in France that is similar to these proposed requirements. The list of actions that FRA proposes also compel the Railroad to evaluate its operation and focus its training resources where the need is greatest.

The proposed rule grants the Railroad flexibility to focus and provide training that is needed in order to complete a specific job category. For instance, the proposal does not require ''checkers'' to receive the same intensive training needed for ''maintainers.'' FRA anticipates that this proposal will not require extensive changes to the manner in which TGV employees in France are trained. However, the proposal will prevent the Railroad from using minimally trained and unqualified people to perform crucial safety tasks.

FRA believes that many benefits will be gained from the Railroad's investment in a comprehensive training program. The quality of inspections will improve, which will result in fewer instances of defective equipment in revenue service and increased operational safety. Equipment conditions that require maintenance attention are more likely to be discovered while the equipment is in a maintenance or yard site, where repairs can be completed safely and efficiently. Trouble-shooting will take less time, and maintenance will be completed correctly the first time, resulting in increased safety and decreased costs.

Section 243.111 Emergency Preparedness Program

This section requires the Railroad to develop and adopt an emergency preparedness program that meets the requirements set forth in FRA's proposed Passenger Train Emergency Standards, 62 FR 8330, (February 24, 1996) which will be codified at 49 CFR part 239 after consideration of all comments received and adopted as final. FRA believes that the FOX system should meet the same emergency preparedness requirements imposed on every other passenger railroad operating in the U.S.

Section 243.113 Pre-revenue Service System Qualification Plan

This section sets forth general requirements for pre-revenue service testing of the FOX system, and works in conjunction with the specific provisions set forth in Chapter 7 of this rule. Pre-revenue qualification tests are extremely important because they represent the culmination of all safety analysis and component tests conducted as part of the system safety program, and will serve as a basis for all passenger operations. The pre-revenue service system qualification tests are intended to demonstrate the effectiveness of the system safety program and to prove that the FOX system can operate safely in its intended environment. FRA believes that these procedures and the documentation required by the pre-revenue system qualification test plan are necessary to ensure that all safety risks have been reduced to a level that will facilitate safe operation in revenue service.

Section 243.115 Hazard Identification and Reduction

This section requires the Railroad to identify all hazards that may arise in the course of operations and analyze methods available to reduce or eliminate the hazards. The Railroad may consider remedies that are based in design, construction, equipment, or operations. However, operation-based solutions are not favored, and should be used only when no other alternative

exists. Design and construction are the preferred methods to eliminate risk in system safety philosophy, because they completely remove the opportunity for simple human mistakes or errors in judgment that can occur in the normal course of operations. This section is important because operational hazards cannot be minimized or prevented until they are first recognized as risks. This thought process is basic to system safety, and so this proposal is an integral component to the Railroad's system safety plan.

Section 243.117 Operating Procedures in the Event of Component Failure

This section requires the Railroad to consider and develop operating rules that will protect passengers, employees, and the public when portions of the system become defective. This section works in conjunction with Subpart F of the rule, which requires the Railroad to develop a comprehensive set of operating rules that must be approved by FRA. It is extremely important to the overall safety of the system that the Railroad deliberate over appropriate procedures that will compensate for the loss of safety that malfunctioning equipment causes. Aside from developing general operating rules, pursuant to the requirements of Subpart F, this section obligates the Railroad to engage in a slightly different thought process—to focus on defective equipment and to mitigate the dangers that arise when equipment malfunctions. FRA believes that this section is necessary to ensure passenger and system safety, particularly as it relates to power brake defects. Also, this section requires the Railroad to analyze and describe the fault tolerant limits of each system that possesses fault tolerant components, and develop a process by which the Railroad and the engineer operating a trainset will be made aware that the system is approaching its fault tolerant limits. This proposal requires the Railroad to acknowledge the pre-determined limits of the system equipment, and to prepare appropriately for instances when those limits are exceeded, which is consistent with and critical to comprehensive system safety planning.

Section 243.119 Safety-Critical Subsystems

This proposed section requires the Railroad to identify the safety-critical subsystems that exist in the FOX system, and to prepare an explanation of the relationship they have with one another throughout the life cycle of the system. FRA anticipates that this requirement reflects the thought that would occur in the normal course of system safety analysis, and believes it is important enough, in terms of the ultimate safety of the system, to incorporate in this Subpart.

Section 243.121 Approval Procedure

This section sets forth the system safety plan approval procedures that the Railroad and FRA must follow. Paragraph (b) requires the Railroad to file a petition for approval with FRA, and the petition must include the Railroad's system safety plan, pertinent supporting documentation, and the primary person to contact if questions arise. This section also requires the Railroad to prepare a petition for approval for safety-critical changes to the Railroad's existing safety plan. FRA believes that such changes have the potential to alter the overall safety of the FOX network, and therefore, Federal oversight should be present. Also, pursuant to principles of administrative law, FRA would notify the public of such changes. Paragraph (c) requires the Railroad to submit the petition for approval with FRA's Associate Administrator for Safety, and paragraph (d) describes the actions FRA must take upon receipt of the petition.

FRA must review the petition, detemine if it complies with all procedural requirements, and evaluate the substantive validity of the petition or proposed changes to the petition. Under this proposal, FRA may approve, approve with special conditions, or disapprove the petition within ninety days. If FRA is unable to arrive at a determination within ninety days, the petition remains pending until FRA acts. Once a petition has been approved, FRA may reopen consideration of the petition for good cause, which might include the discovery of new information or new safety evaluations. FRA must provide the Railroad with written notice of the disposition of the petition. If FRA determines that changes to safety-critical standards, criteria, or inspection frequencies are appropriate in the interest of safety, FRA will publish a notice in the **Federal Register** announcing those changes. Sixty days after the notice is published, the changes become effective.

The FOX system safety program is the most important portion of the Florida high speed rail project. Every safety discipline will be governed by the design, construction, and equipment determinations made in the process of developing the Railroad's system safety program. FRA has no desire to meddle unnecessarily in the internal, nonsafety matters of the Railroad's operation. However, due to the role that the system safety plan plays in the FOX system, and the potential for human casualty that exists on the system, FRA believes that the agency must have approval authority over the final system safety plan that is adopted by the Railroad, in order to ensure the safety of the public. As stated earlier, FRA invites comment on alternatives to the timing proposed for submission of the Railroad's system safety plan. In addition, FRA invites commentary on the approval process that is proposed in this NPRM, and any alternatives that may be more effective.

Subpart C—Signal System

Subpart C sets forth the safety standards for the Railroad's signal system. This Subpart is similar to FRA's existing signal safety standards, 49 CFR part 236, that apply generally to railroad operations in this country. However, changes have been made to account for the differences in the signal system that will be utilized in Florida and the high speed train operations associated with the FOX system.

Section 243.201 Plans, Where Kept

This section requires the Railroad to keep plans that are necessary for the proper maintenance and testing of the signal and train control system at each interlocking and intermediate track circuit case. Plans must be legible and accurate, in order to protect against errors in circuitry connections. This is consistent with the Petition and current U.S. practices.

Section 243.202 Grounds

This proposed section requires the Railroad to keep each circuit that affects the safety of train operations, free from any ground or combination of grounds that will permit a flow of current equal to or in excess of 75 percent of the release value of any relay or other electromagnetic device in the circuit. However, the following circuits are not included in this requirement: circuits that include any track rail; the common return wires of single-wire, single-break, signal control circuits using a grounded common; and alternating current power distribution circuits that are grounded in the interest of safety. This is consistent with the Petition and current U.S. practice.

Section 243.203 Locking of Signal Apparatus Housings

This section requires the Railroad to protect signal apparatus housings from unauthorized entry. The proposal requires the Railroad to lock, seal, or secure all external housings of signal and track-side automatic train control system apparatus. The purpose of this

section is to prevent vital components of the signal system from being vandalized or tampered with, which could cause the system to malfunction. The proposed rule is consistent with the Petition and current U.S. practice.

Section 243.204 Design of Control Circuits on Failsafe Principle

This section requires that the failure of a safety-critical control circuit will not cause a condition more permissive than intended. Safety-critical circuits shall be designed on a failsafe principle. This section includes all vital circuits and track circuits through which signal control circuits are selected, including any failure of the data link radio transmission system. Circuits should be designed so that failure of any part or component of the circuit will cause the most restrictive aspects to be displayed. The proposed rule is intended to address the design of the FOX signal system, including electronic and processor-based equipment.

Section 243.205 Power-operated Switch Use

This section requires all switch movements to be completed by power-operated electric switch machines. Hand-operated switches are prohibited in territory controlled by ATC. Each power-operated switch will be controlled from the Railroad's central traffic control center. This is consistent with the FOX petition and current U.S. practice.

Section 243.206 Yard Operations

This section requires the Railroad to control yard operations through the traffic control center for the yard, and to complete all movements in the yard at restricted speed. This section also states that relevant portions of 49 CFR 236.1 through 236.109 apply to signals that are used in FOX yard operations. There are some requirements presently in other sections of this proposed rule that would apply to yard operations. However, since signals and switches used in yard limits will be similar or identical to conventional signal systems currently in use in the U.S., FRA believes that the applicable portions of 49 CFR 236.1 through 236.109 would be more appropriate. These address such items as design of control circuits, operating characteristics, location of roadway signals, and shunting sensitivity.

Section 243.207 Timetable Instructions

The section requires the Railroad to designate all interlockings, automatic train control territory, and yard limits in timetable instructions. The designation may be published in timetable instructions in any manner that the Railroad chooses. This is consistent with the Petition and U.S. practice.

Wayside and Cab Signals

Section 243.208 Location of Wayside Signals

This section requires FOX to position and align each wayside signal so that its aspects can be visually associated with the track it governs. The proposal grants the Railroad discretion to determine where the wayside signals will be positioned. FRA's safety experts will determine whether the location and alignment of each signal complies with the intent of this section and that the signal aspect is associated with the track governed. This section is consistent with the Petition and current U.S. practice.

Section 243.209 Aspects and Indications

Paragraph (a) of this section requires that aspects of wayside signals must be shown by the color of lights, position of lights, flashing of lights, or any combination thereof. They may be qualified by marker plate, number plate, letter plate, marker light, or any combination thereof. Paragraph (b) states that the fundamental indications of wayside signal aspects must conform to the following: a red light or a series of horizontal lights will indicate stop; a yellow light or a lunar light will indicate that speed is to be restricted and stop may be required; and a green light or a series of vertical lights will indicate proceed at maximum authorized speed. Paragraph (c) requires that the names, indications, and aspects of wayside and cab signals must be defined in the Railroad's operating rules or special instructions, and all modifications must be filed with the FRA within thirty days after the modifications take effect. Paragraph (d) states that absence of a qualifying appurtenance or the failure of a lamp in a light signal may not cause the display of a less restrictive aspect than intended.

Paragraph (e) of this section relates to cab display and requires all cab displays to include the maximum authorized speed, shown by a bar graph or a needle in the periphery of the dial used for the indication of train speed; the target speed, shown by numbers; and the target distance corresponding to the indicated target speed, shown by a continuously refreshed bar graph and numbers in case of overflow of the bar graph. Paragraph (f) states that all bar graphs and numbers must be illuminated so that they can be read easily in all lighting conditions in which the equipment will be used. This proposed section is consistent with the Petition and current U.S. practice.

Section 243.210 Markers

This section requires the Railroad to equip all high speed lines with block section markers and route origin markers, and requires all block section limits to be indicated by marker plates installed along the right-of-way. These markers must be located at adjoining block sections and must be illuminated during night operations and when visibility along the line is limited. Paragraph (c) requires that route origin markers must be positioned at the beginning of each route and must be equipped with a proceed light. Paragraph (d) requires the Railroad to provide special shunting markers at locations that are not equipped with route origin markers and where turn-back operations may be required. This marker must be equipped with a shunting light.

This section, as proposed by FRA, is very similar to portions of the Petition, except that FRA requires the block section limits to be illuminated and FOX proposed that the block section limits would be indicated by retroreflective marker plates. FRA believes that, given the speed trains will travel and the frequent storms that occur in Florida, lighted markers enhance the safety of the system, and impose little financial burden. This addition should ensure that locomotive engineers recognize block sections, which is particularly important for occasions when an engineer must rely on the block sections during any interruption of the ATC system.

Section 243.211 Spacing of Beacons

This proposed section requires the Railroad to design the ATC system and beacon spacing so that the locomotive engineer can comply with any imposed speed restriction by initiating a service brake application, and if the locomotive engineer fails to react, an automatic brake application will occur. In ATC territory, the braking distances must be designed in order to compensate for delay time, which will ensure the trainset complies with the target speed and distance through the brake application initiated by the system. An aspect that mandates a stop at the next signal requires sufficient spacing so that a stop can be achieved before reaching the next signal, without an emergency brake application. These proposed sections apply to all systems, including

the Railroad's high wind, flood, intrusion, and dragging equipment protective devices. The section is consistent with the FOX petition and U.S. practice.

Track Circuits

Section 243.212 Track Circuit Requirements

This proposed section sets forth a variety of track circuit requirements. Generally, track relay controlling home signals or beacons must be in the de-energized position, or a device that functions as a track relay controlling home signals or beacons must be in its most restrictive state. In addition, the track circuit must be de-energized when a rail is broken or a rail or switch-frog is removed or when a trainset occupies any part of the track circuit. It will not be a violation if a track circuit is energized because a break occurs between the end of rail and track circuit connector; within the limits of rail-joint bond, appliance or other protective device, which provides a bypath for the electric current; or, as a result of leakage current or foreign current in the rear of a point where a break occurs.

This proposed section is consistent with the Petition and U.S. practice.

Section 243.213 Track Circuit Shunting Sensitivity

This proposed section requires the Railroad to maintain each track circuit controlling a home signal so that the track relay is in a de-energized position, or a device that functions as a track relay will be in its most restrictive state if, when the track circuit is dry, a shunt is connected across the track rails of the circuit, including fouling sections of turnouts. The electric resistance of the shunt must be: 0.15 Ohm on open track and 0.25 Ohm in interlocking areas. These values are given for use with a ballast of 8 Ohm per kilometer (0.62 mi) resistance and is consistent with the FOX petition.

The proposed signal system will utilize jointless audio frequency track circuits on the main line. Typical track circuits on the FOX main line will be center fed, using one transmitter at the center and a receiver at each end of the circuit. In crossover areas, circuits will be combined with sequential release logic in the interlocking controllers to ensure protection against poor wheel-rail contact on seldom-used rail. Jointed high-voltage impulse track circuits must be used in the yards and maintenance facilities.

Section 243.214 Insulated Rail Joints

This section requires the Railroad to maintain insulated rail joints so that the failure of any track circuit, caused by track circuit current that flows between insulated rails, will be prevented. This is consistent with the Petition and U.S. practice.

Section 243.215 Fouling Wires

This section requires that fouling wires consist of at least two discrete conductors, and that each be of sufficient conductivity and maintained in such condition that the track relay will be in de-energized position, or the device that functions as a track relay will be in its most restrictive state, when the circuit is shunted. This is consistent with the Petition and U.S. practice.

Section 243.216 Turnout, Fouling Section

This section requires rail joints within the fouling section to be bonded, and the fouling section to extend at least to a point where sufficient track centers and allowance for maximum car overhang will prevent interference with trainset movement on the adjacent track. It is important that all rail joints are bonded to ensure continuity of track circuits. The proposed rule is consistent with the FOX petition and U.S. practice.

Wires and Cables

Section 243.217 Protection of Insulated Wire; Splice in Underground Wire; Aerial Cable

This section requires insulated wire to be protected from mechanical injury, any splice in underground wire to have insulation resistance at least equal to the wire spliced, and all aerial cable to be supported by messenger. This is consistent with the Petition and U.S. practice. Insulated wire must be positioned in such a manner that it cannot be damaged by the operation of apparatus, vehicles, tools, workers, or by closing doors. Temporary installation of cable or wires on top of the ground is prohibited by this section.

Section 243.218 Tagging of Wires and Interference of Wires or Tags With Signal Apparatus

This section requires the Railroad to tag or otherwise mark each wire so that it can be identified at each terminal. Tags and other identifiers must be made of insulating material, arranged so that they do not interfere with the moving parts of equipment, and correspond with the circuit plans. The proposed rule is consistent with the FOX petition and U.S. practice.

Standards

Section 243.219 Control Circuits; Requirements

This section of the proposal requires the Railroad to install each signal or beacon that governs train movements into a block section so that it will convey its most restrictive state as long as any of the following conditions exist within the block: a trainset occupies the block, points of a switch are not closed in proper position; a track relay is in de-energized position or a device which functions as a track relay is in its most restrictive state; or, when a signal control circuit is de-energized. This section reflects the unique characteristics of the FOX beacon and loop transmission signal system (TBL) and is consistent with the Petition.

Section 243.220 Control Circuits for Signals, Selection Through Point Detector Operated by Switch Movement

This section requires that control circuit(s) for each signal aspect or beacon, which conveys an indication more favorable than ''proceed at restricted speed'' for signal governing movements over switches, be selected through a point detector operated directly by switch points for each switch, movable-point frog, and derail in the routes governed by such signal or beacon. Circuits must be arranged so that the signal or beacon can convey an indication more favorable than ''proceed at restricted speed'' only when each switch, movable-point frog, and derail in the route is in proper position. This section reflects the FOX TBL system and is consistent with the Petition.

Section 243.221 Time Locking; Where Required

This section of the proposal requires the Railroad to provide time locking in conjunction with signal aspects or beacons that convey indications more favorable than ''proceed at restricted speed.'' FRA will expect that any signal that displays an aspect more favorable than ''proceed at restricted speed'' will have time locking. This requirement would apply regardless of any speed restrictions that may be placed on a stretch of track at any given time. The time locking must be effective for the maximum authorized speed that is permitted on each route. Also, this section requires the Railroad to provide locking for all interlocking signals where route or direction of traffic can be changed. FRA's proposal differs from the Petition by using the term ''interlocking signals'' rather than'controlled signals' because the

FOX system will consist of interlockings.

Section 243.222 Indication Locking

This proposed section requires the Railroad to provide indication locking for switches, movable-point frogs, and derails. Indication locking should prevent the clearing of signals governing movements over switches, movable-point frogs, and derails until each operative unit has completed its required movement. This is consistent with the Petition and U.S. practice.

Section 243.223 Electric Locking Circuits

This proposed section requires the Railroad to provide vital design methods to prevent the system from displaying aspects that will result in conflicting or unsafe movements. The operation of controlling devices, logic, or apparatus are required to succeed each other in proper sequence before a proceed aspect can be displayed. Vital design methods in interlocking circuitry shall prevent ''proceed'' aspects from being displayed for conflicting movements.

Section 243.224 Loss of Shunt Protection; Where Required

This section requires that loss of shunt protection not permit the release of the route locking circuit of each power-operated switch. The loss of shunt protection must be based on a sequential release logic. Sequential release logic requires that when any track circuit becomes occupied in logical sequence from a previous track circuit, in combination with an established train route, its status will not be allowed to return to unoccupied, even though the detected shunt may be lost, until a specified safe time interval after the next track circuit in the route becomes occupied. This section is consistent with the Petition and U.S. practice.

Section 243.225 Signal Control Circuits, Selection Through Track Relays or Devices Functioning as Track Relays

This section requires control circuits for signal aspects or beacons, which convey indications more favorable than ''proceed at restricted speed,'' to be selected through track relays, or through devices that function as track relays, for all track circuits in the route governed. This section would not apply to control circuits of signals displaying aspects with indications of ''proceed at restricted speed.'' This is consistent with the Petition and U.S. practice.

Section 243.226 Switch, Movable-Point Frog or Split-point Derail

This section requires the Railroad to equip switches, movable-point frogs, or split-point derails with clamp locks on each switch or movable point frog and to maintain it so that it cannot be locked when the point is open 6 mm (.25 in) or more. Each high speed turnout on the main line must be equipped with a pair of switch machines (one for the points and one for the movable frog), clamp locks, and position detectors.

Section 243.227 Point Detector

This proposed section requires the Railroad to maintain point detectors so that when switch mechanisms are locked in normal or reverse position, contacts cannot be opened by manually applying force at the closed switch point. Point detector circuit controllers must be maintained so that the contacts will not assume the position corresponding to switch point closure if the switch point is prevented by an obstruction, from closing to within 6 mm (0.25 in). This is consistent with the Petition.

Section 243.228 Signals Controlled by Track Circuits

This section requires control circuits for aspects with indications more favorable than ''proceed at restricted speed'' to be controlled by track circuits extending through an entire block section. A block section would extend from signal to signal, or from signal to its defined limits at end of the system. This section is consistent with the Petition and U.S. practice.

Section 243.229 Circuits at Interlocking

This proposed section prevents circuits at interlockings from displaying aspects that would permit conflicting movements. FRA's proposal uses the term ''interlocking'' rather than the FOX term, ''control point,'' because the proposed system will actually consist of interlockings.

Section 243.230 Signals at Adjacent Interlockings

This proposed section requires signals at adjacent interlockings to be arranged so that movements at greater than restricted speed cannot be displayed simultaneously for conflicting movements. The intent of this section is to ensure that the maximum authorized speed between adjacent interlockings where signals can simultaneously display aspects indicating ''proceed at restricted speed'' may not exceed 20 mph, regardless of more favorable aspects displayed. This is consistent with U.S. practice.

Section 243.231 Track Signaled for Movements in Both Directions, Change of Direction of Traffic

This section requires that where track is signaled for train movement in both directions, occupancy of the track between opposing signals at adjacent interlockings must prevent changing the direction of traffic from that which was obtained at the time the track became occupied. After a train, locomotive, or power car has passed a signal displaying an aspect permitting it to proceed into and through an interlocking, the opposing signals at the adjacent interlocking will not be permitted to display any aspect with an indication other than ''stop,'' so long as the section of track between interlockings is occupied. The only exception to this applies in instances when a train is left on the main track while its locomotive, power car and/or cars move into an adjacent siding or yard for switching purposes and must, in returning to its train, reverse its direction for a short distance. It would be permissible in such instances to permit such movements to be made with a signal aspect indicating ''proceed not to exceed restricted speed'' into the occupied block.

Section 243.232 Route Locking

The section requires the Railroad to provide route locking at all interlockings where power-operated switches are located. When a train, locomotive, or power car passes a signal displaying any type of proceed aspect, including ''proceed at restricted speed,'' over power operated switches, track circuits and route locking would be required.

Section 243.233 Wayside Detectors

This section addresses all of the wayside detection systems that will be located in the FOX right-of-way and connected to the Railroad's central traffic control system. The Railroad must establish guidelines for the events that trigger the detection systems in such a way that all potentially hazardous occurrences are conveyed to the signal system or central traffic control.

Paragraph (c) of this section requires the Railroad to install fall intrusion detectors at all highway, animal, and non-Railroad equipment overpasses and underpasses. Fall intrusion detectors must be activated when the network of protective wiring located at each overpass and underpass experiences a partial or complete break, and this

information must be transmitted to central traffic control continuously. The Railroad's system safety plan must list the location of all fall intrusion detectors, and dictate the actions that will be taken when intrusions occur.

Paragraph (d) requires the Railroad to install an intrusion detection system in the protective fencing along the Railroad right-of-way that must restrict, to the fullest extent possible, unauthorized entry by trespassers, personnel, equipment, and animals. This system shall be installed at each location that is identified in the system safety plan as an area where intrusion is likely to occur. This system must be connected to the Railroad's signal system and to the central traffic control system, and must alert the Railroad to any intrusion. Also, the Railroad must explain in detail where intrusion is likely to occur and why, and set forth specific actions that will be taken when intrusion occurs.

Paragraph (e) requires the Railroad to install dragging equipment detectors at all locations where underframe repair or maintenance work is performed, and at other locations determined necessary by the system safety plan. This system must transmit data continuously to the central traffic control so that Railroad personnel can make appropriate adjustments in operations. The Railroad must explain, in detail, in the system safety plan where dragging equipment is likely to occur and why, and prescribe specific actions that will be taken when dragging equipment is located. The Petition proposed to locate these detectors only where underframe repair and maintenance work is completed, but FRA believes that dragging equipment may actually occur more often at other locations throughout the system. FRA believes that when a rail unit leaves a repair facility it is less likely to be in defective condition than when it travels other portions of the system. Also, equipment that is entering or leaving repair facilities will not be carrying passengers, and so the risk of injury at these locations is minimal. Therefore, FRA proposes in this section that the Railroad, in the process of the system safety analysis, determine where the risk of dragged equipment exists, and place detectors at those locations.

Paragraph (f) requires the Railroad to install flood detectors where determined necessary by the system safety plan. This determination must include consideration of drainage, culverts, bridges, overpasses, underpasses, and flood plain status along the right-of-way. The flood detection system must alert the signal system and central traffic control of any location where an accumulation of water exists in the right-of-way that may present a risk to a right-of-way structure or in-service railroad equipment. The Railroad's system safety plan must include specific actions that will be taken when high water is detected.

Paragraph (g) requires the Railroad to install wind detectors along the right-of-way, where it is determined to be necessary pursuant to area wind and weather patterns, topography, and proximity to large bodies of water. Wind speed data must be conveyed to the central traffic control continuously so that Railroad personnel may make operational changes when necessary. The Railroad's system safety plan must explain where and why wind detectors are located along the right-of-way, list the speeds and conditions at which operational safety is compromised; and set forth the specific actions that will be taken when those wind speeds occur.

Paragraph (h) requires the Railroad to install and maintain hot box detectors along the length of the right-of-way to detect the journal bearing temperature of all moving rail equipment. The wayside detectors must be arranged so that the journal bearing temperature on both sides of each train, and on each track, is monitored. The detectors must be located at least once every twenty-five miles, and must be linked to the signal system to alert the locomotive engineer or the central traffic control system, or both, depending on the level of the overheating, so that Railroad personnel can take appropriate action. This system shall include a hierarchy of alarms, which will alert the Railroad to the level of overheating that is occurring and bring about corresponding actions. For instance, when journal bearing temperature could cause safety-critical components to fail in operation, the detection system will cause the defective train to stop at a designated block marker, and cause all passing trains to slow to a speed of 50 mph or less. When the detectors reveal defective equipment that is less serious, but may result in unsafe operations, the system will require the equipment to move to the next siding, where it will be inspected before movement. Finally, the system will include inspection threshold alarms that will alert the Railroad to journal bearing temperature in a trainset that is significantly higher than the average temperature taken on the other journal bearings. This alarm will be transmitted to the central maintenance facility so that the appropriate inspection and repair can be completed.

The Petition contained several sections on wayside detection systems. FRA has consolidated the concept by placing them together in subpart C, and we require the Railroad to develop the detectors in conjunction with the system safety analysis required by subpart B of this NRPM. The Petition did not contain sufficient clarity concerning the detection systems, which conditions would trigger a Railroad response, and what the Railroad response would be, and so FRA invites comment from FOX and other interested parties on the language we propose in this section. It is difficult to predetermine what events may occur in Florida and how the Railroad should respond to varying levels of high wind or water, for instance. FRA believes that the system safety approach is the most effective way of dealing with all of the factors and conditions that may arise in Florida, and so we have added that connection to the proposed rule text. However, FRA is also concerned that this section may not yet be clear enough, in terms of providing notice to the Railroad and interested parties on the appropriate activity that must accompany potentially unsafe events, and what degree of safety is compromised before the activity is required. Therefore, FRA requests comments from the public on suggested language or concepts that may more fully address the risk factors presented.

Section 243.234 Protection of Maintenance-of-Way Personnel

This section requires that the signaling system include circuitry to lock-out particular block sections and restrict the speed of passing trains on these block sections or adjacent trackage for the protection of maintenance of way personnel, and that corresponding procedures be covered in the Operating Rules. This is consistent with the Petition and current U.S. requirements. FOX proposes that after receiving authorization from the CTC center, roadway workers would be able to ensure their safety by use of a local switch that will protect them from unsafe or inconsistent train movements.

Section 243.235 ATC Device Installation

This section requires that each power vehicle capable of being the lead vehicle be equipped with an automatic train control or ATC device that will operate when the trainset travels at a speed of more than 32 km/h (20 mph). This is consistent with the Petition and U.S. practice. It is important to note that FOX is designing the system to operate so that, if the ATC system does not operate correctly when the speed is greater than 32 km/h (20 mph), external backup

speed control equipment will limit the speed to 32 km/h (20 mph).

Section 243.236 Forestalling Device and Speed Control

Paragraph (a) of this section establishes the requirements of the ATC system arrangement. Paragraph (b) establishes required features of the ATC system, such as braking supervision and maximum speed supervision. This section is consistent with the Petition and U.S. practice, although the system is more advanced than systems in use in this country at the present time. FOX is designing the ATC system to incorporate the following: (1) Multiple processor architecture and on-board equipment; (2) Trackside encoders sending messages through the track beacons and short cable loops, providing notifications of upcoming curves and gradients in the next portion of the line, distances to point, and speed restrictions; (3) On-board equipment that calculates the braking curve requirements with respect to the data received.

Section 243.237 Cab Signal Indication in Accordance With Maximum Speed Limit

This section requires that while providing maximum speed supervision, the Railroad's ATC system will provide a cab signal indication of the maximum authorized speed. This will provide the locomotive engineer with valuable speed authorization information. The proposal is consistent with the petition and U.S. standards.

Section 243.238 Automatic Brake Application; Initiation When the Maximum Speed Limit Is Exceeded

This section requires that the Railroad's ATC system operate to initiate an automatic brake application when the speed of the train exceeds the maximum speed intervention curve. The Automatic brake application can be interrupted by the locomotive engineer only when the speed of the train is lower than the maximum authorized speed. This is consistent with the Petition and U.S. practice. The FOX design includes supervision for a local maximum authorized speed which will consist of: (1) Providing a cab indication of the maximum allowed speed; (2) issuing an audible and/or visual warning if the trainset speed exceeds the maximum allowed speed by a predefined margin and; (3) automatically applying the brake if the trainset speed exceeds the maximum authorized speed by a predefined margin.

Section 243.239 Advance Cab Signal Indication.

This section requires that the ATC system provide a cab signal indication of the target speed and distance before commencing the braking supervision, thus allowing the locomotive engineer to respond by a manual brake application. The section is consistent with the petition and U.S. standards. The opportunity for information enabling a manual brake application by the locomotive engineer is obviously more desirable than resorting to ATC system braking intervention.

Section 243.240 Automatic Brake Application Initiated by the ATC

This section requires that the ATC system initiate an automatic brake application to ensure compliance with target speed and target distance, in the absence of an appropriate response to a cab display indication on the part of the locomotive engineer. This is consistent with the Petition and U.S. practice. The FOX system will be designed so that prior to intervention, the ATC system will provide an audible and/or visual warning so that intervention will be avoided if the engineer reacts within a pre-defined delay.

Section 243.241 Cab Signal Indication After Authorization to Enter a Block Section Where Conditions Defined in § 243.219 Exist

Paragraph (a) of this section requires that if a trainset is authorized to enter a block section in which any condition listed in § 423.219 of this Part exists, the ATC system must display an indication to ''Proceed at Restricted Speed.'' Paragraph (b) requires if the restricted speed is exceeded, the ATC must initiate an automatic brake application. This is consistent with the Petition and U.S. practice. This section will ensure that if another trainset is occupying the block, a switch point is not closed in the proper position or something such as a broken rail is causing a track relay to be deenergized, the trainset authorized to enter such block will be protected from a collision or derailment.

Section 243.242 Audible Indicator

This section requires that the audible cab indicator have two distinctive sounds and be clearly audible throughout the cab under all operating conditions. When the cab display changes, the audible indicator will sound briefly (for approximately 0.5 seconds) to draw the locomotive engineer's attention to the change. This sound will be used to draw the engineer's attention when there is some change in the speed authorization, whether permissive or restrictive. There will be no acknowledgment necessary for this sound. A different audible warning will sound before an automatic brake application is initiated. The warning will be given in sufficient time to allow the locomotive engineer and the train brake equipment to respond to the change. This indicator will sound continuously until the warning condition disappears. The section is consistent with the Petition and U.S. practice. Methods to silence or muffle the audible indicator, such as tampering with the audible device, would be prohibited.

Section 243.243 Delay Time

This section requires that the delay time of the ATC train-borne equipment ensure that the trainset complies with the target speed and distance through the brake application initiated by the system. This section is consistent with the Petition. The principle of the ATC system does not factor in a preset delay time of 8 seconds, as is required by 49 C.F.R. 236.563. Instead, the system permanently checks the level of braking available on the train and takes into account these data to compute the warning and braking curves.

Section 243.244 Automatic Brake Application; Full Service

This section requires that an automatic brake application initiated by the ATC system will cause a full service application of the brakes. This is consistent with the Petition and U.S. practice. FRA will consider a full service brake application to be an application of the brakes, other than emergency, which develops the maximum brake cylinder pressure, as determined by the design of the brake equipment for the speed at which the train is operating.

Section 243.245 Interference With Application of Brakes by Means of Brake Valve

This section will ensure that the ATC apparatus is arranged so the automatic application of the brakes cannot be interfered with by means of the brake valve and the efficiency of the braking system will not be impaired, thus assuring safe train movements. This is consistent with the Petition and with U.S. practice.

Section 243.246 Control From Lead Vehicle

This section requires that each trainset be controlled and operated from the lead vehicle. Each lead vehicle will be equipped with an ATC device. This device will have a fail safe and fault

tolerant architecture, such as a two out of three voting architecture. This is consistent with the Petition and constitutes a desirable method of ensuring safety of train operation and system reliability.

As defined in this proposal, ''fault tolerant architecture'' means the built-in capability of a system to provide continued (full or limited) operation in the presence of a limited number of faults or failures of the system, such as a defect in a hardware device, component or an incorrect step, process or data definition in a computer program.

''Two out of three voting architecture'' means three independent processors operating on dissimilar software operating in such a manner so as to compare the software output from each processor to ensure safety critical results match. If one processor produces an answer inconsistent with the other two processors the conflicting processor is taken off-line and the two remaining processors continue to compare with each other and drive safety critical commands, only as long as they both agree. If the remaining two processors fail to agree, the system will cease to issue safety critical commands and will be shut down and assume a safe state.

Section 243.247 Proper Operative Relation Between Parts Along Roadway and Parts on Power Car

This section requires that ATC track-side and power car components be designed and operate in compatibility under all conditions of speed, weather, wear, oscillation, and shock. This section is consistent with the Petition and U.S. practice, and will ensure ATC system reliability under various outside influences.

Section 243.248 Visibility of Cab Signals

This section requires that cab signals be plainly visible to the locomotive or power car crew from their stations in the cab. The proposal is consistent with the Petition and U.S. practice. Cab signals will be required to be installed so that the crew member or members can plainly see aspects displayed from their normal position in the cab. The cab signal will be required to be properly illuminated, without cracked or broken roundels and its view not obstructed by other equipment installed in the cab.

Section 243.249 Power Supply

This section requires that the ATC system operate from a separate or isolated power supply. The proposal is consistent with the Petition and U.S. practice. Power supplies for ATC systems should be separate and distinct to eliminate interference from other electrical control circuits, thus ensuring reliable power to the ATC system.

Section 243.250 Seal, Where Required

This section requires that a seal be maintained on any device other than the brake-pipe cut-out cock (double-heading cock), where the operation of the pneumatic portion of the automatic train-control apparatus can be cut out. This is consistent with the Petition and U.S. practice. The seal is required to be applied in such a manner that the device cannot be operated to cut out the apparatus without breaking the seal. This provides a means to prevent tampering with the ATC system.

Section 243.251 Rate of Pressure Reduction; Equalizing Reservoir or Brake Pipe

This section will ensure that equalizing-reservoir pressure or brake-pipe pressure reduction during an automatic brake application will be at least equal to a manual service brake application. This is consistent with the Petition and U.S. practice, and will prevent an automatic brake application from being less effective than an application by the locomotive engineer.

Section 243.252 Restrictions Imposed When Device Fails and/or is Cut Out En Route

Paragraph (a) of this section provides instructions for train operation in the event of ATC system failure or when the ATC system is cut-out en route. It is important to note that, for purposes of Subpart C, the ATC system will be considered to be in failure when two or more of the on-board processors are not operating as intended. If one on-board processor malfunctions, the remaining two are designed to capably operate the train safety, and so this event will not be considered to be an ATC failure. It is also important to note that, for purposes of this Subpart, ATC failures are not limited to malfunctioning on-board processors. A variety of conditions may occur to result in ATC failure, and all of them are contemplated by the language in this Subpart.

Paragraph (b) requires that where an ATC system fails or is cut out en route, the Railroad must test the ATC, record the results in accordance with § 243.276 (departure test) and § 243.278 (results of tests), and determine that the ATC is fully operative before the trainset leaves its next initial terminal. This section is consistent with the Petition and U.S. practice.

Section 243.253 The Trackage

This section requires that the trackage over which the Railroad operates trains in revenue service be completely equipped with wayside equipment designed to interface with and provide safety control commands to the lead vehicle of trainsets which operate over that trackage. Signaling beacons and antennas will be installed and maintained in accordance with manufacturer's specifications. This is consistent with the Petition and U.S. practice. The ATC system wayside equipment proposed by FOX will consist of active beacons and cable loops which will be used to transmit intermittent and semi-continuous data from the track to the train. The appropriate quantity of beacons and loops will be calculated in order to meet performance targets and will be adapted to the local conditions. Wayside encoders will be used to store permanent data for the topology of the line, and the data sent to the train through beacons and loops will interface with the interlocking system.

Section 243.254 Cut Out of the ATC System

This section requires that any cut out of the ATC system or activation of the acknowledging device be registered in the on-board event recorder. This is consistent with the Petition and an improvement over current U.S. practice, which currently involves keeping a record of system cut-out. This section will ensure accurate data depicting any ATC system intervention.

Reporting Requirements

Section 243.255 Accidents Resulting from Signal Failure

This section requires that the occurrence of an accident/incident arising from the failure of an appliance, device, method or system to function or indicate as required by this NPRM that results in a more favorable aspect than intended or other conditions hazardous to the movement of a train, shall be reported within 24 hours to the FRA by toll free telephone number, 800–424–0201. This is consistent with the Petition and U.S. practice.

Section 243.256 Signal Failure Reports

This section establishes a time period of five days in which the Railroad must report each failure of an appliance, device, method, or system to function or indicate as required by these standards that results in a more favorable aspect than intended or other condition hazardous to the movement of a train. Form FRA F6180–14, ''Signal Failure

Report,'' must be used for this purpose and completed in accordance with instructions printed on the form. This section is consistent with the Petition and will constitute a recordkeeping requirement. Current U.S. requirements dictate a time period of fifteen days. However, since this is a controlled environment and proper ATC system operation will be vital to the safety of the passenger trains operating at high speeds, there is a need for faster notification by the Railroad and an FRA investigation concerning any unsafe signal failure.

Section 243.257 Annual Signal Systems Report

This section requires that the railroad file an annual signal systems report, which will detail current signal system information, on a form provided by FRA in accordance with instructions and definitions on the reverse side of the form. This section was not in the Petition, but is consistent with current U.S. practice.

Inspection, Testing and Maintenance

Section 243.258 General

This section requires that the Railroad's inspection, testing and maintenance program be designed to ensure that the safety of the Railroad's signaling system does not deteriorate over time, in accordance with § 243.107 of this proposal.

Section 243.259 Interference with Normal Functioning of Device

This section requires that inspection, testing and maintenance will not interfere with or alter the normal functioning of any signal device, except after measures are in place to provide for the safety of train operations that depend on normal functioning of such device. This is consistent with the petition and U.S. practice. Interference would be any condition that circumvents, hinders, impedes, or diminishes whatsoever the intended protection of a device, and may be done by testing, installing, repairing, replacing, operating, or manipulating a component indicating or affecting the indication of safe passage for trains. There will be no difference between accidental or intentional interference with respect to the enforcement of this rule.

Section 243.260 Operating Characteristics of Electromagnetic, Electronic, or Electrical Apparatus

This section requires that signal apparatus which affects the safety of train operations, be maintained in accordance with the design limits of the device. This is consistent with the Petition and U.S. practice. The railroad must have specifications setting forth the pick-up values, release values, working values, and condemning limits of these values for all applicable signal apparatus in use on its property. Manufacturer specifications or Railroad standards compatible with manufacturer specifications will be used to determine such values.

Section 243.261 Adjustment, Repair, or Replacement of Component

This section requires that when any component of a signal system that is essential to the safety of train operation fails to perform its intended signaling function or does not correspond with known operating conditions, the cause shall be determined and the faulty component adjusted, repaired or replaced as soon as possible. This is consistent with the Petition and U.S. practice. The Railroad would be required to determine the cause of each ''stop'' or ''stop and proceed'' aspect resulting from an unknown condition. If that condition is the result of the failure of a signaling component and is a hazard to safe operations, corrective action is required before the next train movement.

Section 243.262 Purpose of Inspection and Tests; Removal From Service of a Relay or Device Failing to Meet Test Requirements

This section requires all inspections and tests to be made in accordance with the specifications of the Railroad and approved by FRA as part of the system safety plan. Tests should be made to determine if the equipment is maintained in the appropriate condition so that it will consistently perform its intended function. Any electronic device, relay, or other electromagnetic device that fails to meet the requirements of the specified tests will be removed from service, and not returned to service until its operating characteristics are consistent with the design limits. This is consistent with the Petition and U.S. practice. This section would apply to all devices that effect the safety of train operations. It is understood and accepted throughout the railroad industry that all signal devices must be designed so that the limits of their operating characteristics provide adequate safety margins.

Section 243.263 Point Detector Test

This section requires the Railroad to test point detectors operated by power-operated switch movement at least once every three months. This test ensures that a safe tolerance of switch point closure is maintained. This section is consistent with the Petition and U.S. practice.

Section 243.264 Relays; Microprocessor Testing

Paragraph (a) of this section requires that each safety-critical, train-borne ATC relay be tested at least once each year to ensure the correct parameters of the relays. Paragraph (b) requires that each safety-critical, wayside relay be tested at least once every four years to ensure the correct parameters of the relays. Paragraph (c) requires the Railroad to test each safety-critical, train-borne electronic subsystem which is not verified internally on a continuous basis at least once each year. Paragraph (d) provides that each safety-critical, train-borne electronic subsystem, in which proper operation is verified internally in a closed loop fashion, will not require periodic tests. Subsystems that contain continuous verification will not need to be tested because of their fail safe design. Paragraph (e) requires the Railroad to test each safety-critical wayside electronic subsystem, which is not verified internally on a continuous basis, at least once every two years. Paragraph (f) provides that each safety-critical wayside electronic subsystem, in which proper operation is verified internally in a closed loop fashion, will not require periodic tests.

The paragraphs in this section are consistent with the Petition and U.S. practice. Although the relay testing requirements of this rule are based on 49 CFR part 236, new language has been added to this proposal in order to address microprocessors.

Section 243.265 Ground Tests

Paragraph (a) requires the Railroad to test for grounds on each safety-critical energy bus furnishing power to circuits at least once every three months. Paragraphs (b) and (c) provide exceptions to this requirement. Periodic ground tests would not be required if ground detection devices are properly functioning, or if the design of circuits is such that a grounded energy bus could not impact the safety of train operation. An inspection of the ground detection device to ensure proper operation of the device will be required at least once every three months. This section is consistent with the Petition, except for the inspection of ground detection devices, and with U.S. practice, except that ground tests are not required when automatic detection devices are used. If ground detection devices are used, such devices should

be verified for proper operation on a periodic basis.

Section 243.266 Insulation Resistance Tests; Wires in Trunking and Cables

Paragraph (a) of this section requires that an insulation resistance test of signal system wires and cables be made at least once every 10 years to ensure that circuit conductors are in proper working order for the safe operation of the signal system. Paragraph (b) provides that a circuit may not be permitted to function on a conductor that has an insulation resistance to ground or between conductors of less than 200,000 ohms. When a test reveals this condition, the conductor must be removed from service immediately to avoid the risk of an unsafe failure in the Railroad's signal system. This section is consistent with the FOX petition and U.S. practice.

Section 243.267 Time Releases, Timing Relays and Timing Devices

This section requires the Railroad to test time releases, timing relays, and timing devices at least once each year. The timing must be maintained at no less than 90 percent of the predetermined time interval, to ensure adequate predetermined parameters, such as train braking distance calculations. The predetermined time will be shown on the plans or marked on the time release, timing relay, or timing device. Where time releases are an integral part of a safety-critical, processor-based controller, and are specified in the applications program, such intervals must be tested only at the time of installation and whenever a change is made in the applications program. This section is consistent with the Petition and with U.S. practice.

Section 243.268 Time Locking

This section requires that where time locking is an integral part of a safety-critical, processor-based controller, and is specified in the applications program, the locking will be tested at the time of installation and whenever a change is made in the applications program. This is consistent with the Petition. The time locking test will determine that no route can be changed until a predetermined amount of time has expired, ensuring the safe movement of the train whose route has been established. There will be no periodic testing required under this rule, such as once every two years, which is required in 49 CFR part 236, because the vital logic processor of the interlocking controller will employ two processors that operate simultaneously in a redundant, checking-system architecture. All safety-critical operations will be continuously performed by both processors. The solid state controller will be based on closed loop principles, software diversity, and the use of vital hardware design techniques.

Section 243.269 Route Locking

This section similarly requires the Railroad to test route locking at the time of installation, whenever a change is made in the applications program, and when route locking has been disarranged. This is consistent with the Petition, except that FRA has included the test requirement ''when route locking has been disarranged.'' In this context, the term ''disarranged'' could apply to several circumstances. Route locking will be considered to be disarranged when: a vital relay, if used, in the route locking circuit is replaced with another; when two or more conductors are severed; when a cable or conductor in a locking circuit is replaced with another; or when wires are removed at the same time from more than one terminal of a relay or terminal board. The route locking test will determine that a train's route cannot be changed once the train has passed a signal indicating proceed until the train has cleared the track section of the route governed. No periodic testing is required by this proposal for the reasons previously stated in § 243.268.

Section 243.270 Indication Locking

This section similarly requires that indication locking be tested at the time of installation, whenever a change is made in the applications program and when the indication locking has been disarranged. This is consistent with the Petition and U.S. practice, except that no periodic testing is required for the reasons stated previously. The indication locking test will ensure that no conflicting route can be established, and no power-operated switch can be moved with a route already established for a train.

Section 243.271 Traffic Locking

This proposed section requires the Railroad to test traffic locking at the time of installation and whenever a change is made in the applications program. This is consistent with the Petition and U.S. practice, except that there will be no periodic testing required by this rule for the reasons stated previously. The traffic locking test will determine that the direction of train traffic cannot be changed, for instance, an opposing proceed signal displayed, where a route is already established for a train in one direction.

Section 243.272 Switch Obstruction Test

This section requires the Railroad to conduct a switch obstruction test of each switch when the lock rod is installed, and at least once every 3 months. This section is consistent with the Petition. This deviates from the monthly switch obstruction test currently required of existing railroads because of the differences in the FOX operating environment. FRA believes that switches will experience little or no variation from their original adjustments.

Section 243.273 Locomotive or Powercar Power Supply Voltage Requirement

This section requires that the output voltage of the power supply for FOX locomotive ATC will be maintained within 10 percent of rated voltage. This will ensure adequate and steady energy to operate the ATC system. This section is consistent with the Petition and U.S. practice.

Section 243.274 Power-Car or Locomotive Insulation Resistance; Requirement

This section requires that when the periodic test prescribed in § 243.266 is performed, insulation resistance between wiring and ground of the automatic train control system may not be less than one megohm. This deviates from the Petition by stating a value for minimum insulation resistance. This requirement is based on current practice for existing operations in this country. The standard referred to in the FOX Petition for insulation resistance (EN–50155) does not state a minimum value, and hence, provides no notice as to what the standard is and would be unenforceable.

Section 243.275 Antennas and Beacons

This section requires the Railroad to inspect and maintain signaling beacons and antennas in accordance with manufacturer's specifications. Also, antennas and beacons that have been repaired or rewound must adhere to the same operating characteristics which they possessed originally or as specified for new equipment. This proposal would ensure that the beacons or antennas are in condition sufficient to transmit reliable data to the on-board ATC equipment. This section is consistent with the Petition and U.S. standards.

Section 243.276 Departure Test

Paragraph (a) of this section requires the Railroad to test the train-borne ATC

equipment by operation over track elements, by operation over a test circuit, or by an on-board test device in order to ensure a reliable means of testing the apparatus. Paragraph (b) requires the Railroad to determine the extent of the departure test in accordance with the system safety analysis described in Subpart B, and include, at a minimum, ground-to-train transmission, the cab display indications, and the interface with the train brakes.

Paragraph (c) requires the Railroad to perform a departure test, and put on-board ATC equipment in service before the trainset operates over equipped territory. If the ATC is cut out, the Railroad must perform another departure test before the ATC equipment can be considered operative. Paragraph (d) provides only one departure test is required in each 24-hour period, except as provided in § 243.252(b) concerning failures or cut-outs en route. This is consistent with current U.S. practice and has provided a high level of safety.

Paragraph (e) requires the Railroad to record each test run and its outcome in the train-borne event recorder, downloaded and retained for at least one year. This will provide a database in the event that a determination of proper testing is needed.

This section is consistent with the Petition and U.S. practice, except for the train-borne event recorder requirement, which is a desirable feature of this ATC system that will enhance safety. ''On-board equipment'' will consist of the on-board unit, vehicle antenna, cab display, and systems that will interface with the train, including a speed measurement system, an event recorder, and an on-board microprocessor system network. The on-board unit consists of processing logic and receiving/transmitting equipment. The vehicle antenna will be mounted under the power-car frame and will receive line description data. The cab display will include the actual speed of train, target speed, target distance, and maximum authorized speed information.

Section 243.277 Periodic Test

This section requires the Railroad to perform a periodic test of the train-borne ATC equipment at least once every two months and on multiple-unit cars as specified by the Railroad, subject to approval by FRA. The Petition recommended a periodic test at least once each year. Current U.S. practice requires a periodic test at least once every 92 days. However, existing standards require a ''daily or after trip test,'' unless a periodic test is done at intervals of not more than two months. It is FRA's belief that, unless the Railroad intends to perform daily or after-trip tests, the ATC equipment should be tested on the same periodic basis as required by current U.S. industry standards. FRA sees nothing in the FOX system to make this requirement unnecessary, and believes that the test enhances safety with minimal cost.

Section 243.278 Results of Tests

This section requires the Railroad to record the results of tests made in compliance with §§ 243.252(b), 243.262 through 243.272 inclusive, 243.276, and 243.277. This section sets forth the required information for recording tests either via pre-printed or computerized forms, or by electronic means. This section is consistent with the Petition and U.S. practice.

Section 243.279 Independent Verification and Validation

This section describes the process by which an independent entity with known technical expertise will conduct an audit of all safety-critical, processor-based equipment in the Railroad's signal system. The audit must be done on the system as it is finally configured, and before revenue operations commence. Paragraph (b) lists the items that the audit must review, and paragraph (c) requires preparation of a report by the independent audit firm. Paragraph (d) describes the procedure by which the report and the Railroad's signal system will be accepted.

FRA believes that this process is necessary in order to ensure the integrity of the FOX signal system. As discussed earlier, the system is not currently in revenue service anywhere in the world, and although safety experts agree that it will likely improve railroad safety, there is no safety record available on which FRA can assess the system's reliability and endurance during operations. Of particular concern is the likelihood of severe weather in Florida, which could disrupt or obliterate the operation of the signal system. FRA believes that an independent audit of the system's software and processors will reveal any system weakness and assist the Railroad in mitigating hazards. FRA does not have the expertise at this time to conduct such an audit, and so seeks appropriate input from recognized, independent experts in the field before the system is approved for revenue service. FRA has required other companies to undergo similar independent validation and verification inspections, and believes that such an inspection is equally wise in the case of FOX. FRA understands that the FOX signal system is being tested presently in Belgium, and will likely be used in revenue service in Europe prior to the commencement of FOX operations. FRA anticipates that the European testing will reveal and correct potential problems, which will benefit FOX and help to focus the review done on the system in the U.S. However, FRA expects that the right-of-way chosen for Florida and the extreme weather conditions that exist, present new factors that will not be considered during the testing in Europe. For all of these reasons, FRA believes that an independent audit would greatly enhance the safety of the system, and will ultimately work to the Railroad's advantage. This proposal was not included in the Petition. FRA seeks comment from the public concerning the value of the audit and any other information that the Agency should evaluate concerning the FOX signal system.

FRA suggests as a guide a verification and validation study commissioned by the Volpe Transportation Systems Center, and completed by Battelle in 1995, entitled Safety of High Speed Ground Transportation Systems, Analytical Methodology for Safety Validation of Computer Controlled Subsystems, Volume 1: State-of-the-Art and Assessment of Safety Verification/ Validation Methodologies (Battelle Volume 1 Report), and Volume 2: Development of a Safety Validation Methodology (Battelle Volume 2 Report).

Subpart D—Track Safety Standards

Subpart D of the NPRM sets forth minimum track safety standards for the FOX system. These proposed standards are based on the Petition, the Agency's proposed high speed track standards for general application in the U.S. railroad industry (62 FR 36138, July 3, 1997) known as ''Track Subpart G,'' and other pertinent standards used internationally. A brief discussion of each of these is warranted, in order to understand the standards proposed in this NPRM for application on FOX.

FRA's Railroad Safety Advisory Committee (RSAC) convened a working group to revise, where appropriate, the existing track standards that govern track safety in the general railroad system (49 CFR part 213). The working group included representatives from rail labor, railroads, trade associations, state government groups, track equipment manufacturers, and FRA. The working group established a special task group, which consisted of individuals with

high speed track expertise, to focus specifically on new high speed track standards.

The high speed task group recognized that high speed track safety standards should be based on sound engineering research, and foreign and domestic practice, and, be understandable, cost beneficial, and enforceable. With these principles in mind, the task group concluded early on that it could not consider high speed track or high speed vehicles in isolation but must consider them as an integral system. This approach led to the development of vehicle/track interaction performance limits—the cornerstone of the group's recommended standards.

The task group asked FRA's Office of Research and Development to organize an effort to provide recommendations on vehicle/track interaction and track geometry. An informal group of experts, including members of the FOX consortium, contributed to this effort. Engineering studies conducted by the experts included evaluation of the use of measuring track geometry with offsets from several chord lengths, computer simulations of vehicle response to track surface and alignment variations, application of the proposed specifications to previously measured track geometry, and comparison of specifications to foreign practice.

The work began with general acceptance of established parameters for vehicle/track interaction (VTI). Then, through analysis of modelling, test data, and foreign practice, the group of experts selected a small number of descriptors adequate to assure freedom from derailment and other hazardous vehicle/track interactions. For the most part, these proposals were considered appropriate for both dedicated track and mixed-traffic environments. The recommendations of the experts on the topics of VTI and track geometry were considered by the high speed task group and incorporated into its recommendation to the RSAC track working group for Track subpart G. The RSAC track working group also accepted the recommendations of the high speed task group, and they became part of Track subpart G, as it was published by FRA for comment on July 3, 1997.

After the track working group forwarded its recommendations to RSAC, members of the high speed task group and its supporting panel of experts met with a separate group who were working on FRA's proposed passenger equipment standards for high speed rail (Tier II). The purpose of this meeting was to ensure that the proposed track standards and the proposed equipment standards would not conflict. The conclusions reached during this meeting are pertinent to this NPRM and are discussed in detail below.

Members of the FOX consortium and FRA staff participated in the development of Track subpart G, and did so with the knowledge that those standards would apply generally to high speed operations across the country. However, it was understood that portions of the FOX Petition and FRA's proposed track standards for FOX might vary from Track subpart G, in this rule of particular applicability, in order to accommodate and assess accurately the specific safety needs in Florida. Therefore, it is not surprising that FOX incorporated many of the Track subpart G proposals in the Petition, that FRA proposes many of those recommendations here, and that both FRA and FOX believe portions of Track subpart G may not adequately address safety standards for the system planned for Florida.

In its Petition, FOX altered some of the proposals that are contained in Track subpart G, based on the operating characteristics that will exist in Florida, such as the absence of freight equipment, and the French TGV practice. The Petition, however, is not identical to the French TGV practice either. As FRA understands it, FOX believes that the lower train density, detection systems, and other operating conditions that will exist in Florida that are not also present in France, merit some reconsideration of the French general practice on high speed lines.

FRA believes that the majority of Track subpart G is applicable to all high speed environments, including the environment proposed in the Petition. FRA is in agreement with FOX that certain specific standards, particularly those pertaining to inspection methods and frequencies, are largely dependent on the loads associated with the types and amount of traffic on the high speed line. The dynamic loads associated with different types of traffic affect the rate of track degradation, which is an important factor to consider when selecting an inspection strategy. Any comprehensive inspection strategy must include automated and visual inspections, which together ensure that the track maintains a high quality, so that it will not induce adverse vehicle response and will withstand the dynamic loads imparted to the track.

In this NPRM, FRA alters some of the inspection frequencies that were set forth in Track subpart G, due to the fact that the FOX system will not include freight traffic, and because of the other operating features that are unique to FOX. Also, FRA reviewed practices utilized on the French TGV and on Japan's high speed rail system, and weighed the appropriateness of those standards to the Florida system. Finally, as discussed previously in this document, FRA recognizes that there are unknown factors, which may present risks or benefits to passengers and employees, that arise because the French system works in a very different financial and legal framework; the US workforce does not possess great institutional knowledge of the system; the Florida topography and weather differ greatly from France; and the FOX system will include features that do not exist now, and have no reliable safety record on which to predict safety. FRA proposes a track safety program that reflects all of the available relevant information, and consideration of the unknown elements outlined above.

Subpart D of this proposal represents FRA's best judgment on appropriate track safety standards that will effectively protect passengers and employees in Florida. FRA anticipates that FOX will object to some of the inspection intervals set forth in this NPRM. FRA believes that the minimal costs associated with the increased inspection frequencies are outweighed by the safety benefit that will accrue to the system, and take into account some of the unknown risks that result from moving this system from France to North America that were discussed previously in this document.

Section 243.301 Restoration or Renewal of Track Under Traffic Conditions

This section, except for minor editing, mirrors the Petition. There are two elements of concern addressed in this section: the track structure stability must not significantly degrade, and roadway worker safety may not be compromised. Only track maintenance involving replacement of worn, broken, or missing components or fastenings, which does not affect safe train movement is permitted. Paragraph (b) prohibits specific activities during train operations, which would compromise track stability and railroad safety.

Section 243.303 Measuring Track not Under Load

This section is identical to the Petition and is consistent with the present track safety standards, which require that any rail movement occurring while the track is loaded must be added to the measurement of the unloaded track.

Section 243.305 Drainage

This section is identical to the Petition and current U.S. practice. The Railroad must design and maintain the right-of-way so that water drains without obstruction, and to such an extent that safe train operations are not jeopardized.

Section 243.307 Vegetation

This section corresponds to the Petition and current U.S. practice. The Railroad must restrict the growth of vegetation along the right-of-way so that it will not interfere with safe train operations.

Section 243.309 Track Geometry; General and Section 243.311 Track Gage

FRA's proposal for §§ 243.309 and 243.311 concerning track geometry and track gage differs from the Petition. FRA's proposal essentially incorporates and expands upon the geometry table found in the Petition, which follows the French TGV's geometry inspection techniques. However, FRA includes a second intervention table to address multiple defects, the requirement to make an additional chordal measurement, additional requirements for the geometry measurement system, and other changes that FRA believes are necessary for safety.

FOX asserts that the values used in the Petition are identical to those used by the French TGV, which permit wider and narrower gage than would be acceptable for railroad operations in this country. Gage limits are extremely important to railroad safety because high wheel forces and wheel climb can occur in tight gage conditions, and high wheel forces and sudden wide gage can occur in wide gage conditions. These conditions can cause train derailments and incidents.

FOX proposes to use the European combination of rail and wheelset profiles, including the wheelset flange back-to-back dimensions, which are slightly different than standard US designs. The significance of these dimensional variations is that the distance between the flange points on a nominal FOX-style wheelset will be very close to the distance between flange points on a standard US wheelset. There is an increase in the tread cone angle of the FOX wheel profile from a 1-in-40 slope to a 1-in-6.67 slope for the last 20 mm of the tread, which would tend to increase any gage widening forces if the wheel experiences very wide gage. The flange back-to-back dimension is larger than permitted under current US practice and should be considered when designing guard rails and flange ways.

FRA is concerned that the Petition would allow tight gage up to 170 km/h (105 mph). The use of 1420 mm gage with wheelsets in nominal condition would cause more than ½″ wheel climb on both wheels. Based on these dimensional analyses, FRA recommends that the minimum gage be modified to 12 mm less than nominal for speeds below 105 mph.

FRA has concluded that several modifications to the Petition are necessary to address additional key safety concerns in this regard. The Petition does not include a provision for multiple or repeating defects, but FRA believes that such provisions are essential to a comprehensive set of minimum track safety standards. The basis of this concept is that safe railroad operations are jeopardized by a series of track defects that in isolation may not be troublesome, but in combination may result in train incidents or accidents. The panel of experts who advised the high speed track task group considered the case of multiple alignment defects and their ability to excite harmonic motion in the carbody. Multiple deviations were considered to occur when three or more non-overlapping deviations from uniformity in track alignment occurred within a distance equal to five times the specified chord length.

FOX states that the Mauzin car, (or track geometry measurement system, as it is called in the proposed rule text), which is a geometry car used in French TGV track inspection, will be used to measure track geometry in Florida. This car does not detect multiple defects. Therefore, FRA proposes provisions in this document to compensate for this deficiency, based on French practice and Track Subpart G, so that a level of safety equivalent to the proposals of Track Subpart G is maintained. In § 243.309, FRA modifies the geometry table FOX proposed in the Petition.

FRA's modifications are consistent with FRA's understanding of French TGV practice, which includes several levels of track geometry defects that require varying levels of remedial action over different periods of time, as determined by the magnitude of the measurements from the Mauzin car. FRA's proposal makes these French maintenance practices the minimum safety requirements for track geometry measurement. FRA believes that it is important to include these practices in the two-table approach proposed by FRA, because the two intervention tables, in combination will prevent multiple defects from occurring. Multiple defects are addressed in a different manner in Track Subpart G, where specific thresholds are established when more than one defect occurs in rapid succession.

The use of these multiple intervention levels identify deteriorating track conditions before they become critical track defects. This practice makes the occurrence of critical multiple defects less likely to occur than would otherwise be expected with a single, safety-level strategy. To capture the desired level of safety, the high speed task group recommended adopting a multiple defect table. Another approach would be a bi-level intervention table, in which the first level would require remedial action within a reasonable period of time to correct defects, and the second level would require immediate action to correct critical defects. FRA's proposal incorporates these concepts.

Aside from the differences outlined above between the Petition and FRA's proposal, FRA adds a chordal measurement that would not be required under the Petition. The FOX petition proposes two chordal measurements to identify critical alignment defects. Careful dynamic analyses indicate that track anomalies with wavelengths at approximately 20 meters can cause unacceptable vehicle responses and may not be detected by the thresholds proposed in the Petition for the 10-meter and 31-meter chordal measurements. FOX engineers have informed FRA that French TGV maintenance practice and use of the Mauzin car, particularly the use of 20-meter chordal measurements by the equipment, precludes the existence of these critical track defects. However, such maintenance practice is not covered by the Petition, and so does not provide the level of assurance desired in this important area. FRA proposes here that the measurements obtained through use of the Mauzin car be processed in a manner similar to the process used to create the 31 meter chord offsets to create a 20-meter chordal measurement. FRA proposes appropriate thresholds for this chord in the tables provided in § 243.309.

For the reasons explained above concerning multiple defects, warp, and related geometry considerations, FRA has concluded that the approach to track geometry that is proposed in the Petition would be acceptable only if the measurements are performed with a measurement vehicle that is similar to the Mauzin car, or the track geometry measurement system. Therefore, as set forth in § 243.331, the standards proposed in this document apply if FOX uses a Mauzin-type vehicle. If FOX does not use a Mauzin car or the track geometry measurement system, the

requirements of Track Subpart G would apply.

Section 243.313 Curves, elevation and speed limitations

This section of the NPRM is unchanged from Track Subpart G and the Petition. The section provides for a procedure in which the Railroad may seek approval to operate equipment at higher curving speeds, based on engineering data. FRA utilizes these procedures when processing waivers for higher cant deficiencies. In order to operate with higher cant deficiencies, the Railroad must submit specified engineering data and analysis to FRA that determines safe operations at the new level of cant deficiency. This information would also be part of the Railroad's determinations concerning safe curving speeds.

Section 243.315 Track Strength

This section is identical to Track Subpart G and the Petition. FRA concurs that the track must be of very high quality to withstand the vertical and lateral loads associated with high speed trains. During the high speed task group discussions, the subject of track modulus was discussed at great length. Track modulus is a physical measurement of the strength of the track. However, it is difficult to measure track modulus with present technology. Track Subpart G and FRA's proposal do not include a specific numeric value for the vertical and lateral strength of the track. Rather, FRA relies on the track's safety performance, as determined by the monitoring of vehicle/track interaction and track geometry measurements required in §§ 243.309, 243.311, and 243.333.

Section 243.317 Crossties

The Petition would require concrete ties for all tracks that carry passenger service trains and FRA includes this proposal in this NPRM. FRA has made a small change from the Petition concerning all other track, by increasing the number of non-concrete ties from 14 ties in each 39 foot segment of track, to 18 ties in each segment. The remainder of this section mirrors the tie requirements contained in Track Subpart G for higher track classes, and the existing track safety standards for the lower classes. This section also lists characteristics of defective concrete or non-concrete ties, which must be replaced by the Railroad. In all cases, the ties must be capable of holding gage, maintaining surface, and maintaining alignment within the geometry limits specified in § 243.309.

Section 243.319 Continuous Welded Rail (CWR)

This section is consistent with Track Subpart G and the Petition and lists requirements for effectively installing, adjusting, and maintaining CWR. The Railroad must submit a plan to address CWR installation, adjustment, maintenance and inspection, and a training program for the application of those procedures. The procedures must follow the detailed guidelines set forth in this section of the NPRM, which represent current industry practice to protect against track buckling.

Section 243.321 Rail End Mismatch

This section of FRA's proposal is identical to Petition. The values listed in this section for rail end mismatch represent pervasive industry practice in the U.S. and abroad. Controlling mismatched rail is essential for the safety of a high speed operation. If a wheel flange would encounter a mismatch of the rail on the gage corner, an accident or incident would be likely. The limits included for this condition follow FRA's present track safety standards for Class 6 track.

Section 243.323 Rail Joints and Torch Cut Rails

FRA's proposal concerning rail joints and torch cut rails differs from the Petition. FOX stated in its petition that the requirements pertaining to rail joints found in Track Subpart G were not included in the Petition because they would not be utilized at all on the Railroad in Florida. As FRA understands it, the French TGV practice does not permit rail joints and so FOX would also not permit them on the system in Florida. However, FRA believes that it is essential to include minimum Federal standards for the condition of joint bars, because joint bar failures or disturbances can quickly lead to train accidents or incidents. If the operating and maintenance practices employed by FOX do not permit unsafe joint bar conditions to develop, the Railroad will have no difficulty in maintaining compliance with this proposal.

In addition, the Petition would permit torch cutting, even in routine welding tasks on the Railroad's track. Based on its own expertise and consistent with the high speed task group's recommendations in Track Subpart G, FRA permits torch cutting rails only in emergency situations. Current U.S. practice utilizes torch cutting only where needed for emergency repairs. It is generally believed in this country that technology has advanced to the point that cutting rail with the available variety of rail saws is more efficient than torch cutting.

Torch cuts present safety hazards in the railroad environment. In 1983, following its investigation of an Amtrak derailment in Texas where torch cut rails became an issue, the National Transportation Safety Board (NTSB) recommended that railroads remove all torch cut rail and that trains travel at 10 mph over any new torch cuts that were made in emergency situations, or as a preparatory step in field welding. It should be noted, however, that the rail involved in the Texas accident had a high alloy content, which tends to increase the rail's resistance to wear, but decreases the rail's resistance to fracture. Torch cutting is no longer used in the U.S. industry because analysis reveals that torch cut rails have a greater tendency to develop fractures, and FRA believes that FOX should not utilize torch cutting on its system. FRA's proposal lists emergency or temporary conditions in which torch cutting may be used, but otherwise prohibits the practice.

Section 243.325 Turnouts and Crossovers, Generally

FRA's proposal is identical to the Petition and Track Subpart G. The members of the high speed task group discussed many types of turnout designs and fastenings, which may be in use today or developed in the future. The group believed, and FRA adopts in this proposal, that the best way to address turnouts would be to require each railroad to prepare a detailed, comprehensive Guidebook on the inspection and maintenance for all turnouts and crossovers. The book would contain, at a minimum, inspection frequency, inspection methodology, limiting measurement values for all components subject to wear or requiring adjustment, and maintenance techniques. The Guidebook must be submitted to the FRA and FRA will monitor the Railroad's compliance with the identified procedures. FRA believes that most major railroads currently provide their employees with instructions for the maintenance of turnouts, and this requirement in the NPRM creates minimal additional paperwork for the Railroad.

Section 243.329 Derails

This section is identical to Track Subpart G and the Petition. It is absolutely critical to safe railroad operations to prevent equipment standing on side tracks from fouling the main track. Each derail must be

operable, clearly visible, and linked to the Railroad's signal system.

Section 243.331 Track Geometry Measurement Systems

This section of FRA's proposal varies from the Petition. As discussed in the section-by-section analysis for § 243.309, FRA developed geometry tables for this proposal that differ from the tables set forth in Subpart G and the FOX submission. This is due to the fact that the Mauzin car, used by the French and probably by FOX, measures track characteristics in different ways than track geometry measurement systems in this country. Therefore, the table set forth in § 243.309, which lists parameters for alignment, surface, gage, gage variation, cant, and warp, is acceptable, so long as the Railroad measures these parameters with a Mauzin, or Track Geometry Measurement System, car. Use of FRA's T–10 geometry car, which measures geometry in a different manner than the Mauzin car used on the French TGV, would not correspond accurately to the geometry table set forth in § 243.309. Therefore, FRA's specific requirements for the Railroad's Track Geometry Measurement System included in this section describe a Mauzin car. FRA believes that the table in § 243.309 and use of the Mauzin car will provide a level of safety equivalent to that of Subpart G. If FOX ultimately elects to substitute another geometry vehicle with different properties than those identified in the Mauzin car, the Railroad must comport with the equivalent requirements set forth in Track Subpart G.

Track Subpart G contains a requirement for a geometry inspection once per month, with at least 15 days between inspections. The Petition proposed geometry vehicle inspections at least twice within 200 calendar days, with at least 30 days between inspections, or nearly once every three months. In this NPRM, FRA proposes to make this requirement twice within 180 days, with at least 30 days between inspections, so that the requirement is clearly done once every three months. In its determination of the recommended frequency of geometry car inspections, the RSAC high speed task group considered the possibility of mixed passenger-freight service, which would likely accelerate the rate of track degradation. FRA concludes that, in view of the light loads and dedicated traffic on the proposed FOX line, an inspection with a geometry car once every three months sufficiently provides for the necessary monitoring of geometry parameters. If the Railroad discovers exceptions to the geometry limits, the Railroad must field verify the exceptions and institute remedial action within two days.

This section also requires the Railroad to maintain continuous plots of all measured track geometry parameters and exception reports that contain a systematic listing of all track geometry conditions that constitute an exception to the speed limits over the track segments surveyed, for at least one year.

Section 243.333 Track/Vehicle Performance Measurement Systems.

This section proposes requirements for the periodic measurement of carbody and truck accelerations using a Track Acceleration Measurement System (TAMS), which differs from the FOX Petition. The Petition and Track Subpart G differ in a variety of ways concerning track/vehicle measurement systems. FOX did not incorporate many of the Track Subpart G proposals with respect to condemning safety limits and corresponding remedial actions. FOX did not include a requirement for the measurement of wheel/rail forces, beyond the qualification phase of the project. Track Subpart G, on the other hand, proposes an annual requirement for the measurement of wheel/rail forces to verify that the track/vehicle system remains within safe performance limits throughout the life of the system. Also, Track Subpart G requires immediate action when minimum performance limits are exceeded, regardless of speed, while FOX proposed to set different safety limits for various speed ranges. In the Petition, FOX states that ''Each exception must lead to an immediate slow order on the corresponding portion of track'' but later states that ''within two days after the inspection, field verify and institute remedial action for all recorded exceptions.'' Track Subpart G also includes filtering characteristics that are not apparent in the Petition's discussion of the TAMS car and proposed safety thresholds. Finally, the Petition uses ''zero-to-peak'' thresholds and the Track Subpart G uses ''peak-to-peak.'' Under most circumstances, an interpretation of an accelerometer trace using a ''zero-to-peak'' measurement results in approximately one-half of the magnitude of a ''peak-to-peak'' threshold. In the development of the proposed high speed standards contained in Track Subpart G, the high speed experts recommended using the peak-to-peak criterion.

FRA believes that an immediate speed reduction must be imposed when vehicle/track performance limits are exceeded. The intent of track and carbody acceleration limits is to limit vehicle response, regardless of track condition and vehicle speed. FRA proposes to adopt the approach contained in Track Subpart G for vehicle/track interaction safety limits. The measurement of wheel/rail forces and accelerations is required. Many experts advise that derailments may be imminent if these limits are exceeded. An immediate speed reduction must be imposed until the Railroad determines the cause of the adverse vehicle/track interaction and corrects the condition.

The Petition suggests, and FRA proposes, using the term ''TAMS'' to describe a vehicle with capabilities such as the ''Melusine'' car in France to measure accelerations. Although this term is not used in Track Subpart G, the frequency of inspection recommended in Track Subpart G is approximately the same as the Petition. For speeds over 125 mph, Track Subpart G requires the measurement of accelerations at a frequency of at least twice within sixty days, with not less than fifteen days between inspections. FOX proposed an inspection frequency of at least twice within 45 calendar days, with not less than seven days between inspections. FRA has adopted the frequency set forth in the Petition.

To summarize, FRA's proposal differs from the Petition in several significant ways. The Petition would require the measurement of wheel/rail forces once during system qualification, and would not require periodic re-measurement of wheel/rail forces. FRA believes renewed, periodic measurements are necessary to ensure safety. The Petition does incorporate a requirement for the periodic measurement of accelerations, but uses threshold descriptors, thresholds, and remedial actions that differ from FRA's view and proposal. These measurement systems and remedial measures are important to demonstrate continued vehicle/track safety performance—the cornerstone of high speed track standards.

Section 243.335 Wheel/rail Force Measurement System.

In this section, FRA proposes that FOX conduct bi-annual wheel/rail force measurements and that FOX equipment not exceed limits established in the vehicle/track interaction chart in this section. The Petition did not contain a similar section or requirement.

The FOX petition and Track Subpart G would require a qualification procedure for vehicles on the high speed track, using instrumented wheelsets. The high speed task group concluded that the interaction of the high speed vehicle on the track must not exceed wheel/rail force, truck side

accelerometer, and carbody accelerometer performance thresholds during the qualification phase and during the life of the railroad. The Petition includes a requirement for the use of instrumented wheelsets to measure wheel/rail forces during the system qualification phase, but does not include a requirement for a periodic re-measurement of wheel/rail forces during the life of the system because ''forces are proportional to accelerations,'' which are monitored every two weeks. FRA believes that wheel/rail force measurements, and carbody and truckside accelerometer measurements relate to different safety concerns and so, the measurements are not appropriate substitutes for one another.

Vehicle/track interaction has critical consequences in railroad safety, and so establishing safe parameters and developing a measurement system to adhere to those parameters is highly important for any track safety program. The high speed task group considered several hazardous and unacceptable vehicle/track interaction events that are well-known in railroad engineering, and for the most part, occur on existing high speed operations. These unsafe events include wheel climb, rail rollover, vehicle overturning, gage widening, and track panel shift. Truck hunting is a dynamic phenomenon that results from unstable motion of railroad wheelsets, and may result in wheel climb or other unsafe events.

FRA's proposed vehicle/track interaction chart includes provisions for truck hunting and carbody accelerometers. Truck hunting is typically measured by truck-mounted lateral accelerometers. Carbody accelerations measurements address different concerns. Large carbody accelerations can be hazardous to standing or walking passengers; large vertical accelerations may cause passengers to fall. The primary and secondary suspension characteristics of a particular car and truck spacing influence the natural frequency of vertical motion and, therefore, the wavelength of profile variations become of interest. Carbody vertical acceleration is also an indicator of variation in vertical force applied to the rails.

FRA believes that an annual or biannual inspection using instrumented wheelsets must be considered as part of a high speed inspection strategy that includes visual inspections, pilot (sweeper) train, geometry car inspections, periodic carbody and truck-mounted accelerometer measurements, and other inspections deemed necessary. All of these requirements are largely dependent on track and vehicle degradation. Paragraph (a) of this section requires FOX to complete a wheel/rail force measurement system inspection biannually, with at least 240 days between each inspection, to ascertain whether the vehicles respond to the existing track within the limit defined. FRA agrees with FOX that its axle loads, minimization of unsprung mass, high quality track, and low cant deficiency would probably not lead to the sort of track or vehicle degradation that would become hazardous within one year after the Railroad's trainsets meet the pre-revenue qualification phase of the system. However, the track or vehicle degradation rate is an unknown and FRA, therefore, believes that an inspection frequency of once every two years, as required by paragraph (b) in this section, is a prudent requirement.

This section requires the Railroad to maintain for one year after a qualifying track acceleration measurement is done, a copy of the plot and exception printout for the track segment involved, the date the inspection was made, the track segment involved, and the remedial action taken, for all listed exceptions. The Railroad must maintain a list of locations where the limits are exceeded.

Section 243.337 Daily Inspection Trainset

In this section, FRA proposes a daily inspection trainset that must be operated each morning over the Railroad's entire system, prior to revenue service. FRA also proposes that the inspection train be equipped with on-board truck side and carbody accelerometers to measure track conditions, and that the Railroad develop procedures to notify track personnel when track conditions warrant attention. In its petition, FOX described the French TGV practice of operating a daily sweep train to visually inspect the track and ensure that the right-of-way is free from obstacles, and included such a requirement for Florida. FRA agrees that this is a valuable safety measure. However, FRA added the requirements for minimal instrumentation on the daily inspection train in order to more closely reflect the expertise of the high speed task group and the Tier II passenger equipment group.

Track Subpart G requires accelerometers in at ''least two cars in every train.'' At the latter stages of the development of Track Subpart G, the high speed task group met with a group of experts working on the Tier II equipment standards. This group consisted of members from labor, the rail industry, and private associations. Many members from both groups concluded that requirements for carbody accelerometers on every train would generate voluminous data that would not be necessary for safety. Members of both groups noted that a requirement for lateral truck-mounted accelerometers already existed in the Tier II passenger equipment standards.

Instead, many members of both groups felt that accelerometer measurements could better be addressed with a requirement for lateral and vertical carbody accelerometers and lateral truckside accelerometers on at least one train each day. Truck and carbody accelerometers on one train per day would detect settlement or other geometry conditions, such as culvert settlement or an anomaly inadvertently introduced by a maintenance crew, before they became serious. Several of the members believed that safety would be enhanced if track personnel were dispatched to investigate the track whenever the accelerometers indicated possible track concerns. These members felt that these conditions could be identified and corrected before the next regularly scheduled periodic ride quality inspection with an instrumented car, and concluded that the threshold to trigger notification and the procedures for the notification of the track personnel should be left up to the high speed railroad.

The requirement here for the daily monitoring of accelerations was included in order to provide an instrumented ''rough track report.'' It is normal practice in this country for train engineers or crews who sense an irregularity in the track, to communicate their concerns to track personnel who then perform a follow-up inspection. The accelerometers on the daily inspection train would remove the subjectivity from this process, and would more accurately identify areas that should be investigated by track personnel. However, because of time limitations, the high speed task group was ultimately unable to change the requirement from accelerometers on every train to accelerometers on one train per day.

FOX believes that a requirement for daily carbody accelerometer measurements is unnecessary because the TGV equipment comes equipped with truck-side accelerometers on each power and trailer truck, and the truck-side accelerometers would identify the defect as being track related. However, carbody accelerometers perform an entirely different function than truck-side accelerometers. FOX recognizes this distinction by recommending an

inspection with carbody and truckside inspections once every two weeks.

FRA believes that a requirement for accelerometers on the daily inspection train would enhance safety at minimal cost and so, includes the requirement in the NPRM. However, FRA invites comment on this section, as on all others in the NPRM.

Section 243.339 Inspection of Rail in Service

This section proposes that the Railroad develop and implement written inspection procedures for internal defects, joint bars, and defective rails. The section includes a chart of specific defects with corresponding remedial measures, and requires the Railroad to adhere to appropriate remedial actions.

In this NPRM, FRA replaced the section in the FOX petition entitled ''Defective Rails'' with this section, with substantial change. The Petition stated that the frequency of inspection for rail defects should be once per year in view of French TGV practice and the fact that the track will be newly constructed in Florida. Track Subpart G proposes an inspection frequency of twice per year for high speed rail in the general system, which is higher than the annual inspection required in the current track standards for lower speed operations.

In view of the load characteristics proposed for the FOX project, the occurrence of rail flaws are not expected to be high. In addition, since rail flaw growth is largely dependent on accumulated tonnage, the growth of flaws is expected to be minimal. However, there are concerns relating to new rail due to possible weld defects that may occur in the factory or field, and the potential for damage to the rail during installation. In addition to the requirements for the initial inspection of new rail at the mill and an inspection of welds required by proposed § 243.341 discussed below, FRA's proposal includes a requirement in § 243.339 for the Railroad to conduct a continuous inspection of all rail within ninety days after the initiation of revenue service. This inspection will verify that the mill inspection and plant weld inspections accurately located any rail flaws present in the new rail and will confirm that the rail was not damaged during installation. FRA concurs with the language of the Petition, in which it is determined that a rail inspection frequency of once each year is appropriate, considering the absence of freight traffic and the presence of relatively light axle loads on the proposed FOX lines.

FOX proposed a remedial action table for rail flaws based on French TGV practice and somewhat vague standards that ''take into account the quality of the track to be restored once the defect is fixed.'' The defect table in the Petition largely does not categorize all defects in terms of the size of the defect, and so does not include corresponding remedial actions that are based on the size or severity of the defect. For example, the FOX proposal does not specify different remedial actions for transverse defects of varying sizes.

FRA believes it would be unwise to deviate from the rail flaw procedures that developed in this country to control rail-caused accidents. They are included in Track Subpart G and are identical for high and low speed track. These requirements are the result of railroad experience in this country, rail flaw research, and recommendations from the NTSB.

FRA does not anticipate that adoption of this rail flaw table and with accompanying remedial actions will negatively impact FOX maintenance policies. Given the axle loads associated with the FOX system, the rail flaws of the size specified in the table may never occur in Florida, and so FOX would have no difficulty in complying with this section. However, if these serious rail flaws do arise, this section will secure the safety of passengers and employees.

Section 243.341 Initial Inspection of New Rail and Welds

This section sets forth minimum standards for the Railroad's in-service rail and weld inspections, mill inspections, welding plant inspections, and field weld inspections. FRA has made a minor change in this section from what was set forth in the Petition, by correcting an error in the rule text that would have permitted an in-service inspection, conducted ninety days after the rail is installed, for a mill or welding plant inspection. FRA believes that FOX intends to conduct a mill and welding plant inspection prior to installation, which is common practice on US railroads. Rail defects discovered in the course of these inspections must be handled in accordance with the actions set forth in § 243.339 of the proposal.

Section 243.343 Visual Inspections

This section requires the Railroad to conduct a visual track inspection once each seven days by riding in a vehicle at a speed that facilitates visual inspection of the track structure. This section is not consistent with the Petition, which proposed a visual inspection once each six weeks.

FOX proposed a six-week visual inspection based on French TGV practice. However, the practice in this country historically has been to conduct a visual inspection at least twice each week on all passenger lines. For example, Amtrak performs walking visual inspections on the Northeast Corridor at a frequency of at least two times per week. Amtrak also conducts automated inspections in a manner similar to the French TGV practice, which includes geometry car and acceleration measurements.

In the lower speed classes of track in the US, present track safety standards require two visual inspections per week on passenger tracks, but do not mandate the use of automated inspections to supplement the visual inspections. Freight railroads also typically inspect main tracks at least twice each week. Many railroad maintenance officials believe that this inspection frequency facilitates early identification of conditions that require maintenance. However, it is also important to note that, while many major railroads use geometry cars, the use of the automated inspection techniques proposed by FOX are generally not used on freight railroads.

Track Subpart G requires two inspections per week for track speeds between 110 mph and 160 mph, and three times per week for speeds between 160 mph and 200 mph. These frequency levels developed through consideration of all available automated and visual inspection methods. Some members of the high speed task group emphasized that state-of-the-art automated inspections techniques enhance, but cannot replace visual inspections. Walking or hi-rail inspections identify certain conditions, such as loose or missing fastenings and blocked culverts, that are not discovered by geometry, acceleration, rail flaw, or other automated equipment. Visual and automated inspections compliment one another, and should both be part of a high speed track safety system.

In support of its position of performing visual inspections at a frequency of once every six weeks, FOX discusses its concern for the hazards inspectors might face along the high speed line. In addition, FOX argues that more frequent visual inspections are unnecessary in view of its total inspection program, which is based on French TGV practices. FOX also asserts the daily ''sweeper'' train conducts a visual inspection of the track and ensures that the right-of-way is clear.

FRA acknowledges the hazards associated with inspecting high speed track and urges FOX to take every

precaution to ensure the safety of its inspectors. (This NPRM adopts and incorporates safety standards for roadway workers in 49 CFR part 214, which should address these safety concerns if followed properly.) Also, FOX may wish to conduct inspection activities during low traffic periods, and perhaps at night as is done in France. Amtrak routinely accomplished track work during evening hours, and has policies in place to protect inspection crews.

FRA has considered the factors discussed above and believes that a prudent, initial standard would include one weekly visual inspection of the track and turnouts. This is consistent with the visual inspections conducted in Japan on high speed, dedicated lines. However, FRA invites comment on this inspection frequency from safety experts and members of the public. FRA considered, but did not succeed in devising, an objective performance standard for adjusting inspection frequency. Commenters are invited to suggest such a performance standard.

Section 243.345 Special Inspections

This section requires the Railroad to make special track inspections where emergency or extreme events occur that could cause damage to the track structure. This section is consistent with Petition.

Section 243.347 Inspection Records

This section sets forth minimum requirements for treatment of the Railroad's track inspection records. The section is consistent with the Petition and Track Subpart G. However, this proposal contains a noteworthy change from the present track safety standards for records inspections. Paragraph (d) of this section requires the Railroad to record any location where a proper rail inspection cannot be performed because of rail surface conditions. The new language in this section requires a recordkeeping of those instances.

Paragraph (f) of this section also proposes a provision for maintaining and retrieving electronic records of track inspections. The provision permits Railroad to design its own electronic system, so long as the system meets specified criteria to safeguard the integrity and authenticity of each record. The provision also requires that railroads make available paper copies of electronic records when needed by FRA or by railroad track inspectors.

Subpart E—Rolling Stock

Subpart E sets forth minimum safety standards for the design, performance, and maintenance of the FOX rolling stock. For the most part, the Railroad's compliance with the design and performance requirements of this Subpart will be demonstrated by the pre-revenue qualification tests required in Subparts B and G of this proposal. However, FRA will closely monitor the operation of the FOX equipment throughout the life of the system in order to ensure compliance with the equipment inspection, test, and maintenance requirements.

The rolling stock safety standards set forth in the NPRM are very similar to the Petition, and are based on 15 years of safe operating experience in France. As discussed previously in this document, the French design, operation, and maintenance practices have resulted in an exceedingly safe passenger system. FRA proposes standards in this Subpart that will facilitate development of an equally safe system in Florida. It is extremely important to note, as we do throughout this NPRM, that these standards would not be appropriate for any other operation in this country. The standards set forth in this Subpart relate to a specific system with unique safety characteristics. This proposal reflects the combination of many operating features, and if any one feature disappears, all of the standards would have to be reevaluated.

Section 243.401 Clearance Requirements

This subsection requires the rolling stock to be designed to meet all applicable clearance requirements of the Railroad, including the static clearance diagram, the dynamic clearance diagram and the obstacle clearance diagram. Rolling stock clearance of all natural or infrastructure obstacles is a basic safety requirement. Adequate clearance of all obstacles will be demonstrated during the pre-revenue service system qualification tests. At a minimum, the Railroad must make the following diagrams available to FRA upon request: rolling stock static clearance diagram, rolling stock dynamic clearance diagram, and obstacle clearance diagram.

Section 243.403 Structural Strength of Trainset

This section sets forth the structural design or performance requirements for the FOX passenger equipment. This section is patterned after FRA's proposed Tier II Passenger Equipment Safety Standards, which were published on September 23, 1997 (62 FR 49728). The Tier II passenger proposals are based equipment that would travel at high speed (125 to 150 mph) in existing North American rail corridors, which may include grade crossings used by heavy highway vehicles, and mixed rail traffic that includes heavy freight or commuter trains.

FRA recognizes that existing North American corridors which contain grade crossings or mixed freight-commuter rail operations may be less conducive to safe operation of passenger trains at speeds greater than 150 mph. Due to the high degree of kinetic energy that must be dissipated in the event of a collision or derailment, structural mitigation of the effects of the accident are very difficult to achieve in high speed passenger equipment. Therefore, combining very high speed operations with slow, heavy rail traffic, or heavy highway vehicles at grade crossings, produces a relatively high risk of collision and passenger injury. As discussed previously, to counter these risks, the French TGV system operates on an accident-avoidance, rather than accident-mitigation philosophy. FOX plans to utilize this philosophy in Florida, and the standards that FRA proposes concerning rolling stock reflect this approach to safety.

FRA proposes structural standards for the FOX passenger trainsets that are based on International Union of Railways (UIC) standards for the design of passenger equipment in Europe, and on SNCF specifications that adapt UIC standards to the TGV trainset configuration. The European structural standards result in a lighter trainset, which facilitates travel at high speeds with minimal track forces and lower track degradation.

Paragraph (a) proposes two very important general structural requirements. First, the passenger cars in each trainset must be semi-permanently coupled with articulated trucks between the trailer cars. These trainsets may be uncoupled only in repair facilities, in accordance with the operating procedures set forth in § 243.433. When a derailment occurs at high speed, trains containing individually coupled passenger cars tend to buckle, accordion style, which exposes individual cars to side impacts or rollover. The articulated connection between trailer cars has been shown to be extremely effective in keeping the trainset in-line and upright during derailments, even at high speed. The articulated connection also provides significant anti-climbing resistance between each passenger car.

The second proposed general requirement is essentially an operating requirement with strong structural implications. FRA requires the Railroad to operate every trainset with a power

car at each end of the train. FOX proposed to operate in this manner, and FRA believes that these high speed trainsets should not be operated in a push-pull mode. The presence of a power car in the lead maximizes the protection provided for the cab crew and passengers, in the event of a head-on or rear end collision.

Paragraph (b) proposes the structural requirements for power cars. Paragraph (b)(1) lists the basic carbody structural strengths of the power car, which represent European design practice and the UIC standards. Equipment built to these standards provides structural protection for the operator and passengers during low speed train-to-train collisions that might occur in station or yard operations. Also, equipment built to these standards provides structural protection for the operator and passengers during collisions at moderate speeds with highway vehicles. The proposal establishes the magnitude of the force that the power car structure must resist, and how that force must be applied during the testing and analysis that will be done to ensure that the design complies with each safety standard.

Paragraph (b)(2) proposes that each power car be equipped with an anti-penetration wall ahead of the operator's cab. This anti-penetration wall serves the function of a collision post in North American design practice, or of a forward end structure, as proposed in the Tier II passenger equipment NPRM. This anti-penetration wall in the power car cab plays a vital role in protecting personnel and the equipment in a collision with another object. This structure must resist override, prevent the entry of fluids into occupied spaces of the cab, and allow the crash energy management system to function. FRA proposes the following specific design parameters for the anti-penetration wall: resist a longitudinal compressive load of 3000 kN (675,000 lb) at the top of the underframe, without exceeding the ultimate strength of the joint; and resist a longitudinal compressive load of 1500 kN (337,000 lb) applied at a height of 760 mm (30 in) above the top of the underframe, and reacted at the rear of the cab structure, without exceeding the ultimate strength of the structure. FRA also requires that the Railroad verify compliance with these requirements by either linear static analysis or equivalent means.

Paragraph (b)(3) sets forth the crash energy management requirements for the power car. Crash energy management is an equipment design technique used to provide controlled deformation and collapse of designated sections of the unoccupied volumes of a passenger train, to absorb energy that occurs in a collision. This permits collision energy to dissipate before any structural damage occurs to the occupied volumes of the train, and reduces the decelerations experienced by passengers and crew members in a collision. Reduced decelerations mitigate the force of any secondary collision between passengers and objects in the train's interior, such as seats. The French equipment incorporates a crash energy management design that has been demonstrated to be safe and commercially feasible. This is the sort of design that will likely develop on the Amtrak lines in the Northeast Corridor.

FRA proposes that in unoccupied areas, each power car shall be designed to absorb a minimum 4.2 megajoules through controlled structural deformation. This requirement can be met using existing technology and provides an adequate level of safety.

Paragraph (b)(4) proposes a basic longitudinal compressive strength for the power car cab. Specifically, FRA proposes that in occupied areas, each power car must be designed to resist, without permanent deformation of the sidesill, contrail, and side post structural members, a longitudinal compressive load of 3560 kN (800,000 lb) when applied uniformly at the front of the cab between the underframe and waist level, and reacted at the cross section of the carbody at the back of the cab. This proposed requirement provides a degree of crash refuge or structural shelter to the operator equivalent to that typical of North American design practice.

Paragraph (b)(5) requires each power car to be designed to withstand a uniformly distributed vertical load of 1.3 times its static laden weight, when supported at the truck centers, without permanent deformation. This requirement essentially sets the vertical stiffness of the car body as it is supported between the two trucks.

Paragraph (b)(6) proposes the rollover strength for the FOX power cars. Specifically, power cars must be designed to rest on their sides, uniformly supported at the top (cantrail) and the bottom (sidesill) chords of the side frame with the allowable stress in the main structural members for occupied volumes for this condition limited to one-half yield stress. In addition, power cars must be designed to rest on their roofs, with damage limited to roof sheathing and framing. Deformation of the roof sheathing and framing, to the extent necessary to permit the vehicle to be supported directly on the top chords of the side frames and end frames, are permitted. The permissible stress in the main structural members for occupied volumes for this condition are one-half yield. These rollover strength requirements are equivalent to the requirements proposed in the Tier II NPRM for passenger cars. Presently, there are no North American standards for rollover strength of locomotives.

Paragraph (c) proposes the structural requirements for trailer cars. Paragraph (c)(1) lists the basic carbody structural strengths of the trailer car. These parameters represent European design practice as reflected in UIC standards. Equipment built to these standards provides structural protection for the passengers during low speed, train-to-train collisions typical of station or yard operations. Equipment built to these standards also provide structural protection for the passengers during collisions at moderate speeds with most highway vehicles. The proposed requirements specify the magnitude of the force that the trailer car structure must resist and how that force is to be applied during the test and analysis done to prove that the design complies with each requirement.

Paragraph (c)(2) requires each trailer car to be designed to withstand a uniformly distributed vertical load of 1.3 times its static laden weight, when supported at the truck centers, without permanent deformation. This requirement essentially sets the vertical stiffness of the car body as it is supported between the two trucks.

Paragraph (c)(3) proposes that the occupied volumes of trailer cars be designed to resist, without permanent deformation of the sidesill, cantrail, and side post structural members, a longitudinal compressive load of 3560 kN (800,000 lb.) when applied as distributed over the carbody cross section at the seated passenger compartment. This requirement is equivalent to North American practice for passenger coach design.

Paragraph (c)(4) proposes that trailer cars possess the same rollover strength as power cars. This rollover strength requirement is equivalent to the requirements set forth in the Tier II standards of FRA's Passenger Equipment Safety Standards NPRM for passenger coaches.

Section 243.405 Trailer Car Interior

This section contains proposed requirements for interior fittings and surfaces in passenger trailer cars. Research indicates that passengers striking interior objects in trains, principally during collisions and

derailments, account for 57% of the serious injuries and 7% of the fatalities on passenger trains.[1] Once survivable space is ensured by basic vehicle structural strength and crash energy management, the design of the interior becomes an important factor in preventing or mitigating serious injury. To reduce the injury and fatality numbers, FRA proposes that passenger seats and other interior fittings be securely attached to the car body; interior fittings be recessed or flush-mounted; overhead storage racks provide restraint for stowed articles; and sharp edges be padded or otherwise avoided.

FRA and NTSB investigations of passenger train accidents have revealed that luggage, seats, and other interior objects that break or loosen during an accident often cause passenger and crew injuries. During a collision, the greatest decelerations, and thus the likeliest forces to cause potential failure of interior fitting attachment points, occur in the longitudinal direction, *i.e.,* in the direction parallel to the normal direction of train travel. Current North American design practice consists of seats and other interior fittings that withstand the forces due to accelerations of 6g in the longitudinal direction, 3g in the vertical direction, and 3g in the lateral direction. Due to injuries caused by broken seats and other loose fixtures, FRA believes that the current design practice is inadequate. Accordingly, FRA's NPRM for Passenger Equipment Safety Standards proposed that each seat in a passenger car remain firmly attached to the car body when subjected to individually applied accelerations of 4g in the vertical direction and 4g in the lateral direction acting on the deadweight of the seat or seats, if a tandem unit. In addition, the attachment must resist a longitudinal inertial force of 8g acting on the mass of the seat, plus the impact force of the mass of a 95th-percentile male occupant(s) being decelerated from a relative speed of 25 mph and striking the seat from behind. By resisting the force of an occupant striking the seat from behind, a potential domino effect of seats breaking away from their attachments is avoided.

In addition, the NPRM for Passenger Equipment Safety Standards proposes that overhead storage racks provide longitudinal and lateral restraint for stowed articles to minimize the potential for these objects to come loose and injure train occupants. Further, to prevent overhead storage racks from breaking away from their attachment points to the carbody, the racks must have an ultimate strength capable of resisting individually applied accelerations of 8g longitudinally, 4g vertically, and 4g laterally acting on the mass of the luggage stowed.

Paragraph (a)(1) proposes that Fox trainset seat backs be designed to withstand, with deflection and permanent deformation allowed, but without total failure, the load due to a 95th-percentile male seat occupant accelerated with the following pulse: 0 to 6g in 0.05 s; 6g for 0.125 s; and 6 to 0g in 0.05 s.

Paragraph (a)(2) proposes that the ultimate strength of a seat attachment to the trailer carbody be sufficient to withstand the following individually-applied accelerations acting on the mass of the seat, plus the mass of a seat occupant who is a 95th-percentile male: 6 g, longitudinal; 2 g, lateral; and 2 g, vertical.

Paragraph (b)(1) proposes that other interior fittings be attached to the trailer carbody with sufficient strength to withstand the following individually-applied accelerations acting on the mass of the fitting: 3 g, longitudinal; 2 g, lateral; and 2 g, vertical.

Paragraph (b)(2) requires, to the extent possible, that interior fittings be recessed or flush-mounted, and corners and sharp edges avoided altogether or padded to mitigate the consequences of impact with such surfaces.

Paragraph (c) proposes that luggage stowage compartments include a means to restrain luggage, and have sufficient strength to resist loads due to the following individually-applied accelerations acting on the mass of the luggage that the compartment is designed to accommodate: 3 g, longitudinal; 2 g, lateral; and 2 g, vertical.

These seat attachment, interior fitting attachment, and luggage compartment strengths that FRA proposes for the FOX system are lower than those set forth in FRA's Passenger Equipment Safety Standards for Tier II equipment. Also, FRA is not proposing for FOX enclosed overhead luggage racks, as are proposed for the generic Tier II equipment. FRA believes that the standards we propose here for FOX provide an equivalent level of safety for passengers and employees on the FOX equipment for several reasons.

First, the Railroad's operation is based on principles of accident-avoidance. As discussed previously, this safety philosophy will be implemented on FOX through a variety of operating features, including the dedicated right-of-way, the absence of grade crossings, low train density, and an advanced signaling system. In combination, these characteristics of the system provide a very high level of safety performance and a very low risk of an accident.

Second, FOX could not find any record of passenger injury caused by loose seats, loose interior fixtures or fallen luggage on TGV trainsets, including the high speed derailments. Given the high number of passenger-miles covered by the TGV in France since 1981, this fact tends to indicate that such injuries are unlikely.

Third, the trainset provides several alternate stowage areas so that all luggage need not be stored on the overhead racks. The TGV trainsets will have two locations, at the first and last passenger units, where heavy or large pieces of baggage may be checked into a dedicated compartment for stowage. Also, two of the passenger units will include stowage racks for large carry-on luggage. Finally, stowage will also be available throughout the trainset between back-to-back seats. The overhead racks would typically be used for smaller and lighter luggage, which is less likely to cause injury in an accident.

Fourth, the TGV trainsets inherently provide excellent ride quality at high speed due to the articulated design, the quality and geometry of the track, the suspension characteristics, and the large curve radii. The articulated design eliminates in-train forces due to slack; the quality and geometry of the track provide smooth high speed operation; and the large curve radii facilitates high speed travel through curves at low cant deficiency. These combined factors result in very low longitudinal, lateral, and vertical forces on trainsets throughout the speed range.

Finally, the estimated increase in weight, per trailer car, of nearly 456 kg (1,000 lb.) that would be required to meet the more stringent, generic standards would be detrimental to the operational design limits for this high speed transportation system.

Section 243.407 Glazing

Paragraph (a) proposes the glazing impact and ballistic requirements for the trainset, which are based on French TGV standards. The end facing (engineer's front windshield) must resist an energy of 30 kJ at 20° C (72° F) and 25 kJ at 0° C (32° F). As a comparison, the proposed Tier II equipment standards would require the end facing glazing to resist 12.2 kJ of energy for operation at 240 kph (150 mph) and 21.7 kJ for 322 kph (200 mph) operation. These glazing standards are more

[1] ''Rail Safety/Equipment Crashworthiness.'' M. J. Reiley, R. H. Jines, & A. E. Tanner. (FRA/ORD–77/73, Vol. I, July 1978).''

stringent than those proposed for Tier II equipment, and have proven effective in service in France.

Paragraph (b) requires interior glazing to meet the minimum requirements of AS1 type laminated glass, as defined in American National Standard ''Safety Code for Glazing Materials for Glazing Motor Vehicles Operating on Land Highways,'' ASA Standard Z26.1–1966. This requirement alleviates the need for interior glazing to meet the stringent impact resistance requirements placed on exterior glazing, but ensures that the glazing will shatter in a safe manner in the event of an accident, much like automotive glazing.

Paragraph (c) proposes that the glazing frame will hold glazing in place against all forces that are generated in the tests required by this proposal.

Section 243.409 Brake System

Paragraph (a) requires the FOX brake system to be capable of stopping trainsets with a service application of the brakes from its maximum authorized operating speed, within the signal spacing that exists on the track. This proposed requirement is the fundamental performance standard for any train brake system. This section merely codifies a requirement which is current industry practice, and is the basis for safe train operations in the U.S. Paragraph (a) also defines the test conditions for braking under low adhesion levels as defined in UIC leaflet 541.05. This standard requires a specific quantity of detergent to be sprayed on the rails during the braking test. In addition, paragraph (a) requires the flow rate, defined by UIC 541.05, to be doubled at speeds in excess of 180 km/h (112 mph). This meets the French TGV requirement to minimize the attainable adhesion level during a high speed test, in order to ensure a high margin of safety for high speed braking.

Paragraph (b) proposes that the braking on each truck shall be independently controlled by the brake pipe. Unlike conventional North American brake systems which have a brake manifold on each car, the FOX trainset braking system has a separate manifold for each truck. The brakes are applied through a brake pipe pressure reduction, controlled by the engineer's brake valve. A uniform distribution of the pressure reduction throughout the train is enhanced by an electro-pneumatic control. An electric trainline signal is used to activate an electro-pneumatic valve on the brake manifold for each truck, which provides a quick and uniform control of the brake pipe pressure. This arrangement also minimizes the operational effects of a failure of a brake manifold, in that only one truck in the consist is inoperative if a brake manifold has failed or has cut out.

Paragraph (c) proposes to require that the electric brake be completely independent on each powered truck and shall operate with the loss of the overhead power supply. The kinetic energy of a train, and hence the energy that must be dissipated in stopping a train, is proportional to its mass and the square of its speed. Therefore, there is a radical increase in energy to be dissipated for a very high speed train, compared to that required for a typical North American train. As an example, the energy that must be dissipated to stop the Railroad's trainset (1–8–1; or one power car, eight trailer cars, and one power car) from 322 km/h (200 mph), is about 1.7×10^6 kJ (1.3 billion ft-lb). To put this in perspective, this is approximately 3 times the energy required to stop a 1–8–1 Amfleet consist from 161 km/h (100 mph). Unlike conventional North American equipment, very high speed trainsets rely to a great extent on the electric brake. Therefore, paragraph (c) requires the electric brake to be independent on each powered truck and be able to operate if power from the catenary is lost. To achieve this, separate batteries and battery chargers are used for field excitation of the traction motors on each truck. There are two power cars on each FOX trainset, each with two powered trucks; each trainset will have four completely independent electric brakes, which provides for a high level of redundancy and safety.

In addition, paragraph (d) proposes that any failure of the electric brake on any powered truck must be displayed to the train operator. This important safety feature will alert the operator so that s/he can take compensating action to prevent accident or incident.

Paragraph (e) requires the brake system to be designed to prevent thermal damage to wheels or discs. The purpose of this requirement is to ensure that the brake system is designed and operated to prevent dangerous cracks in wheels. Passenger equipment wheels are normally heat treated so that the wheel rim is in compression. This condition forces small cracks that form in the rim to be closed. Heavy tread braking can heat wheels to the point that a stress reversal occurs and the wheel rim is in tension to a certain depth. Rim tension is a dangerous condition because it promotes surface crack growth. In 1994, FRA published an NPRM on power brakes, which proposed a wheel surface temperature limit to prevent this condition. (See 59 FR 47729). Several brake manufacturers and railroads objected to this approach, claiming that the temperature limit was too conservative and did not facilitate the development of new materials that can withstand higher temperatures. Based on these comments and concerns, FRA is proposing a more flexible performance requirement here, rather than a wheel tread surface temperature limit. This is an extremely important safety requirement because a cracked wheel that fails at high speed can have catastrophic consequences. In addition, the proposed requirement will lead to longer wheel life, and so should provide maintenance savings to the Railroad.

Paragraph (f) proposes to require the Railroad to demonstrate, through analysis and test, the maximum safe operating speed of the trainset where no thermal damage occurs to wheels or discs, for various combinations of electric and friction brake failure. The railroad must also demonstrate that no thermal damage results to the wheels or discs under conditions resulting in maximum friction braking effort being exerted. Unlike conventional North American passenger trains which may vary in weight, length and braking capability, FOX will use fixed consists. This significantly simplifies the task of determining the braking characteristics for various modes of degraded braking. Demonstrating that the requirements of paragraph (e) have been met will be an important objective of the pre-revenue service system qualification tests.

Paragraph (f) also requires the Railroad to develop a matrix that lists a variety and combination of brake failures and corresponding safe speeds that must be followed in the event of brake failures. This matrix must be completed in conjunction with the Railroad's system safety plan analysis, and must be displayed prominently in each power car. This process is employed by the French TGV to assess accurately appropriate braking distances and train speed for each route on the TGV line. This paragraph requires FOX to complete this analysis for the entire right-of-way in Florida, and to adhere to the train speeds that are determined to be safe for all potential brake failures.

Paragraph (g) requires that when a failure of the electric or friction portion of the brake occurs en route, the trainset must proceed at the speed determined appropriate by the matrix prepared in accordance with paragraph (f), and confirmed by the pre-revenue service system qualification tests required by § 243.21 and Subpart G of this proposed rule. Also, the engineer must notify central traffic control of any combination of brake failure that

requires a speed restriction. On the FOX system, these speed limitations will be automatically enforced by the signal system.

In paragraph (h), FRA proposes that the trainset be equipped with an emergency application feature that produces an irretrievable stop, using a brake rate consistent with prevailing adhesion, passenger safety, and brake system thermal capacity. In addition, an emergency application shall be available at any time, and a means to apply the emergency brake must be provided at two locations in each trainset that are accessible to the train crew. This paragraph merely codifies current industry practice and ensures that passenger equipment will continue to be designed with an emergency brake application feature. In FRA's 1994 NPRM on power brakes, FRA proposed a requirement that all trains be equipped with an emergency application feature capable of increasing the train's deceleration rate a minimum of 15 percent. See 59 FR 47729. Comments received indicated that passenger brake equipment should provide a deceleration rate with a full service application that is close to the emergency brake rate, and that the proposed requirement would require lowering full service brake rates, which would compromise safety and reduce train speeds. Based on these comments, FRA proposes the current requirement, which is in accordance with suggestions made by several U.S. passenger railroads.

Paragraph (i) proposes that FOX trainsets be designed so that an inspector would not be on, under, or between components of the equipment in order to observe brake actuation or release. The proposal grants the Railroad flexibility to use a reliable indicator in place of direct observation of the brake application or piston travel. The current design of many passenger car brake systems make direct and safe observation extremely difficult. FRA wishes to avoid this and the employee injuries that may result. Brake system piston travel or piston cylinder pressure indicators have been used with satisfactory results for many years. Although indicators do not provide 100 percent certainty that train brakes are effective, FRA believes that they provide a high degree of assurance and are preferable to placing an inspector in a dangerous position.

Paragraph (j) requires the trainset brake design to permit a disabled train's pneumatic brakes to be controlled by a rescue locomotive through brake pipe control alone. This feature will facilitate easy and safe removal of disabled trainsets to an appropriate repair shop.

Paragraph (k) proposes that the Fox trainset be equipped with a hand or parking brake that can be set and released manually and can hold the equipment on the maximum grade anticipated by the operating railroad. A hand or parking brake is an important safety feature, which prevents parked equipment from rolling or runaway. In the 1994 NPRM on power brakes, FRA proposed requiring a hand brake on cars and locomotives. See 59 FR 47729. FRA received several comments suggesting that the term ''parking brake'' be added to the requirement, because that is the term used in many passenger operations. Based on those suggestions, FRA has added the term in this proposal. This requirement differs from typical North American practice, which calls for a hand brake on each car. FOX trainsets are a fixed consist that can not be uncoupled in the field, and so this proposal treats the trainset as a single vehicle.

Paragraph (l) proposes an independent failure detection system to compare brake commands with brake system output to determine if a failure has occurred. The failure detection system shall report brake system failures to the automated train monitoring system. This requirement ties the brake system to the automatic monitoring system, as required by § 243.425(a) discussed below. Also, this important safety feature will alert the operator to potential brake system problems so that timely compensating action.

Paragraph (m) requires that each truck of the trainset be equipped with a wheelslide system designed to automatically adjust the braking force on each wheel to prevent axle-locking during braking. In the event of failure of a truck's wheelslide system, control will be automatically provided by the wheelslide system of an adjacent truck. This redundancy is necessary, because at very high speeds, the available adhesion between the wheel and the rail is lower than exists at slower, conventional speeds. This factor increases the possibility of wheelslide during braking at high speeds. The FOX trainset has a separate and independent microprocessor to control wheelslide on each truck. If a microprocessor fails, an adjacent microprocessor takes over wheelslide control for the truck with the inoperative microprocessor. The trainset is also equipped with a system that detects non-rotating axles and removes pressure from the brake cylinders until rotation resumes. Paragraph (m) also proposes that a visual and/or audible alarm be provided in the cab of the controlling power car if a blocked axle is detected.

Section 243.411 Truck and Suspension System

This section contains the proposed requirements for trucks and suspension systems. Truck and suspension system performance are crucial to the safe operation of high speed passenger equipment. The suspension system requirements proposed in this section were also used for the successful demonstrations of the X–2000 and the ICE trainsets on the Northeast Corridor at speeds up to 135 mph. These proposed requirements are also likely to be part of the suspension system performance Amtrak's passenger future equipment.

Paragraph (a)(1) requires the truck-to-car-body attachment on the FOX trainset to resist, without failure, a force of 250,000 pounds acting in any horizontal direction. The requirement for the attachment to resist a horizontal force is intended to allow the truck to act as an anti-climbing device during a collision. With the truck attached to the car body, the truck of an overriding rail vehicle is likely to be caught by the underframe of the overridden rail vehicle, thus arresting the override. The parameter selected represents the current North American design practice, which has proven effective in preventing horizontal shear of trucks from car bodies.

Paragraph (a)(2) requires each component of the truck must to remain attached to the truck when a force equivalent to 2g acting on the mass of the component is exerted in any direction on that component. Paragraph (a)(1) is intended to keep the truck attached to the car body, and paragraph (a)(2) is intended to keep truck components attached to the truck.

To ensure safe, stable performance and ride quality, paragraph (b) requires suspension systems to be designed to prevent wheel climb, wheel lift, rail rollover, rail shift, and to prevent vehicles from overturning. These requirements must be met in all operating environments, and under all track and loading conditions as determined by the operating railroad. In addition, these requirements must be met under all track speeds and conditions, consistent with the requirements of Subpart D, up to the maximum operating speed and maximum cant deficiency of the equipment. These broad suspension system performance requirements address the operation of equipment at both high speed over well maintained track and at low speed over lower

classes of track. Suspension system performance requirements are needed at both high and low speeds, in order to prevent derailments while negotiating curves. Compliance with paragraph (b) must be demonstrated during the Railroad's pre-revenue service system qualification testing of the equipment as described in Subpart G.

Paragraph (c) requires the steady-state lateral acceleration of passenger cars to be less than 0.1g, as measured parallel to the car floor inside the passenger compartment, under all operating conditions. Passenger cars must not operate when the steady-state lateral acceleration is 0.1g or greater. FRA originally considered limiting the cant deficiency to effect this requirement, but members of the RSAC track working group concluded that this steady-state lateral acceleration requirement would ensure safe operation.

Paragraph (d) requires each truck to be equipped with a permanently installed lateral accelerometer mounted on the truck frame. If hunting oscillations are detected, the train monitoring system shall provide an alarm to the locomotive engineer and the train shall be slowed by the locomotive engineer to a speed of 8 km/h (5 mph) less than the speed at which hunting oscillations stopped. Also, this requirement must be included in the Railroad's operating rules.

Paragraph (e) provides ride vibration, or quality, limits for vertical accelerations, lateral accelerations, and the combination of lateral and vertical accelerations. These limits must be met while the equipment is traveling at the maximum operating speed over its intended route during the qualification phase of the system. The limiting parameters and the means to measure them are a result of the consensus recommendations from the RSAC high speed track task group and the passenger equipment working group. These standards have proven effective during the demonstrations of the X–2000 and ICE trainsets here in the U.S. Compliance with ride quality requirements contained in this paragraph must be demonstrated during the pre-revenue service qualification tests required by § 243.113 and Subpart G of this proposal. One of the most important objectives of pre-revenue service system qualification testing is to demonstrate that suspension system performance requirements have been met.

Paragraph (f) requires bearing overheat sensors to be provided on-board the equipment, or at reasonable wayside intervals. FRA prefers sensors on-board the equipment, in order to eliminate the risk of a hotbox that develops between wayside locations. However, FRA recognizes that on-board sensors have a history of falsely detecting overheat conditions, which have caused operating difficulties for some passenger railroads.

Section 243.413 Fire Safety

This section contains the fire safety requirements proposed for the FOX system. In 1984, FRA published guidelines recommending testing methods and performance criteria for the flammability, smoke emission, and fire endurance characteristics for categories and functions of materials to be used in the construction of new or rebuilt rail passenger equipment. 49 FR 33076 (Aug. 20, 1984); 49 FR 44582 (Nov. 7, 1984). The guidelines mirrored fire safety guidelines developed by the Federal Transit Administration (formerly known as the Urban Mass Transit Administration).

The intent of the guidelines is to prevent fire ignition and to maximize the time available for passenger evacuation where fire does occur. FRA subsequently reissued the guidelines in 1989 in order to update the recommended testing methods. 54 FR 1837 (Jan. 17, 1989). Testing methods cited in the current FRA guidelines include those of the American Society of Testing and Materials (ASTM) and the Federal Aviation Administration (FAA). In particular, the ASTM and FAA testing methods provide a useful screening device to identify materials that are especially hazardous.

FRA sought comments in the Advance Notice of Proposed Rulemaking (ANPRM) for Passenger Equipment Safety Standards on the need for more thorough fire safety guidelines. 61 FR 30672 (June 17, 1996). FRA noted that fire resistance, detection, and suppression technologies have all advanced since the guidelines were first published. In addition, FRA explained that a trend toward a systems approach to fire safety is evident in most countries with modern rail systems. In response, the National Fire Protection Association (NFPA) commented that perhaps more thorough guidelines are needed, or at least should be evaluated.

Paragraph (a) addresses fire safety by proposing to make FRA's fire safety guidelines mandatory in the construction of FOX trainsets. In addition, the proposed rule would also require that fire safety be furthered through a fire protection plan and program carried out by the railroad. Paragraph (b) proposes that the Railroad require certification from the equipment supplier that combustible materials used in the construction of trainset interiors have been tested by a recognized independent testing laboratory, and that the results comply with the requirements of paragraph (a) of this section.

Paragraphs (c)–(e) link the fire safety analysis portion of the system safety program required by Subpart B to the trainset design requirements. These paragraphs require the Railroad to ensure that good fire protection practice is used during the design and operation of the equipment. These paragraphs require the Railroad to install various detection and suppression equipment where the Railroad's written analysis determines they are required.

Paragraph (f) requires the Railroad to comply with all elements of its written procedures designated as mandatory under Subpart B for the inspection, testing, and maintenance of all fire safety systems and equipment.

Section 243.415 Doors

This section contains the requirements for exterior side doors on FOX trailer cars. These doors are the primary means of egress from the train. During an NTSB investigation of the February 16, 1996, collision between the MARC and Amtrak trains in Silver Spring, Maryland, that agency identified unsafe conditions on MARC's rail cars that had been manufactured by Sumitomo. Concerned that the unsafe conditions identified on these rail cars may exist on other commuter lines subject to FRA oversight, on March 12, 1996, the NTSB recommended that FRA:

> Inspect all commuter rail equipment to determine whether it has: (1) Easily accessible interior emergency quick-release mechanisms adjacent to exterior passageway doors; (2) removable windows or kick panels in interior and exterior passageway doors; and (3) prominently displayed retro-reflective signage marking all interior and exterior emergency exits. If any commuter equipment lacks one or more or these features, take appropriate emergency measures to ensure corrective action until these measures are incorporated into minimum passenger car safety standards. (Class I, Urgent Action) (R–96–7).

The requirements proposed in this section respond to this NTSB recommendation.

Paragraph (a) proposes requirements for powered, exterior side doors. In paragraph (a)(1) FRA proposes that each trailer car have a minimum of four exterior side doors, or the functional equivalent of four side doors, that each permit at least one 95th-percentile male to pass through at a single time. FRA believes that such a requirement is

necessary, at least as an interim measure, so that each passenger car have a sufficient number of exits to allow passengers to quickly exit in an emergency. This requirement would be met by providing two sets of double-wide doors that permit two 95th-percentile males to pass through at the same time. However, FRA invites comment concerning the extent to which the design of the FOX trainsets cannot comply with this proposed section. FRA may modify this proposal based on information provided by FOX or other interested parties. As a long term approach, FRA is investigating an emergency evacuation performance requirement similar to that used in commercial aviation where a sufficient number of emergency exits must be provided to evacuate the maximum passenger load in a specified time for various types of emergency situations.

Paragraph (a)(2) proposes that the status of each powered, exterior door shall be displayed to the crew in the operating power car and if door interlocks are used, the sensors used to detect train motion shall be nominally set to operate at 5 km/h (3 mph). Such a proposal would enable a crew member in the operating cab to determine whether train doors are closed before departure. This capability is well within current technology and complies with the emergency exit requirements proposed in the NPRM for Tier II Passenger Equipment Safety Standards.

In paragraph (a)(3) FRA proposes that powered, exterior doors be powered by the compressed air system or by electricity. If powered by electricity, the doors shall be connected to an emergency back-up power system. The back-up power system should facilitate rapid evacuation through the doors in the event of primary power failure.

Paragraph (a)(4) requires that each powered, exterior door be equipped with a manual override that is: Located adjacent to the door that it controls; capable of opening the door without power from inside and outside the car; and designed and maintained so that a person may access the override device from inside and outside the car, without the use of any tool or other implement. FRA believes this requirement is necessary to ensure that passengers are able to quickly evacuate the train.

Paragraph (a)(5) requires that instructions for manual override be clearly posted in the car interior at door locations. As a result of the MARC/Amtrak accident in Silver Spring, Maryland, the NTSB stated that several train passengers were unaware of the locations of emergency exits, and none knew how to operate them. The NTSB found that the interior emergency window decals were not prominently displayed and that one car had no interior emergency window decals.

Paragraph (a)(6) addresses this concern by requiring a means for emergency responders to access the manual override from outside the car be provided. In addition, instructions for access and use of the handle must be clearly posted outside the car at all door locations. As a result of the Silver Spring accident, the NTSB had found that the exterior emergency decals were often faded or obliterated, and the information on them, when legible, directed emergency responders to another sign at the end of the car for instructions on how to open emergency exits.

Paragraph (a)(7) requires that manual door releases be activated easily. To ensure that most passengers are capable of opening the doors using the manual releases, FRA proposes that they be easily operable by a 5th-percentile female, without the use of any tool to accomplish the manual override, in the event of head-end power loss.

To ensure that manual override devices are easily accessible by passengers, FRA is proposing requirements in paragraph (a)(8) to address covers and screens used to protect such devices from casual or inadvertent use. FRA desires to balance the concern that passengers may unnecessarily exit cars when no emergency is present with the need for passengers to easily access a door-release mechanism in a life-threatening situation. Thus, the Railroad may protect a manual override device used to open a powered, exterior door with a cover or a screen capable of removal by a 5th-percentile female without requiring the use of a tool or other implement. If the method of removing the protective cover or screen entails breaking or shattering it, the cover or screen must be scored, perforated, or otherwise weakened so that a 5th-percentile female can penetrate the cover or screen with a single blow of her fist without injury to her hand.

In paragraph (b), FRA proposes that passenger compartment end doors be equipped with a kick-out panel, pop-out window or other equivalent means of egress in the event the door will not open. The NTSB noted that none of the car doors on the MARC train involved in the Silver Spring, Maryland, accident had removable windows or pop-out emergency escape panels (''kick panels'') for use in an emergency.

FRA shares the NTSB's concern about passenger egress in an emergency; however, FRA believes that the NTSB's suggestion to install kick panels is best limited to interior doors to ensure passage through a train in an emergency—and not applied to exterior doors. To the best of FRA's knowledge, the concept of kick panels has not been utilized in North American rail equipment. Installing kick panels below the window levels in exterior doors was evaluated by FRA—with concurrence from the Passenger Equipment Safety Standards Working Groups—as unacceptable for safety reasons. Because passenger railroads have encountered recurring situations in which passengers have inappropriately exited moving trains, leading to death or serious injury, introducing kick panels in exterior doors would create an unacceptable risk of inadvertent use, particularly by children.

Use of kick panels to open passageways through a train has merit. If panels can be made sufficiently large without decreasing the functionality of doors in normal operation, such a feature may facilitate evacuation through the length of the train if exterior side doors are jammed. Evacuation throughout the length of the train is often the safest route of egress in situations such as fires, derailments in multiple track territory, and incidents in third-rail powered commuter service. Accordingly, FRA proposed in the NPRM for Passenger Equipment Safety Standards that Tier II passenger car end doors be equipped with a kick-out panel, pop-out window or other similar means of egress in the event the doors will not open.

Section 243.417 Emergency Equipment

Paragraph (a) proposes that the emergency system requirements given in this section apply to each FOX trailer car. Experience gained during rescues conducted after recent passenger train accidents indicates that emergency lighting systems either did not work or failed after a short time, greatly hindering rescue operations. Paragraph (b) requires FOX trailer cars to be equipped with emergency lighting providing a minimum average illumination level of 55 lux (5.1 ft-candles) at floor level for all potential evacuation routes, and a back-up power feature capable of operation for a minimum of two hours after loss of normal power.

The two-hour time duration for availability of back-up power is based on experience gained during rescue operations for passenger train accidents in remote locations. In such accidents, fully-equipped emergency response forces can take an hour or more to arrive at the site, and additional time is

required to deploy and reach people trapped or injured in the train. In addition, the back-up power system must be able to operate in all orientations and after experiencing a shock due to a longitudinal acceleration of 3g and vertical and lateral accelerations of 2g. The shock requirement will ensure that the back-up power system has a reasonable chance of operating after the initial shock caused by a collision or derailment.

Paragraph (c) requires an emergency communication system within the train with back-up power. This safety feature will allow the train crew to provide evacuation and other instructions to passengers. Such a system can help prevent panic that often occurs during emergency situations. FRA is proposing that transmission locations be located throughout the trainset and that the locations be marked with clear instructions for the use of the emergency communication system.

Paragraph (d) proposes that locations of emergency equipment and exits be clearly marked with luminescent material that makes the identity and location of the emergency exit recognizable from a distance equal to the width of the car. This requirement is intended to allow passengers and crew to easily locate emergency equipment and exits, even under poor visibility conditions. The requirement will aid an orderly evacuation of the train in the event of an emergency.

Paragraph (e) contains the proposed requirements for FOX emergency exits. Paragraph (e)(2) requires clear and understandable instructions for the use of emergency exits to be posted at each emergency exit and be visible from a distance of 30 inches. This provision should aid passengers unfamiliar with the operation of emergency exits to operate them and evacuate train quickly.

Paragraph (e)(3) proposes that each trailer car have a minimum of four emergency window exits, arranged in a staggered configuration, or with one located at each end of each side of the trailer car. Each FOX trailer car will be equipped with 4 emergency windows, 2 at each end and one on each side, to comply with this requirement. An emergency window is also located in each FOX trailer car side entrance door to provide emergency access in the event of a blocked door. This configuration complies with the emergency exit requirements proposed in the NPRM for Passenger Equipment Safety Standards.

Paragraph (e)(4) proposes that each trailer car window emergency exit shall have a minimum free opening of 1.6 m (63 in) wide by 0.6 m (24 in) high. This configuration complies with the emergency window exit requirements proposed in the NPRM for Passenger Equipment Safety Standards and is the minimum size that will allow a fully equipped emergency responder to enter the car through the window. The FOX trainsets will have emergency windows much larger than this minimum size.

Paragraph (e)(5) requires that emergency window exits be capable of activating easily. The FOX system trainsets will employ breakable emergency windows, rather than the conventional North American removable type. This will facilitate use of a window-to-carbody seal that will withstand the large pressure variation between passing trainsets, and use of a flush-mounted window seal that will minimize air drag for high speed operations. A small pointed hammer will be located at each end of the passenger compartment, beside each window and door, to break the emergency window. FRA proposes that each emergency window exit shall be easily operable by a 5th-percentile female using this hammer. No other tool or implement may be required for this purpose.

Paragraph (e)(6) proposes that each power car have an emergency roof hatch with a minimum opening of 0.45 m (18 in) by 0.6 m (24 in) and an emergency escape exit in the cab sidewall. Such features should aid in removing passengers and crew members from a vehicle that is either on its side or upright in water. This proposed requirement exceeds the requirements for Tier II equipment proposed in the NPRM on Passenger Equipment Safety Standards.

In paragraph (f) FRA requires the Railroad to have in place a redundant means for the train crew to communicate with the pertinent railroad operations center to summon aid in the event of an emergency situation. These redundant methods may include operating portable radios or cellular telephones. This requirement will ensure that emergency response forces can be quickly summoned in the event of an emergency.

Section 243.419 Operator's Controls and Power Car Layout

FRA believes that power car cab interior features play an important role in safety, because they affect employee response and performance. Given the speed that FOX trainsets will travel, FRA believes it would be appropriate to establish minimum standards for the cab layout, in order to maximize employee cab performance. The proposed requirements set forth in this section attempt to capture sound ergonomic design practice for cab layout in order to minimize the risk of human error, attention loss, and operator fatigue. These standards are self-explanatory, and consistent with the FOX high speed equipment.

Section 243.421 Exterior Lights

Paragraph (a) proposes that each power car be equipped with two or more headlights, each capable of producing 12,000 or more candela. Paragraph (b) proposes the following taillight requirements: each trailing power car shall be equipped with two or more red taillights; each taillight shall be located at least 1.2 m (3.9 ft) above rail; each taillight shall produce 15 or more candela; and taillights of the trailing power car must be on when the trainset is on a section of the system that is in revenue service.

The intensity of the headlights and taillights proposed here for the FOX trainsets are lower than exist on standard North American equipment. Due to all of the unique operating characteristics that are part of the FOX system, (no grade crossings, a fenced right-of-way with intrusion detection systems, no mixed traffic, advanced signal system), the high speed equipment can be (and often is in France) operated at full speed without the locomotive engineer having sight of the right-of-way. The intensity of the TGV lights have provided safe operation for fifteen years of revenue service in France, and FRA believes this will be sufficient for the system in Florida.

Section 243.423 Electrical System Design

This section contains the proposed requirements for the FOX electrical system design. These requirements reflect common electrical safety practice and are widely recognized as good electrical design practice. They include provisions for circuit protection against surges, overload and ground faults; electrical conductor sizes and properties to provide a margin of safety for the intended application; battery system design to prevent the risk of overcharging or accumulation of dangerous gases that can cause an explosion; and design of resistor grids that dissipate energy produced by dynamic braking with sufficient electrical isolation and ventilation to minimize the risk of fires. These proposed electrical system design requirements are consistent with the FRA's NPRM for Tier II Passenger Equipment Safety Standards.

Section 243.425 Automated Monitoring

This section contains proposed requirements for automated monitoring of the status or performance of the Railroad's safety-related equipment systems and subsystems. Investigations of past passenger train accidents reveal that many accidents were caused, in some measure, by human error. FOX's high operating speeds will reduce the time train operators will have to react to nonconforming conditions, and evaluate potentially dangerous situations. Therefore, the potential for accidents increases. Automated monitoring systems can reduce the risk of accidents by alerting the operator to abnormal conditions and advising the operator of necessary or recommended corrective action as soon as the abnormalities appear. These systems can even be designed to make automatic corrective action in certain situations. FRA proposes that the FOX trainsets be equipped with an automated system to monitor various train systems and components. The requirements that FRA proposes are consistent with the requirements for FRA's NPRM for Tier II Passenger Equipment Safety Standards.

Paragraph (a) requires the train to be equipped to monitor the performance of a minimum set of safety-related systems and components that includes the following: Reception of cab signals and train control signals; truck hunting; electric brake status; friction brake status; fire detection systems; head end power status; alerter; horn; and wheel slide. This monitoring system will also provide information to the Railroad for use in trouble-shooting, maintenance, and to accumulate reliability data that will form the basis for establishing required periodic maintenance intervals.

Paragraph (b) requires that the locomotive engineer be alerted when any of the monitored parameters are out of predetermined limits. The Railroad's operating rules, developed pursuant to § 243.117 and Subpart F of the rule, will govern the engineer's activities if the equipment malfunctions. If the engineer does not act in accordance with the Railroad operating rules for this situation, the Railroad's central traffic control must initiate corrective action.

Paragraph (c) requires the Railroad to develop, in the course of its system safety plan analysis, appropriate operating rules that will address engineer and train performance if a trainset's automated monitoring system becomes defective en route, or is defective when the daily inspection required by § 243.433 is completed. The automated monitoring system greatly enhances safe operations. Although trains may operate safety without this system, FRA believes that specific practices must be developed and followed by the Railroad to address such items as train speed, braking distances, and communications when the system becomes defective. As stated earlier in this document, FRA is unclear whether this monitoring system is designed to function in redundant fashion. If that is the case, it may be very unlikely that the monitoring system will ever fail. Nonetheless, FRA believes that the added precaution of standards to cover that event is necessary to ensure safety.

Paragraph (d) proposes that each lead power car be equipped with an event recorder that monitors and records safety data as required by § 243.425(a) of this proposal and 49 CFR 229.135, Event Recorders.

Paragraph (e) requires that each of the systems monitored, and listed in paragraph (a), must be inspected during the daily inspection that is required by § 243.433 of this Subpart. This works in conjunction with § 243.433(f)(1), which requires the Railroad to inspect these monitored systems in the daily inspection of each trainset. If for some reason, conditions cannot be determined through the automated monitoring system, the Railroad must perform a visual inspection before the trainset can be placed in revenue service.

Section 243.427 Trainset System Software and Hardware Integration

This section contains the proposed requirements for the Railroad's rolling stock hardware and software. This section reflects the growing role of automated systems to control passenger train safety functions. Paragraph (a) proposes that the trainset system hardware and software integration conform with CF–001, On-Board Electronic Equipment and Computer Hardware. In addition, paragraph (b) proposes that the trainset system hardware and software integration conform with Pr CF–67–004, Methodology for the Development of On-Board Micro-Computer Equipment.

These requirements represent accepted practice, and will not limit the flexibility of the Railroad's equipment designers. However, these standards reflect good design, that has led to reliable, safe computer hardware and software control systems in the European railroad industry. Computer hardware and software systems designed to meet these standards may require an initial investment, but it has shown that such an investment is quickly recovered by the reduction in hardware and software integration problems, minimizing trouble-shooting, debugging of equipment.

Section 243.429 Control System Design Requirements

This section requires that the rolling stock computer be designed and function pursuant to the software safety program developed as part of the Railroad's system safety plan in Subpart B of this proposal, discussed previously.

Section 243.431 Safety Appliance

This section contains proposed requirements for safety appliances on FOX trainsets. The proposal is consistent in concept with existing requirements, but is tailored specifically for application to this new and somewhat unconventional equipment. These requirements are also consistent with those proposed for Tier II equipment in the FRA's Passenger Equipment Safety Standards.

Paragraph (a) of this section contains the proposed requirements for couplers that are positioned at either end of the trainset, which will be used to connect to other locomotives for hauling or rescue purposes. Paragraph (a) requires automatic couplers at the leading and trailing ends of the trainset to couple on impact, and uncouple by use of uncoupling lever or other means that does not require a person to go on, under, or between equipment units. This requirement prevents employee exposure to the safety hazards that arise from working on or between rail equipment. The leading and trailing automatic couplers of the trainset must be compatible with the Railroad's rescue locomotive couplers, without the use of special adapters. This would facilitate rapid movement of disabled trains and protects employees from the hazards of going between the locomotive units. Paragraph (a) also proposes that all couplers be equipped with an anti-climbing mechanism capable of resisting an upward or downward vertical force of 250 kN (56,200 lb) without permanent deformation. This is common European design and is appropriate in an operating environment such as the FOX system, where the risk of a collision has been greatly reduced through strict collision-avoidance measures, and the articulated train formation that resists climbing in the event of an accident.

Paragraph (b) of this section sets forth minimum requirements for safety appliance mechanical strength and fasteners. Handrails and sill steps must be made of steel pipe that is 1 inch in

diameter, and fasteners must have a mechanical strength of at least a M10-diameter SAE steel bolt. These standards are consistent with European and U.S. practice, and provide a high degree of safety for employees who must utilize the safety appliances in the course of their duties.

Paragraph (c) sets forth the minimum standards for handrails and handholds. All handrails and handholds must be made of stainless steel, which provides optimum strength and durability for equipment exposed to all sorts of environmental elements. This paragraph also establishes minimum clearance requirements that will facilitate safe employee usage. Handrails and handholds are not required on units of a trainset that are semi-permanently connected, as the FOX trainsets are. The reason for this exclusion is that these units can be disconnected only in repair facilities with the use of special tools, and employees have no reason to position themselves between units and so, have no need for the handholds and handrails for that process. Similarly, handrails and handholds are not required on the leading and trailing units, which are equipped with automatic couplers that are coupled or uncoupled with the use of tools that do not require employees to work between the units. However, handrails and handholds are required at both sides of the doors used to board and depart the trainset. This will provide passengers and employees additional stability and safety as they enter or leave the equipment.

Paragraph (d) of this section sets forth the minimum requirements for sill steps on the FOX passenger equipment. Sill steps must be present below each side door on all power and trailer cars, and must be made of expanded metal or equivalent anti-skid material, in order to protect employees and passengers from slipping from the step. Sill steps must conform to the clearance requirements set forth in order to accommodate safety the average foot, and must be securely fastened to prevent collapse when under load. Sill steps are not required on cars that are semi-permanently connected, or on the leading and trailing units, which are equipped with automatic couplers. FOX may utilize these devices, but is not required to do so, so long as the equipment remains semi-permanently connected, and possesses automatic couplers at each end of each trainset.

Finally, paragraph (e) of this section describes the manner in which the FOX trailer and power cars are connected to one another. The system does not use traditional couplers that are common in U.S. railroading. Cars are connected through articulated semi-permanent connections that can be disengaged only in repair facilities, with the use of special tools. These connectors between trainset vehicles are an integral design characteristic of the French TGV equipment, and one which will be duplicated on the FOX system. Employees are not placed in danger from the hazards that arise from unexpected rail car movements, and these connectors tend to resist buckling and rolling in the event of a derailment. They greatly enhance employee and passenger safety, and this proposal requires their use.

Section 243.433 Trainset Inspection, Testing and Maintenance Requirements

This section sets forth the minimum standards for the FOX inspection, testing, and maintenance program. FRA proposes general guidelines for the Railroad to follow in order to develop a comprehensive inspection, testing, and maintenance program that will assure the safety of the system's rolling stock. However, FRA proposes to exercise final approval of the inspection, testing, and maintenance program developed by the Railroad and to enforce the safety-critical inspection, testing, and maintenance procedures, criteria, and maintenance intervals that result from the approval process.

FRA sets forth this proposed cycle of preventive maintenance for the FOX trainsets, which is based on the operational experience acquired in France throughout the last fifteen years. The French inspection and maintenance program utilizes accumulated mileage and degradation rates as indicators for inspection needs, and FRA adopts those criteria in this proposal.

Paragraph (a) requires the Railroad to obtain FRA approval of the written inspection program for the rolling stock prior to implementation of that program and prior to commencing operations. At a minimum, this program must include the complete inspection, testing, and maintenance program for the TGV trainsets as it is performed in France, including all inspections set forth in § 243.433(d) of this rule. This information shall include a detailed description of: safety inspection procedures, intervals and criteria; test procedures and intervals; scheduled preventive maintenance intervals; maintenance procedures; special test equipment or measuring devices required to perform safety inspections and tests; and training and qualification of employees and contractors to perform safety inspections, tests and maintenance.

Paragraph (b) requires the Railroad to designate which inspection and maintenance criteria are safety-critical, and deems all emergency equipment safety-critical. ''Safety-critical'' requirements are those that, if not fulfilled, increase the risk of damage to equipment or personal injury to a passenger, crew member, or other person. The Railroad must identify the items in the inspection, testing, and maintenance program that are safety-critical, and must submit the program to FRA.

Paragraph (c) requires the Railroad to obtain FRA approval for any changes to the safety-critical portion of the program required in this section. Paragraph (d) requires the Railroad to adopt and implement the inspection, testing, and maintenance program that FRA approved and paragraph (e) mandates that the Railroad's program must ensure that all systems and components are free from hazardous conditions.

Paragraph (f) sets forth specific inspections and maintenance programs that FOX must complete throughout the life of the system. These are identical to the French practice, which have produced a high level of safety on the TGV system. Paragraph (f)(1) sets forth the daily inspection that each trainset must undergo before it can begin revenue operations. This paragraph lists a series of conditions that, if not corrected, would prevent the trainset from commencing passenger service. These conditions are: Malfunction of the driving assistance system (SIAC); malfunction of the fire detection system; indication of an unbalanced tripod; indication of a broken tripod; indication of blocked axle; a single phase pantograph or its circuit breaker out of order; power car failure or cut-out; isolated roof disconnecting switch H(HT); transformer cooling or ventilation out of order; two or more motor blocks isolated; mechanical brake on one or more trucks isolated; total failure of the anti-slide device on one truck; failure of locomotive engineer's vigilance system (VACMA); speedometer failure; failure of on-board signaling system; failure of the speed measuring system (the warning flag of the speedometer does not disappear when the driving cab is activated); locomotive engineer's console out of order; locomotive engineer's brake valve not operating; leak in the main reservoir line; leak in the main brake pipe; failure indication during the required brake test; any battery charger out of order; and total failure of the trainset interior lighting.

The daily inspection is required prior to placing a trainset in service for the

first time during a calendar day. As FRA understands it, this inspection will utilize the automated, electronic test features that are part of the FOX equipment, rather than rely on visual or manual inspections. As rail technology improves, reliance on electronic sensors will naturally increase, and benefits flow from this progression. Electronic devices can often detect imperfections or potential problems that are invisible to the human eye. Also, some of the equipment that the automated testing devices inspect are difficult or impossible to view on the TGV trainsets. Therefore, this electronic capability reduces the risk of injury to employees who might otherwise crawl on, under, or between equipment subject to movement, and dramatically reduces the risk that defective equipment could be released for service.

Paragraph (f)(1) also requires that if any of the conditions listed above cannot be detected through the equipment's on-board automated monitoring system, the Railroad must conduct a visual inspection to verify that the condition does not exist and the equipment is safe for use. As FRA understands the FOX equipment, the automated monitoring system should have the capability to detect all of the potentially unsafe conditions that are listed in the daily inspection requirement. However, this in unclear from the FOX submission. Also, if the on-board monitoring system malfunctions, all of the conditions listed in this paragraph could not be detected from the cab and a visual inspection would be the only method of ensuring that the conditions do not exist. As discussed previously, the Railroad must develop appropriate operating rules, pursuant to § 243.117 and § 243.425 of this proposal, to address the safety risks that may arise if an on-board monitoring system fails en route or during this daily inspection. FRA believes that, in the interest of safety, the Railroad must conduct a visual inspection to detect the items listed in this paragraph if the on-board monitoring system is not capable of detecting them.

FRA is considering making all or some of these items part of a trip inspection, rather than a daily inspection, which would be completed before each trainset begins a new trip. FRA is concerned that some of the items listed in the daily inspection are so critical to the safety of the system, that a train should not be in service for any period of time when those items are not functioning properly. A recent passenger train collision in England, in which six fatalities occurred, may have been prevented if the railroad had conducted a trip inspection and then prevented the train's departure when the defective condition was discovered. Because the items inspected here in the daily inspection are inspected electronically, as FRA understands it, requiring the inspection to occur at the beginning of each trip would impose few, if any, financial or operational burdens on the Railroad. However, FRA seeks comment on the merit of this proposal and any changes to it. Also, FRA requests commenters to discuss which, if any, items should be required to be inspected on a trip basis.

Paragraph (f)(2) describes the examination in service which is a walking visual inspection conducted by qualified personnel every 4000 km (2,485 mi), at a location where there is a repair pit and access to the top of the trainset. The purpose of the examination in service is to detect anomalies that have occurred and correct them so that the trainset can be returned to service without any safety risk. This examination focuses on the systems keenly involved in trainset trackworthiness, including running gear, trucks, and components under the carbody. As FRA understands it, this may become a daily visual inspection if the ridership studies commissioned by FOX become a reality, and the system operates so that each trainset will complete four round-trip journeys each day.

At a minimum, the items listed below must be inspected during an examination in service. All conditions found that do not comply with the safety inspection criteria required by § 243.433(a)(1) of this rule must be corrected before the trainset is put into revenue service: Condition of the pantographs and roof insulators; condition of sanding nozzles; fixation and condition of dampers; condition of suspension springs; fixation and condition of grounding straps; condition of side skirts and underbody panels; condition of trucks; oil levels; traction motor-to-carbody securement; presence of brake pads; condition of brake shoes; condition of wheel tread; and condition of drive train.

Paragraph (f)(3) proposes the running gear inspection which must be done by qualified personnel once every 18 days. The purpose of the running gear inspection is to guarantee running safety by monitoring wear conditions on wheels, bearings, brakes and suspension systems. The inspection is to be conducted once every 18 days on each trainset, independent of distance traveled.

At a minimum, the items listed below must be inspected during a running gear inspection. All conditions found that do not comply with the safety inspection criteria required by § 243.433(a)(1) of this proposal must be corrected before the trainset is put into revenue service: A visual inspection of trucks; an inspection of the operation of flange-lubricating devices; an inspection of the condition and attachment of dampers, roof mounted elements, and suspension components; an inspection of the brake rigging, journal bearings, and tripod transmission; a visual inspection of the condition and attachment of brake pads; an inspection of the oil levels on drive train; an inspection of the securement of drive train and wheel slide sensors; an inspection of the condition of the pantographs and roof insulators; and check for audible leaks on pneumatic system.

Paragraph (f)(4) sets requirements proposed for the wheel inspection (also called Systematic Work). Each trainset wheel and wheel profile must be inspected by qualified personnel at an interval not to exceed 50,000 km of travel. Equipment not in compliance with the inspection criteria established in paragraph (a) must be corrected or replaced before trainset returns to revenue service. The purpose of the wheel inspection is to ensure safety and ride comfort at high speeds.

Paragraph (f)(5) describes the Minor Inspection which must be done by qualified personnel at an interval not to exceed 150,000 km of travel or 7 months of time, whichever comes first. The Minor Inspection must be equivalent to the Minor (Limited) Inspection performed on TGV trainsets in France and performed in accordance with the tests procedures and inspection criteria established in paragraph (a). All conditions found that do not comply with the safety inspection criteria required by paragraph (a) must be corrected before the trainset is put into revenue service. The Minor Inspection must complete the following for electrical parts: Inspect current return devices, antennas, transponders; examine batteries; check operation of lighting; check operation of speedometer unit and of cab signal receptor; check sensors and sensor protectors; check roof switches and contacts; check circuit breakers; and check traction motors and main transformers. For mechanical parts, the Railroad must: Inspect axles, axle boxes and trucks; check tightening torque of shock absorber and support mounting bolts; check buffing gear; inspect pantographs; check attachment of anti-roll bars; examine condition of guard-irons; check setting of sanders; verify proper operation of flange-lubricating

devices; check level and condition of oil on motor and reducing gears; check attachment of geared motors; check for grease projections from the motive force transmission components, and carrying and fixed rings of the articulation joint; check attachment of motive force transmission components and tripod transmission; check condition of motorized axle torque reaction rods; check condition of brake-units and brake shoes; check condition of disk brake pads and of the brake rigging cylinder assembly; check condition of bellows; check for attachment defects and/or distortions on carbody components such as underside panels, skirts, windows, fairings, etc.; verify proper operation of doors including locking devices; check for defects on front windows; inspect extinguishers, tooling and safety equipment; and inspect tachometer and odometer sensors. For pneumatic parts, the Railroad must check main compressor; check the oil level and check for leaks on main compressor; check condition of pneumatic suspension components; and check brake equipment and brake indicator lamps.

Paragraph (f)(6) describes the general inspection which must be conducted at an interval not to exceed 300,000 km of travel or 13 months of time, whichever comes first. The Railroad must perform a General Inspection (equivalent to the General Inspection performed on TGV trainsets in France) in accordance with the tests procedures and inspection criteria established in paragraph (a). All conditions found that do not comply with the safety inspection criteria required by paragraph (a) must be corrected before the trainset is put into revenue service. The General Inspection must consist of the following steps for electrical parts: Inspect circuit breaker; examine insulators; inspect main transformers; inspect braids and connecting shunts, sensors and sensor protectors; examine electro-pneumatic and electromagnetic contacts; inspect freon enclosures; check for anomalies on resistors; check operation of various signaling lights; visual inspection of diodes and antennas; check condition of electronic plug-in units; check condition of switches, controls, joints; check condition of master controller; check operation of clock, indicator of imposed speed; check operation of ground-to-train radio link and speed supervision by transponder; check operation of passenger alarms; inspect antenna; verify that headlights (full and dimmed), tail lights, other indicators, lighting, desks operate properly; verify power supply to electrical outlets available to passengers and service personnel; check operation of lights and telltale indicators in electrical cabinets; inspect various motors (traction, main, auxiliary compressors, ventilation); check operation of refrigeration system and circuit breakers. For mechanical parts, the Railroad must: Check operation of pantographs; check for defects on trucks (cracks, distortions); check for defects and check play on fixed and carrying rings of articulation joint; check for defects on intercar passageways; check for defects on doors, locks and joints; check interbody and anti-tilt dampers; check tread brake units; check underbody rotation stops. For pneumatic parts, the Railroad must: Check pressure gauge; check operation of braking gear; check operation of the anti-wheelslide device; check operation of the emergency brake valve; clean driver's brake valve and check its operation; inspect various flexible and half-couplings; check operation of valves which control alarms, windshield washers, windshield wipers, and of differential valves; check brake indicator lights.

Paragraph (f)(7) proposes the Major Inspection which must be conducted at an interval not to exceed 600,000 km of travel or 25 months of time, whichever comes first. The Railroad must perform a Major Inspection (equivalent to the Major Inspection performed on TGV trainsets in France) in accordance with the tests procedures and inspection criteria established in paragraph (a) of this section. All conditions found that do not comply with the safety inspection criteria required by paragraph (a) shall be corrected before the trainset is put into revenue service. The Major Inspection must include the following steps for electrical parts: Inspect roof cable and lightning arresters; check operation of the roof switch; inspect battery switches; inspect battery charger and battery voltmeter; inspect inverters; examine coils; clean electronic gear; inspect couplers and connecting cables; check driver's console switch box; test driver's vigilance system; pre-departure checks (pantograph uplift, air conditioning, etc.); check operation of cab signal; clean switchgear cabinets; lubricate traction motors; check ammeters, key switch panel; check 30 KVA inverter; check spare light bulb supply.

For mechanical parts, the Railroad must: Check calibration of pantographs; check for defects on motorized axle reaction rods; check the constituents of fixed and carrying rings of articulation joint; check that headlight covers are tightly secured; check for defects on carbody exterior paint. For pneumatic parts, the Railroad must inspect air and oil filters; inspect main compressor couplings; check operation of the main air dryer; check operation of pressure gauges; inspect pneumatic suspension reservoirs; check operation of power car and trailer car brakes; check operation of pneumatic pressure regulators; inspect truck-to-carbody coupling and pneumatic suspension connections; and check operation of the spring-applied parking brake.

Paragraph (g) proposes that the Railroad designate brake system repair point(s) in the inspection criteria established in paragraph (a) of this section. FRA proposes that no trainset depart a brake system repair point unless that trainset has a 100% operational brake system.

Paragraph (h) proposes that the Railroad's program established pursuant to paragraph (a) must include the Railroad's scheduled maintenance intervals for equipment based on TGV operations in Europe, and on an analysis required the system safety program set forth in Subpart B of this rule. FRA proposes to allow the maintenance intervals for safety-critical components to be changed only when justified by accumulated acceptable operating data. Changes in maintenance cycles of safety-critical components must be based on verifiable data made available to all interested parties and shall be reviewed by FRA. This proposal is another attempt to balance the needs of the operating railroad to run efficiently and the concern of rail labor organizations that railroads have the ability to unilaterally make safety decisions.

Paragraph (i) requires the Railroad to establish a training and qualification program as defined in Subpart H of this proposal to qualify individuals to perform inspections, testing, and maintenance on the rolling stock. Only qualified individuals may perform inspections, testing, and maintenance of the rolling stock. An employee or contractor employee shall have knowledge of standard procedures described in paragraph (h) of this section in order to qualify to perform a task. FRA does not prescribe a detailed training program or qualification and designation process.

Paragraph (j) proposes that the Railroad's program required by this section include the Railroad's written standard procedures for performing all safety-critical equipment inspection, testing, maintenance, or repair tasks. This paragraph proposes various broad requirements relating to the content and enforceability of the standard operating procedures. FRA has drawn on the

experiences of other heavy industries and in the military, where inherently dangerous tasks are common, which have proven that standard operating procedures are an effective tool in reducing work-related injuries. Further, standard operating procedures can form the basis for periodic safety refresher training. FRA does not propose to prescribe the detailed procedures to be used. The proposed rule is designed to have the detailed procedures developed by those with most knowledge of how to safely perform the tasks—the operators and employees.

These standard procedures must: Describe in detail each step required to safely perform the task; describe the knowledge necessary to safely perform the task; describe any precautions that must be taken to safely perform the task; describe the use of any safety equipment necessary to perform the task; be approved by the railroad's chief mechanical officer; be approved by the railroad's official responsible for safety; be enforced by supervisors with responsibility for accomplishing the tasks; and be reviewed annually by the railroad.

Paragraph (k) requires the Railroad to establish an inspection, testing, and maintenance quality control program, which will be enforced by the Railroad, to reasonably ensure that inspections, tests, and maintenance are performed in accordance with Federal safety standards and the procedures established by the Railroad. In essence, this creates the need for the Railroad to perform spot checks of the work performed by its employees and contractors to ensure that the work is performed in accordance with established procedures and Federal requirements. FRA believes that this is a very important management function that, if neglected will surely lead to safety problems.

Paragraph (l) of this section requires the Railroad to make and maintain a written or electronic record of each of the inspections required in this Subpart. The record must be maintained for at least one year. Inspection records are extremely helpful to railroads and FRA in determining the natural life of equipment and components, and appropriate safety limits that should be imposed because of those natural restrictions. These records will assist the Railroad and FRA to determine whether all inspection and replacement intervals are understood and followed by the system employees and supervisory staff. Also, these records are often helpful, in the event of an accident, to determine probable causation factors.

Subpart F—Operating Practices

Operating rules and practices play a vital role in assuring railroad safety. This Subpart proposes requirements for the Railroad's operating rules and practices, which for the most part, mirror the Petition and general U.S. practice. However, FRA makes some important changes to our treatment of the FOX operating rules, based on the peculiarities of this operation.

Section 243.501 Purpose

First, this proposal grants FRA authority to approve the FOX operating rules prior to revenue operations. FRA believes that approval authority is necessary to ensure that FOX follows, to the maximum extent possible, the safety-critical operating rules used in France on the TGV, which have helped to create the TGV's admirable safety record. FRA has not had the opportunity to review these rules, though they exist, and believes that Federal approval of the FOX operating rules should not occur until a comparison between the TGV rules and the FOX operating rules can take place. Therefore, this section proposes that FRA must approve FOX operating rules before revenue operations commence.

Section 243.503 Operating Rules; Filing and Recordkeeping

Section 243.503 of the proposal sets forth the filing and recordkeeping requirements for the Railroad. Paragraph (a) requires FOX to file its operating rules with FRA six months prior to commencing internal operations, and one year prior to revenue operations. The reason for this distinction is that FRA would like to review the Railroad's operating rules when the equipment first travels across the system, when the potential for employee injury exists. This requirement would ensure that the Railroad has in place appropriate operating rules at that time to protect employees from moving equipment and operating systems, and the potential for injury that may arise as a result of initial disorganization, inconsistent movements, or faulty equipment. FRA requests comment from FOX and other interested parties as to whether the operating rules prepared for internal operations will vary greatly from the rules for revenue operations. If the rules are strikingly different, modifications may need to be made to this proposed requirement.

Paragraph (a) also requires the Railroad to designate which of its operating rules are safety-critical, and states that FRA will adopt and incorporate the safety-critical rules as Appendix C to this Part. Paragraph (b) of the proposal requires the Railroad to file any amendment to its operating rules with FRA within 30 days of the day it takes effect. Section 243.509 of this Subpart, discussed below, permits the amendment to remain in effect until or unless FRA disapproves the amendment. Therefore, this Subpart grants FRA the authority to approve the Railroad's operating rules, as well as all changes that are made to the rules after initial approval.

Paragraph (c) requires the Railroad to keep one copy of the operating rules at headquarters and make the records available to FRA for inspection or duplication. Paragraph (d) authorizes FRA to issue civil penalties or take other enforcement action against any person who violates a safety-critical operating rule, which has been adopted and incorporated by reference in Appendix C to this rule under paragraph (a) discussed above. This proposal marks an important change from the way in which FRA currently addresses operating rules for existing railroads. This authority will underscore the importance of Railroad, employee, and contractor adherence to safety-critical rules that have been developed thoughtfully and in connection with development of a system safety plan. FRA has no desire to meddle unnecessarily into non-safety issues on railroad property, and the authority proposed in this paragraph will not facilitate such Federal action. FRA may only initiate enforcement actions under this section where clear safety hazards arise due to the violation of a safety-critical rule. This authority will enhance the system's performance for passengers, employees, and the Railroad.

Section 243.505 Program of Operational Tests and Inspections; Recordkeeping

Section 243.505 requires the Railroad to conduct periodic tests and inspections to determine the extent of compliance with its code of operating rules, timetables, and timetable special instructions in accordance with the program filed with and approved by the FRA. This section is consistent with the Petition and current U.S. practice, and will ensure that FRA will be informed of the Railroad's internal validation that employees are complying with the operating rules.

The testing and inspections refer to operational field tests and inspections, not qualifying tests or examinations of employees in operating rule classes. Also, the terms ''inspection'' and ''test'' are not functional equivalents. The term ''inspection'' is broader in scope and

may include varying numbers and types of specific ''tests.'' Each terminal, division, or other organizational category would be inspected periodically for compliance with operating rules. The number and variety of specific ''tests'' comprising each periodic inspection may vary according to the size and nature of the component, local operating conditions, and safety problems uncovered in past inspections or that have developed since the previous inspections. The documents listed in paragraphs (a-d) must be kept at system headquarters, for specified time periods, and must be available to FRA for inspection and copying during normal business hours.

Paragraph (d) requires the Railroad, before March 1, to maintain an annual summary covering the previous year's activities. This must include the number, type and result of each operational test and inspection that was conducted in accordance with paragraphs (a) and (b) of this section.

Paragraph (e) facilitates retaining the required information in an electronic format. This format may be utilized only where certain procedures are in place. There must be restricted access to the electronic database, and identification of those personnel granted access to the information. Also, a terminal with a central processing unit attached to either a fax or printer, that can retrieve and produce information in a usable format for immediate review by FRA representatives must be present. The Railroad must designate a person who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of such electronic records.

Section 243.507 Program of Instruction on Operating Rules; Recordkeeping; Electronic Recordkeeping

Section 243.507 contains the requirements for the Railroad to develop and implement a program of instruction on its code of operating rules. The Railroad must ensure that its employees understand and comply with its code of operating rules. Many railroad accidents are attributable to a lack of compliance with railroad operating rules or a misinterpretation of their intended application. If the Railroad's employees have a better understanding of the operating rules, the chances for non-compliance or misinterpretation should be reduced.

Paragraph (a) requires that a written instructional program, kept at system headquarters and at the division headquarters, will be the basis of instruction on the Railroad's operating rules for those employees governed by such rules. FRA does not intend to prescribe every detail of what the program must contain. However, the program should be based on the specific safety needs and operating environment of the high speed rail system being developed.

Paragraph (b) covers the gradual implementation schedule of its program of periodic instruction. Each amendment to the original program will be retained at the system headquarters and at the division headquarters. The program must be available to representatives of the FRA for inspection and copying during normal business hours. The program must include a description of the means and procedures for instruction of different classes of affected employees. The frequency of instruction and the rationale on which it is based, must also be explained. A schedule for completing initial instructions for employees who are already employed and for those hired at a later date also must be included in the program.

Paragraph (c) states that the Railroad is authorized to retain, via electronic recordkeeping, its program for periodic instruction of its employees on operating rules provided that the conditions and requirements set forth in § 243.505 of this proposal are met.

Section 243.509 Operating Rules Approval

Section 243.509 proposes the approval process for the Railroad's operating rules. Within ninety days of receipt, FRA must notify the Railroad, in writing, of the operating rules' approval or disapproval. If FRA disapproves the entire package or individual operating rules, FRA must explain in its written response the reasons for the disapproval, and the actions needed to obtain FRA approval. Paragraph (b) of this section requires the Railroad to submit any operating rule amendment to FRA for review, within thirty days after it was issued by the Railroad. The amendment will remain in effect, unless FRA notifies the Railroad, in writing, that the amendment has been disapproved. This section also states that the Railroad must submit supporting documentation to FRA that FRA believes is necessary to make an enlightened determination of the Railroad's proposed operating rules. FRA anticipates that the TGV operating rules, for instance, would be one document necessary to determine whether the FOX operating rules are comprehensive and likely to provide a high level of safety on the Railroad.

Subpart G—System Qualification Tests

This Subpart sets forth pre-revenue qualification testing requirements that the Railroad must complete for a period of four months prior to commencing passenger service. This testing program developed pursuant to this Subpart is required by Subpart B of the proposal, and will be approved as part of the system safety plan approved by FRA. The testing program will provide the Railroad assurance that the system is safe, as designed and constructed, so that passengers are not put at risk when operations begin. For the most part, this Subpart is self-explanatory.

Section 243.601 Responsibility for Verification Demonstrations and Tests

Section 243.601 requires the Railroad to comply with the pre-revenue service testing plan, which must meet the specific requirements of this Subpart and the determinations made during the system safety plan analysis required by Subpart B of this proposal.

Section 243.603 Preparation of Test Plan

Section 243.603 requires FOX to develop a test plan that covers every aspect of the system. The plan must include a clear set of objectives, and the Railroad's primary objective should be to demonstrate that the system, as constructed and operated, meets all design and performance standards required by this proposal. The test plan must set a schedule for the testing, describe all property and facilities that will be used, detail how the tests will be conducted, describe how the data obtained will be analyzed, create quality control procedures to ensure that the testing is done correctly, and demonstrate the inspection criteria developed for revenue service. Paragraph (d) requires that the test program include steps to verify the results of the installation and performance tests performed by contractors and manufacturers, conduct pre-operational testing of individual components and subsystems, and to conduct the full system tests.

Section 243.605 Pre-operational Qualification Tests

Section 243.605 details the pre-operational qualification tests that the Railroad must complete on all safety-critical components of the system. The components must be shown to meet performance specifications and verify specified operational functions. This section is consistent with the Petition.

Section 243.607 Integrated Operational Testing of Systems.

This section outlines the testing that FOX must complete with respect to the integrated systems. These tests include vehicle clearances to structures along the right-of-way; mechanical performance of the overhead catenary system; and the integrated performance of the track, signal, power supply, vehicle, software, and communications. Also, this section requires the Railroad to demonstrate safe system performance during normal and degraded operating conditions. These tests must verify power supply protection; catenary and pantograph interaction; incremental increases in train speed; braking rates; and wheel suspension characteristics.

Paragraph (b)(10) of this section requires the Railroad to verify the track and civil structure under dynamic load. FOX must conduct qualification testing to ensure that the equipment will not exceed the wheel/rail force safety limits specified in the table in Subpart D and the limits for ride vibration specified in Subpart E at any speed less than 10 mph above the maximum authorized speed. During the qualification of the vehicle/track system, the ride vibration levels in § 243.411 will be used rather than the accelerometer levels contained in § 243.335. During a joint meeting of RSAC's High Speed Task Group and a group working on the Tier II Passenger Equipment standards, many members of both groups concluded that the lower ride vibration quality levels should apply when a railroad wishes to initially qualify a system, but that the accelerometer levels in the table as represented in § 243.335 should apply during daily operation of the system. Equipment and track tolerances are expected to loosen slightly during operation, but the vehicle/track system must be monitored during the life of the system to ensure that the wheel/rail force measurement and accelerations specified in § 243.335 are not exceeded. These concepts are discussed in greater detail in the analysis of Subpart D.

The Railroad must establish a testing speed at least 10 mph above the maximum operating speed, as well as target test and operating conditions, and conduct a test program sufficient to evaluate the operating limits of the track and equipment. The test program must demonstrate safe vehicle dynamic response as speeds are incrementally increased from 100 mph to the target maximum speed. The test must be suspended where any of the vehicle/track performance limits in this section are exceeded.

At the conclusion of the test, when the maximum safe operating speed is known, along with permissible levels of cant deficiency, a test run will be made over the entire route at the speeds the Railroad will request FRA to approve for such service, and a second run again at 10 mph above this speed. A report of the test procedures and results must be submitted to FRA upon completion of the tests. The test report must also show the design flange angle of the equipment, because this flange angle is used to calculate the safety limit for the ratio of the lateral force to the vertical force exerted by the same wheel on the rail. FRA believes that this testing, in combination with all of the other tests, will reveal any weaknesses in the system or construction of the components, and will greatly enhance the overall safety of high speed passenger line.

Section 243.609 Pre-revenue Service Testing

Section 243.609 requires the Railroad to conduct the pre-revenue service tests for four months prior to operations. The testing will expose problems before passengers are at risk, and will also give operational experience to the Railroad and its employees. This section is consistent with the Petition.

Section 243.611 Verification of Compliance

Section 243.11 requires the Railroad to prepare a report that details the results of all pre-operational tests, and outlines the remedial measures necessary to correct any deficiencies discovered during the testing. This section also requires the Railroad to implement the improvement measures discussed in the report, and to submit the report to FRA sixty days prior to commencing railroad operations.

This Subpart, as proposed, is very similar in concept to the Petition. FRA has made some subtle changes, primarily to streamline the requirements and avoid duplication with Subpart B of the proposal. The requirement proposed in paragraph (c) of § 243.611, which mandates report filing with FRA sixty days prior to revenue operations, was not included in the Petition. FRA invites comment on the timing set forth in paragraph (c), and may consider alternatives to this proposal. FRA believes that Federal review of the verification report is necessary to ensure that all problems encountered during testing are corrected, and additional time may be warranted in order to conduct that review adequately and thoughtfully. FRA has no desire to prevent timely commencement of revenue operations, and would take that into consideration in determining a different time period.

Subpart H—Personnel Qualification Requirements

Section 243.701 General Requirements

This Subpart sets forth specific requirements for the Railroad's personnel qualification program. This Subpart works in conjunction with Subpart B of the proposal, which requires that the Railroad's system safety plan consider the sort of training and qualifications that will be necessary to maintain the appropriate level of safety in the Railroad's revenue operations. This program takes on particular importance with respect to FOX because the American workforce generally does not have thorough knowledge of the FOX equipment and practices. Also, if FOX follows through with plans to bring representatives from the French TGV to Florida to train American workers, there will be language differences that must be overcome during the training process. In addition, the American workforce may not be accustomed to heavy reliance on metric measurements, which are prevalent in Europe and used throughout the FOX system. All of these factors make the Railroad's employee training and testing program critical to the safety of the high speed system. Also, it is important to repeat that all contractor employees must be trained and qualified by the Railroad for the tasks that they are required to complete.

This section sets forth specific parameters for the Railroad's employee qualification program. The Railroad must develop and implement a program that prepares employees to complete their safety-related tasks effectively, and requires supervisory personnel to understand fully the Railroad system and exercise prudent judgment to ensure that the system runs safely. The program must provide ''hands-on'' testing and refresher training of all employees. The Railroad must designate, in writing, that each employee possesses the knowledge to assume his or her assigned duties, and maintain these records for the duration of each employee's employment. Paragraph (c) states that the Railroad's personnel qualification program must explain the process by which the Railroad will confirm that employees are fully capable of handling assigned tasks, and must explain how the Railroad will measure employee skills. Paragraph (e) requires the Railroad's training program for locomotive engineers to follow existing regulations,

49 CFR part 240, as discussed previously. Paragraph (f) prohibits the Railroad from using unqualified or untrained personnel from completing tasks on the Railroad's system.

Section 243.703–Section 243.709 Personnel Qualifications for Track Maintenance and Inspection Personnel

Section 243.703 of Subpart H describes the qualifications that Railroad track personnel must possess in order to maintain and inspect track. Work on or about track structure supporting qualified high speed passenger trains demands the highest awareness about the need to perform work properly. Section 243.703 sets forth requirements for the Railroad to designate qualified individuals responsible for the maintenance and inspection of track in compliance with the safety requirements for Subpart D. The Railroad must maintain records of each designation in effect, the basis for the designation (including training and test results), and the records of the track inspections made by the qualified individuals.

Three categories of qualifications are set forth: § 423.705 establishes the qualifications for the individuals who supervise restorations and renewals; § 423.707 establishes the qualifications for those individuals who inspect track for defects; and § 243.709 sets forth qualifications for persons who inspect and restore continuous welded rail.

A person may be qualified to perform restorations and renewals under § 243.705 in three ways. First, the person may combine five or more years of supervisory experience in track maintenance for track Class 4 or higher and the successful completion of a course offered by the employer or by a college level engineering program, supplemented by special on-the-job training. Second, a person may be qualified by a combination of at least one year of supervisory experience in track maintenance of Class 4 or higher, 80 hours of specialized training or in a college level program, supplemented with on-the-job training. Third, an employee with at least two years of experience in maintenance of high speed track can achieve qualification status by completing 120 hours of specialized training in maintenance of high speed track, provided by the employer or by a college level engineering program, supplemented by special on-the-job training. The third option is intended to provide a means for the railroad to promote and qualify an outstanding employee who has the prerequisite experience in maintenance of high speed track.

Pursuant to § 243.707, a person may be qualified to perform track inspections by attaining five or more years of experience in inspection in track Class 4 or higher and by completing a course taught by the employer or by a college level engineering program, supplemented by special on-the-job training. Or, the person may be qualified by attaining a combination of at least one year of experience in track inspection in Class 4 and higher and by successfully completing 80 hours of specialized training in the inspection of high speed track provided by the employer or by a college level engineering program, supplemented with on-the-job training. Finally, a person may be qualified by attaining two years of experience in track maintenance in Class 4 and above and by successfully completing 120 hours of specialized training in the inspection of high speed track provided by the employer or by a college level engineering program, supplemented by special on-the-job training provided by the employer with emphasis on the inspection of high speed track. The third option is intended to provide a way for employees with two years of experience in the maintenance of high speed track to gain the necessary training to be qualified to inspect track.

For both categories of qualifications, the person must have experience in Class 4 track or above. To properly maintain and inspect Class 4 track or higher requires a level of knowledge of track geometry and track conditions that are not as readily obtained at lower classes. Persons who are qualified for high speed track must know how to work, maintain, and measure high quality track. Experience in Class 4 track is established as a lower limit to provide a pool of candidates, who may be drawn from freight railroads, who would provide the necessary experience on well-maintained track. Each person must demonstrate annually to the Railroad that he or she understands the requirements of Subpart D, can detect deviations, and can prescribe appropriate remedial action to correct or safely compensate for those deviations. A recorded examination on Subpart D is required.

Section 243.709 proposes specific requirements for qualifications of persons charged with maintaining and inspecting continuous welded rail (CWR). Training of employees in CWR procedures is essential for high speed operations. Each person inspecting and maintaining CWR must understand how CWR behaves and how to prevent track buckles and other adverse track reactions to thermal and dynamic loading. As part of the qualification, each employee who restores and inspects CWR must have an examination on the procedures for the handling of CWR required by § 243.329.

Section 243.711—§ 243.717 Personnel Qualifications for Signal Maintenance and Inspection Personnel

These sections describe the minimum qualifications for the Railroad's signal personnel. The Railroad must designate that signal employees have been qualified to perform their assigned tasks, and the designated employees must meet the specified standards in these sections.

FRA is reluctant to dictate specific education or experience levels that would be required for various employment categories. FRA believes it more appropriate to set broad minimum standards that provide FOX flexibility to choose the best work force available. However, each employee designated as qualified must demonstrate annually, and preferably in writing, that she or he understands the signal safety standards set forth in Subpart C, that he or she can detect deviations from the standards, and that he or she can prescribe appropriate remedial measures. Signal supervisors must successfully complete the program that the employees complete, and must possess the ability to exercise judgment and make rational decisions concerning the Railroad's signal system.

Section 243.719–§ 243.723 Personnel Qualifications for Rolling Stock Maintenance and Inspection Personnel

These sections establish minimum standards for the Railroad's rolling stock personnel. Again, FRA is reluctant to dictate specific education or experience levels, and so sets broad categories that provide FOX flexibility and ensure that qualified individuals are secured to work on the system's rolling stock. The Railroad must give rolling stock personnel written procedures to follow, hands-on training on the equipment, and periodic refresher training.

FRA invites comment from interested parties on these proposed qualification standards. The proposal varies slightly from discipline to discipline, and reflects, to some extent, the existing qualification programs in this country. Because we are dealing with a new system, however, where specialized training will be very important, FRA seeks suggestions from the safety community on alternate methods to guarantee an informed and prepared workforce.

Subpart I—Power Distribution

This Subpart of the proposal sets minimum requirements for the Railroad's power distribution system. As is explained in the system description of this proposal, the Railroad will operate on electric power generated and transferred to the equipment from an overhead catenary system. The catenary will maintain high voltage power throughout the length of the right-of-way, which can create an extremely hazardous work environment if not handled properly. The proposed standards in this Subpart follow generally accepted principles found in the National Electric Safety Code and the U.S. Occupational Safety and Health Administration's (OSHA) existing employee protection requirements, and also are generally consistent with the Petition. FRA wishes to make very clear that nothing in this proposal displaces OSHA's authority over employees working on, around, or with the Railroad's electrical generation, distribution, or transmission systems or subsystems. Furthermore, it is important to note that this proposal does not displace OSHA's authority over any working condition that the Railroad's employees face that have not been specifically addressed in the final standards that follow this proposal.

Section 243.801 Warning Signs

This section of the proposal requires the Railroad to post warning signs throughout the right-of-way, at underpasses and overpasses, and at each catenary mast to provide notice to employees, trespassers, and other individuals that high voltage lines are present. FRA believes that plentiful warnings will go a long way to prevent injuries to unauthorized individuals, and will also serve as a necessary reminder to employees working along the right-of-way.

Section 243.803 Clearance Requirements

This section requires all electrical clearances to meet the European standard, UIC 606–2 OR, which references formulas and values that are consistent with the system configuration that will develop in Florida, and that has safely guided the operation of the TGV in France. This standard includes references to other European standards, such as UIC 505–6, which must also be followed by FOX. The consideration of appropriate clearances in not a trivial matter, and many factors influence the development of safe, adequate clearances. Because the catenary system is dynamic, the task becomes that much more complicated. Therefore, FRA proposes that FOX adhere to the pertinent European standards, which we know safely accommodate the equipment that will be utilized in Florida and the employees who work along the right-of-way.

Section 243.805 Catenary Connections

This section requires the Railroad to ground the catenary masts to the ground or rail. Grounding of the catenary masts to the rail should be coordinated with the signaling system installation to insure that they function properly together, and FOX should design and construct this portion of the system in conjunction with the system safety plan. This is consistent with the Petition, which states that FOX will ground each catenary pole to the earthling wire, which will run the length of the right-of-way, and will be grounded to earth approximately every 10 km or 6.2 miles. This is consistent with common safe practice. This section also states that the electrical impedance of the connection must meet the step and touch requirements set forth in international standards to prevent electrical shock. At a system level, the lower the impedance of the grounding system, the quicker the fault energy is diverted to ground, and the sooner the protection equipment, or circuit breakers, will isolate the faulty section of catenary/power distribution system. At an individual level, current takes the path of least resistance, and therefore, if someone was in contact with an object that had current running through it, we would want the grounding system to divert as much energy away from objects that potentially could come in contact with members of the public and railroad employees.

Section 243.807 Access to Stations

Section 243.807 of Subpart I requires the Railroad to prevent unauthorized personnel from entering power supply stations, substations, and autotransformer stations. This provision aims at protecting employees and members of the public from exposing themselves to high voltage hazards, and also ensuring that the power system will not be harmed or disrupted by intruders. FOX states in the Petition that they intend to follow the National Electrical Safety Code with respect to station access and FRA believes that would provide an adequate measure of safety.

Section 243.809 Actuators

This section of the proposal requires the Railroad to protect the operator from electrical shock, direct or induced, that may occur in the actuators of high voltage switches. The operation of the high voltage switch may induce current or voltage surges that may cause voltage surges between the switch control and ground. The person operating the switch much be protected against these surges.

Section 243.811 Power Feeding

Section 243.811 requires the Railroad to protect the power distribution system from short circuits and over voltage that may occur as a result of lightning or utility surges. FRA is reluctant to dictate the specific method that FOX uses to accomplish this task, but believes that the system must be protected from interruptions or breakdowns that can occur on any electrical system, and may surely occur in Florida where electrical storms are commonplace.

Section 243.813 Emergency Devices

Section 243.813 provides for communication and power disconnection abilities in the event of an emergency along the right-of-way. This section requires the Railroad to place emergency devices that are capable of disconnecting and isolating power, or grounding the catenary to the rail, or both, at every underpass, overpass, emergency entrance, supply station, substation, and autotransformer station along the right-of-way. Also, the Railroad must install telephones at each of these locations, and they must be connected to the Railroad's central power dispatching center.

Section 243.815 Overpass Protection

Section 243.815 requires the Railroad to install fencing or other suitable device at each overpass that is adjacent to, above, or beneath the catenary. This section should protect the public, employees, and the electrical system by preventing accidental, hazardous contact with the catenary.

Section 243.817 Safety Work Rules

Section 243.817 states FRA's expectation that FOX will provide for the safety of all employees by following all work practices covered by pertinent regulations issued by OSHA concerning the generation, distribution, and transmission of electrical power. The Petition states that FOX intends to follow the National Electrical Safety Code (NECS) in this regard. FRA believes that FOX should and will be able to comply with both sets of standards. FOX must comply with pertinent OSHA regulations, as they constitute the enforceable standard for working conditions that other federal agencies have not regulated. FRA has not exercised jurisdiction over the

working conditions that arise in the course of maintaining or inspecting power distribution systems, and therefore the pertinent OSHA standards apply to these employee working conditions. The NESC is a professional reference standard, commonly followed by all entities that operate, maintain, and inspect power distribution systems. As FRA understands it, the OSHA regulations and the NESC are not identical in scope and content, but complement one another. FRA invites comment as to whether compliance with each standard would be difficult to accomplish on the FOX system, and the reasoning for it. FRA anticipates that the Railroad's system safety plan analysis will devote attention to the development of appropriate employee work rules and protections vis-a-vis power distribution that are consistent with the OSHA and NESC safety standards.

Section 243.819 Inspection, Testing, and Maintenance of Power Distribution System

Section 243.819 requires the Railroad to develop an inspection, testing, and maintenance program for the power distribution system. This section works in conjunction with Subparts B and H of the proposal, which also require the Railroad to establish and adhere to a comprehensive program that facilitates proper operation of the equipment and system, and which guarantees that employees receive adequate training to perform their duties safety. This section also includes specific inspection items and intervals, which comport with general industry practice and the Petition.

Appendix A—Schedule of Civil Penalties

This appendix is being reserved until promulgation of the final rule of particular applicability. At that time, FRA will include a schedule of civil penalties to be used in connection with enforcement of the standards in the rule of particular applicability. Because such schedules are statements of policy, notice and comment are not required prior to their issuance. See 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions under each regulatory section that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

FRA prepared a cost/benefit analysis of the NPRM for the FOX high speed rail system, and determined that the NPRM imposes no new costs on FOX. The analysis hinges on the establishment of what constitutes a baseline level of regulatory cost. The assumptions were:

- FOX will operate as it proposed in the Petition.
- There is no cost or benefit if FOX intended or intends to follow the proposal under its current practices. Where it was not clear what FOX intends to do as a business practice, the FRA assumed that FOX would follow procedures established by TGV operations in France.
- There is no cost or benefit where FOX would have to follow the requirements of the proposal under current or proposed regulations applying to all railroad operations. (For example, FOX will be required to file accident reports.)
- There is no cost or benefit where FOX has proposed, and FRA has accepted, provisions which are less strict than current or proposed regulations, but for which FOX has proposed limitations on its operations or other practices which directly affect the safety issue in question. (For example, because FOX will limit the weight of its trains and exclude freight operations, the dynamic load on the track will be less than on other track Class 4 and higher, so FRA will permit FOX to make one visual inspection a week, where other high-speed lines would be subject to visual inspection two or three times a week.)
- There is no cost or benefit where FOX would have to follow restrictions FRA now places on other railroads under waivers to accomplish the same end. (For example, FRA is requiring that railroads participating in the ITCS demonstration program validate their software.)
- The proposed rules FRA considered as part of the base case include track standards for high-speed operations, emergency preparedness and passenger equipment safety standards for Tier II equipment.

The proposed rule will not impose any costs on FOX beyond those above, so the FRA does not anticipate that the proposed rule will create any benefits. If the first assumption, that FOX will operate as it represented in the Petition, is not true, then the public safety would be ensured by this proposal, and it would create benefits.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires an assessment of the impacts of proposed rules on small entities. FRA has determined that this proceeding will not have a significant impact on a substantial number of small entities. The NPRM and any final standards that evolve in this proceeding relate only to the FOX high speed rail system, and FOX is not a small entity.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C 3501–3520, and its implementing regulations, 5 CFR part 1320, when information collection requirements pertain to nine or fewer entities, Office of Management and Budget (OMB) approval of the collection requirements is not required. This regulation pertains to one railroad, and therefore, OMB approval of the paperwork collection requirements in this proposed rule is not required.

Environmental impact

FRA has evaluated these proposed standards in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.*), and related laws and regulations. FRA has determined that this NPRM does not in and of itself have a direct impact on the environment. These proposed standards establish an improved framework for safety oversight of the system proposed by FOX, but FOX could build or operate a similar high speed rail network in the State of Florida under existing Federal railroad safety regulations of general applicability. It is expected that there will be other Federal approvals. The FRA has entered into a Memorandum of Understanding with the Federal Highway Administration (FHWA) and the Florida Department of Transportation (FDOT) through which the parties have established a process for considering the environmental impact of the implementation of the FOX high speed rail system in Florida to the extent that Federal approvals are required. The FHWA and FRA have agreed to serve as joint lead agencies for the purpose of complying with the statutory requirements of NEPA and related statutes, and such compliance will be completed prior to the proposed rule having practical effect. FDOT has agreed to coordinate the development of environmental studies at the state level. Appropriate notices, including a notice of the intent to prepare an

environmental analysis, will be provided to the public by the FRA and FHWA in accordance with FRA and FHWA procedures implementing NEPA.

Federalism Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. It should be noted that the U.S. Supreme Court in *CSX* v. *Easterwood*, 507 U.S. 658 (1993), upheld Federal preemption of any state or local attempts to regulate train speed. Nothing in this notice proposes to change that relationship.

List of Subjects in 49 CFR Part 243

French TGV, High Speed Rail, Railroad safety, System safety

The Proposed Rule

In consideration of the foregoing, FRA proposes to amend Title 49 of the Code of Federal Regulations by adding Part 243, as follows:

PART 243—FLORIDA OVERLAND EXPRESS HIGH SPEED RAIL SAFETY STANDARDS

Subpart A—General Requirements

Sec.

Subpart B—System Safety Program and Plan

Subpart C—Signal System

Wayside and cab signals

Track circuits

Wires and cables

Standards

Reporting Requirements.

Inspection, Testing, and Maintenance

Subpart D—Track Safety Standards

Geometry

Track Structure

Inspection

Authority: Subtitle V of Title 49 of the United States Code; 49 CFR 1.49(m).

Subpart A—General Requirements

§ 243.1 Purpose and scope.

This Part prescribes minimum Federal safety standards for the high speed transportation system described in detail in § 243.13 of this rule, known as the Florida Overland Express and hereinafter referred to as the ''Railroad.'' The purpose of this rule is to prevent accidents, casualties, and property damage which could result from operation of this system.

§ 243.3 Applicability.

(a) This Part applies only to the Railroad operating between Miami, Orlando and Tampa in the State of Florida, as described § 243.13. The Railroad shall operate only within the system defined in § 243.13. Any operations outside the system as defined in § 243.13 are prohibited without prior approval by the FRA.

(b) Except as stated in paragraph (c) below, this rule, rather than the generally applicable Federal railroad safety regulations, shall apply to the Railroad.

(c) Effective on the date the Railroad begins revenue operations, the following generally applicable Federal railroad safety regulations, all of which are found in Title 49 of the Code of Federal Regulations, and in the case of paragraph (c)(14), which will be codified in the near future, and any amendments thereto, are hereby made applicable to the Railroad, regardless of any statements of limited application that they may contain:

(1) Part 209, Railroad Safety Enforcement Procedures;

(2) Part 210, Railroad Noise Emission Compliance Regulations;

(3) Part 211, Rules of Practice;

(4) Part 212, State Safety Participation Regulations;

(5) Part 214, Railroad Workplace Safety;

(6) Part 216, Special Notice and Emergency Order Procedures;

(7) Part 218, Railroad Operating Practices;

(8) Part 219, Control of Alcohol and Drug Use;

(9) Part 220, Radio Standards and Procedures;

(10) Part 225, Railroad Accidents/Incidents: Reports, Classification, and Investigations;

(11) Part 228, Hours of Service of Railroad Employees;

(12) Part 229, Section 135, Event Recorders;

(13) Part 235, Instructions Governing Applications for Approval of a Discontinuance or Material Modification of a Signal System or Relief from the Requirements of Part 236, except § 235.7; Any reference in Part 235 to Part 236 shall be read to be a reference to Subpart C, Signal Standards, of this rule;

(14) The emergency preparedness requirements set forth in FRA's proposed Passenger Train Emergency Standards, 62 FR 8330 (February 24, 1996), which shall be codified as modified after consideration of all comments received at 49 CFR part 239;

(15) Part 240, Qualification and Certification of Locomotive Engineers, except sections 240.227 and 240.229; and

(16) Part 215, Railroad Freight Car Safety Standards; Part 229, Railroad Locomotive Safety Standards; Part 230, Locomotive Inspection; Part 231, Railroad Safety Appliance Standards; and Part 232 Railroad Power Brakes and Drawbars shall apply to the Railroad's conventional locomotive and freight fleet as it is used in work trains, rescue operations, yard movements, and other non-passenger functions.

(d) The Federal railroad safety statutes apply to all railroads, as defined in 49 U.S.C. 20102. The Railroad covered by this Part is a railroad under that definition. Therefore, the Federal railroad safety statutes, Subtitle V of Title 49 of the United States Code, apply directly to the Railroad. However, pursuant to authority granted under 49

U.S.C. 20306 (formerly the Rock Island Railroad Transition and Employee Assistance Act), FRA has exempted the Railroad from certain requirements of 49 U.S.C. 20301, *et seq.* (formerly the Safety Appliance Acts).

(e) The Système International, or metric measurement system, is the measuring system used throughout this rule. For clarification, United States' standard values typically follow the metric values in parentheses, and a soft conversion has been used.

§ 243.5 Definitions.

As used in this Part:

Adjusting/destressing, track means the procedure by which a rail's temperature is readjusted to the desired value. It typically consists of cutting the rail and removing rail anchoring devices, which provides for the necessary expansion and contraction, and then re-assembling the track.

Administrator means the Administrator of FRA, the Deputy Administrator of FRA, or the delegate of either.

Alerter means a device or system installed in the locomotive engineer cab to promote continuous, active locomotive engineer attentiveness by monitoring select locomotive engineer control activities, providing alarms, and stopping the train, if necessary. If fluctuation of a monitored locomotive engineer control is not detected within a predetermined time, a sequence of audible and visual alarms is activated to progressively prompt a response by the locomotive engineer. Failure by the locomotive engineer to institute a change of state in a monitored control, or acknowledge the alerter alarm activity through a manual reset provision, results in a penalty brake application, bringing the power car, locomotive, consist or trainset to a stop.

Anti-climbing mechanism means parts of the ends of adjoining trainset units that are designed to engage, when the units are subjected to large buff loads, to prevent override of one unit by another.

Associate Administrator means the Associate Administrator for Safety, FRA, or a Deputy Associate Administrator for Safety, FRA.

Automatic train control (ATC) means equipment installed on the power car or locomotive working in conjunction with a track-side system, so arranged that its operation will automatically result in the application of the brakes to stop a train or control its speed at designated speed or location restrictions, should the locomotive engineer not respond.

Block means a length of track of defined limits, the use of which trains, trainsets, or any other on-track, self-propelled equipment are governed by block signals, or cab signals, or both.

Block signal means a manual signal at the entrance of a block to govern trains, trainsets, or any other on-track, self-propelled equipment entering and operating in that block.

Block, absolute means a block in which no train is permitted to enter while it is occupied by another train, trainset, or any other on-track, self-propelled equipment.

Brake, air means a combination of devices operated by compressed air, arranged in a system and controlled manually, electrically, or pneumatically, by means of which the motion of a power car, trailer car, or trainset is retarded or arrested.

Brake, disc means a retardation system used on some rail vehicles, primarily passenger equipment, that utilizes flat metal discs as the braking surface, instead of the wheel tread.

Brake, dynamic or electric means a train or trainset braking system in which the kinetic energy of a moving train or trainset is used to generate electric current at the power car or locomotive traction motors, which is then dissipated through banks of resistor grids.

Brake, emergency application means a brake application that results in the maximum designed retarding force for the train brake system.

Brake, full service application means an application of the brakes resulting from a continuous or a split reduction in brake pipe pressure at a service rate until maximum brake cylinder pressure is developed. As applied to an automatic or electro-pneumatic brake with speed governor control, an application other than emergency which develops the maximum brake cylinder pressure, as determined by the design of the brake equipment for the speed at which the train is operating.

Brake, tread means a braking system that uses a brake shoe that acts on the tread of the wheel to retard the vehicle.

Brake control system means the components, including software, that either automatically or under the control of the engineer cause changes in the retarding force applied to the trainset by the brake system.

Brake pipe means the system of piping, including branch pipes, angle cocks, cutout cocks, dirt collectors, hose, and hose couplings, that connects power cars and all trailer cars and permits the passage of air to control the power car and trailer car brakes.

Brake system failure means the brake system not applying or releasing in response to commands, or other significant departure from intended operation.

Braking supervision means a function of the ATC system whereby the speed and position of the trainset are monitored in relation to its effective braking performance to ensure compliance with the target speed and target distance.

Broken base means any break in the base of the rail.

Broken rail means a complete break of the rail.

Buckling incident/buckling rail mean the formation of a lateral mis-alignment sufficient in magnitude to constitute a deviation of 125 mm (4.9 in.) measured within a 20 m (65.6 ft.) chord. These normally occur when rail temperatures are relatively high and are caused by high longitudinal compressive forces.

Cab means the compartment of the power car or locomotive designed to be occupied by the crew, and from which the propelling power and power brakes of the trainset are manually controlled.

Cab signal means a signal located in the locomotive engineer's compartment or cab, indicating a condition affecting the movement of a trainset, power car or locomotive and used in conjunction with interlocking signals, and in conjunction with or in lieu of block signals.

Calendar day means any period beginning at 12:01 a.m. and ending at midnight on a given date.

Cant means the vertical distance of the outer rail above the inner rail in a curve.

Cant deficiency means the additional height, which if added to the outer rail in a curve, at the designated vehicle speed, would provide a single resultant force, due to the combined effects of weight and centrifugal force on the vehicle, having a direction perpendicular to the plane of the track.

Cant, rail means a rail's inward inclination.

Cantrail means the longitudinal structural member at the intersection of the side wall and the roof of a rail vehicle.

Central traffic control means the system of railroad operation in which the movement of trains over routes and through blocks on a designated section of track or tracks is directed by signals controlled from a designated point.

Compound fissure means a progressive fracture originating in a horizontal split rail head which turns up or down in the head of the rail as a smooth, bright, or dark surface progressing until substantially at a right angle to the length of the rail. Compound fissures require examination of both faces of the fracture to locate the

horizontal split head from which they originate.

Continuous welded rail (CWR) means rail that has been welded together into lengths exceeding 120 m (394 ft).

Crack, rolling stock means a fracture without complete separation into parts, except that castings with shrinkage cracks or hot tears that do not significantly diminish the strength of the member are not considered to be cracked.

Crash energy management means an approach to the design of passenger rail equipment which controls the dissipation of energy during a collision to protect the occupied volumes from crushing, and to limit the decelerations on passengers and crew in those volumes. This may be accomplished by designing energy-absorbing structures of low strength in the unoccupied volumes of a rail vehicle or passenger train to collapse in a controlled fashion, while providing higher structural strength in the occupied volumes. Energy deflection can also be part of a crash energy management approach. Crash energy management can be used to help provide anticlimbing resistance and to reduce the risk of train buckling during a collision.

Crew means the complement of crew members assigned to operate a train.

Crew member means a Railroad employee called to perform service covered by 49 U.S.C. 21103 and subject to the Railroad's operating rules and program of operational tests and inspections required in this rule.

Critical buckling stress, means the minimum stress necessary to initiate buckling of a structural member.

Critical software means software whose failure could have an impact on safety, or could cause large social or financial loss.

Damaged rail means any rail broken or injured by accidents, wrecks, broken wheels, flat wheels, unbalanced wheels, slipping or similar causes.

Desired rail installation temperature range means the rail temperature range in a specific geographical area, at which forces in CWR installed in that temperature range should not cause a track buckle in extreme heat, or a pull-apart during extreme cold weather.

Detail fracture means a progressive fracture originating at or near the surface of the rail head. These fractures do not include transverse fissures, compound fissures, or other defects which have origins internal to the rail. Detail fractures may arise from shelling, head checks, or flaking of the rail.

Disturbed track means track having reduced resistance to lateral or longitudinal movement, or both, as a result of the disturbance of the roadbed or ballast by track maintenance or any other event.

Emergency application means a brake application which results from an emergency reduction.

Emergency reduction means a depletion of brake pipe pressure at a rate sufficiently rapid to move the operating valve to emergency position.

Employee or Railroad employee means any employee of, contractor of, or employee of a contractor of, the Railroad.

End structure means the main support projecting upward from the floor or underframe of a power car, locomotive, trailer car or other rail vehicle. The end structure is securely attached to the underframe at each end of a rail vehicle.

Engine burn fracture means a progressive fracture originating in spots where driving wheels have slipped on top of the rail head. In developing downward, such fractures frequently resemble the compound or transverse fissures, with which they should not be confused or classified.

Event recorder means a device, designed to resist tampering, that monitors and records data on train speed, direction of motion, time, distance, throttle position, brake applications and operations (including train brake, independent brake, and, if so equipped, electric brake applications and operations) and, where the locomotive, including a power car, is so equipped, cab signal aspect(s), over the most recent 48 hours of operation of the electrical system of the locomotive on which it is installed.

Failsafe means a characteristic of a system or its elements that, upon any failure or malfunction affecting safety, will cause the system to revert to a state that is known to be safe.

Fault tolerant architecture means the built-in capability of a system to provide continued full or continued limited operation in the presence of a limited number of faults or failures of the system, such as a defect in a hardware device or component, or an incorrect step, process or data definition in a computer program.

Flattened head or flattened rail means a short length of rail, not a joint, which has flattened out across the width of the rail head to a depth of 10 mm (0.4 in) or more below the rest of the rail. Flattened rail occurrences have no repetitive regularity and thus do not include corrugations, and have no apparent localized cause such as a weld or engine burn. Their individual length is relatively short, as compared to a condition such as head flow on the low rail of curves.

Full service application means a brake application which results from one or more brake pipe reductions sufficient in amount to cause a full service reduction.

Full service reduction means a service reduction sufficient in amount to cause equalization of pressure in brake cylinder with pressure in the reservoir from which compressed air is supplied to brake cylinder.

Glazing, end-facing means a glazing panel located where a line perpendicular to the exterior surface of the panel makes a vertical or horizontal angle of 50 degrees or less with the longitudinal center line of the rail vehicle in which the panel is installed. A glazing panel that curves so as to meet the definition for both side-facing and end-facing glazing is end-facing glazing.

Glazing, exterior means a glazing panel that is an integral part of the exterior skin of a rail vehicle with a surface exposed to the outside environment.

Glazing frame means the arrangement used to install the glazing into the structure of a rail vehicle.

Glazing, interior means a glazing panel with no surface exposed to the outside environment and which is protected from projectiles by the structure of a rail vehicle.

Glazing, side-facing means a glazing panel located where a line perpendicular to the exterior surface of the panel makes an angle of more than 50 degrees with the longitudinal center line of the rail vehicle in which the panel is installed.

Grade Crossing means a location where a public highway, road, or street or private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks at grade.

Handrails means safety appliances installed on either side of a rail vehicle's exterior doors to assist passengers and crew to safely board and depart the vehicle.

Head end power means electrical power provided on board the locomotive of a passenger train to serve the train.

High voltage means an electrical potential of more than 150 volts.

Home signal means a roadway signal at the entrance to a route or block to govern trains entering and using that route or block.

Horizontal split head means a horizontal progressive defect originating inside of the rail head, usually 6 mm (0.25 in) or more below the running surface and progressing horizontally in all directions, and generally accompanied by a flat spot on the running surface. The defect appears as

a crack lengthwise of the rail when it reaches the side of the rail head.

Hunting oscillations means a sustained cyclic oscillation of the truck which is evidenced by lateral accelerations in excess of 0.4g root mean square, mean-removed, for 2 seconds.

In passenger service/in revenue service means a train or passenger equipment that is carrying, or available to carry, passengers. Passengers need not have paid a fare in order for the equipment to constitute in passenger or revenue service.

In service means equipment subject to this that is in passenger or revenue service, unless the equipment:

(1) Is being handled in accordance with § 243.15, as applicable;

(2) Is in a repair shop or on a repair track; or

(3) Is on a storage track and is not carrying passengers.

Indication locking means electric locking which directly prevents the operation of a switch or other operative unit, in case another unit which should operate first fails to make the required movement.

Interior fittings means any component in the passenger compartment which is mounted to the ceiling, sidewalls or end walls and which projects into the passenger compartment more than 25 mm (1 in.) from the surface or surfaces to which it is mounted. Interior fittings do not include seats, windows, side wall, end wall, floor, door pockets and ceiling lining materials.

Interlocking means an arrangement of signals and signal appliances so interconnected that their movements must succeed each other in proper sequence and which may be operated manually or automatically.

Interlocking block limits means the tracks between the opposing home signals of an interlocking.

Knowingly means having actual knowledge of the facts that give rise to a violation, or knowledge that a reasonable person acting in the circumstances and exercising reasonable care would have.

Linear static analysis means an analysis of the stresses in a structure under load, for which the loads are constant and the loads do not cause permanent deformation to the structure.

Locomotive means a piece of on-track equipment other than hi-rail, specialized maintenance or other similar equipment that may consist of one or more units operated from a single control stand—

(1) With one or more propelling motors designed for moving other equipment;

(2) With one or more propelling motors designed to transport freight, passenger traffic or both; or

(3) Without propelling motors but with one or more controls. This term does not include locomotives propelled by steam power.

Locomotive, controlling means the locomotive from which the locomotive engineer exercises control over the train.

Longitudinal means in a direction parallel to the normal direction of travel of a rail vehicle.

Luminescent material means a material that absorbs light energy when ambient levels of light are high and emits this stored energy when ambient levels of light are low, making the material appear to glow in the dark.

L/V ratio means the ratio of the lateral force that any wheel exerts on an individual rail to the vertical force exerted by the same wheel on the rail.

MIL–STD–882C means a military standard issued by the United States Department of Defense to provide uniform requirements for developing and implementing a system safety program to identify and then eliminate the hazards of a system or reduce the associated risk to an acceptable level.

Main track means a principal track, other than an auxiliary track, designated by timetable or special instructions, and upon which trains are authorized to operate by one or more of the following explicit methods of control: timetable/train order, signal indication, yard limits, or some form of direct train control.

Marker, block section means a marker located at the boundary between adjoining block sections.

Marker, route origin means a marker that is equipped with a proceed light signal, located at the beginning of a route.

Marker, shunting means a special marker, which is equipped with a shunting light, that is used for turn back operations where no route origin marker exists.

Marker, signaling means a marker used in open track, located at the boundaries between each block, to indicate spacing information.

Mechanical stabilization means a procedure used to restore track resistance to disturbed track following certain maintenance operations. This procedure may incorporate dynamic track stabilizers or ballast consolidators, which are units of work equipment that are used as a substitute for the stabilization action provided by the passage of tonnage trains.

Occupied volume means the spaces of a vehicle where passengers or crew are normally located during service operation, such as the operating cab and passenger seating and sleeping areas. Vestibules are typically not considered occupied, except when in use as a control cab.

Override means to climb over the normal coupling or side buffers and linking mechanism and impact the end of the adjoining vehicle or unit above the underframe.

Permanent deformation means a permanent change in the shape of a structural member.

Person means all categories of entities covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Piped rail means a vertical split in a rail, usually in the web, due to failure of the shrinkage cavity in the ingot to unite in rolling.

Power car means a type of locomotive at the leading or trailing end, or both, of a trainset which has a locomotive engineer cab and propelling motors that move the trainset; when at the leading end of the trainset, the unit from which the locomotive engineer controls the trainset.

Qualified person means a person determined by the Railroad to have the knowledge and skills necessary to perform one or more functions required by this rule. The Railroad determines the qualifications and competencies for employees designated to perform various functions in the manner set forth in this rule.

Rail anchors means those devices which are attached to the rail and bear against the side of the crosstie to control longitudinal rail movement. Certain types of rail fasteners also act as rail anchors and control longitudinal rail movement by exerting a downward clamping force on the upper surface of the rail base.

Rail temperature means the temperature of the rail, measured with a rail thermometer.

Railroad equipment means all trains, trainsets, rail cars, locomotives, and maintenance vehicles owned or used by the Railroad.

Railroad operation means any movement of a train, trainset, locomotive, on-track equipment, or track motor car, singly or in combination with other equipment, on the track owned or operated by the Railroad.

Railroad, the means the company, also known as the Florida Overland eXpress (FOX), which owns and operates the high speed rail transportation system connecting Orlando, Miami, and Tampa and which is responsible for compliance with all aspects of this rule.

Redundancy means the existence in a system of more than one means of accomplishing a given function, with those means so arranged that if one means of accomplishing a function fails then another performs the function.

Redundancy, active means that all redundant items are operating simultaneously rather than being activated when needed.

Redundant system means a piece of equipment or a system that duplicates the essential function of another piece of equipment or system to the extent that either may perform the required function regardless of the state of operation or failure of the other.

Refresher training means periodic retraining required and imposed by the Railroad for employees or contractors to remain certified to perform specific equipment inspection, testing, or maintenance functions.

Repair point means a location designated by the Railroad where repairs of the type necessary occur on a regular basis, and that contains all facilities, tools, and qualified employees required to make necessary repairs.

Rollover strength means strength needed to protect the structural integrity of a rail vehicle in the event the vehicle leaves the track and impacts the ground on its side or roof.

Roof rail means the longitudinal structural member at the intersection of the side wall and the roof sheathing.

Route locking means electric locking, effective when a train passes a signal displaying an aspect for it to proceed, which prevents the movement of any switch, movable-point frog, or derail in advance of the train within the route entered. It may be so arranged that as a train clears a track section of the route, the locking affecting that section is released.

Safety appliance means an appliance, required under 49 U.S.C. chapter 203, excluding power brakes. The term includes automatic couplers, handbrakes, sill steps, handholds, handrails, or ladder treads which are made of steel or a material of equal or greater mechanical strength used by the traveling public and Railroad employees that provides a means for safe coupling, uncoupling, or ascending or descending Railroad equipment.

Safety-critical means a component, system or task that, if not available, not performed, or not performed correctly, increases the risk of damage to equipment or injury to a passenger, crew member, or other person.

Safety measurement criterion means a measurement limit or observation threshold used to trigger the duty to take corrective action to prevent a serious safety problem from developing. Measurements may be taken manually or by reliable sensors.

Semi-permanently coupled means coupled by means of a drawbar or other coupling mechanism that requires tools to perform the uncoupling operation. Coupling and uncoupling of each unit in a train can be performed safely only while at a maintenance or shop location where personnel can safely get under a unit or between units.

Service application means a brake application which results from one or more service reductions.

Service reduction means a decrease in brake-pipe pressure, usually of from 5 to 25 pounds, at a rate sufficiently rapid to move the operating valve to service position, but at a rate not rapid enough to operate the valve to emergency position. Quick service is that feature of the operating valve which provides for local reduction of brake-pipe pressure.

Shear strength means the ability of a structural member to resist forces or components of forces acting perpendicular to compression or tension forces, or both, in the member.

Shock absorbent material means material designed to prevent or mitigate injuries due to impact by yielding and absorbing much of the energy of impact.

Side posts means main vertical structural elements in the sides of a rail vehicle.

Side sills means that portion of the underframe or side at the bottom of the rail vehicle side wall.

Soft conversion means a dimension taken, typically from a product or component of a product, already designed and manufactured to English system dimensions, and expressing that dimension to nearly equivalent English or metric dimensions.

Spall, glazing means small pieces of glazing that fly off the back surface of glazing when an object strikes the front surface.

Speed, maximum authorized means the speed at which trains are permitted to travel safely, as determined by all operating conditions and signal aspects.

Speed, maximum revenue service means a speed of 200 mph.

Speed, maximum safe operating means the highest speed at which train braking may occur without thermal damage to the discs or wheels.

Speed, restricted means a speed that will permit stopping within one-half the range of vision, but not exceeding 20 mph.

Speed, slow means a speed not exceeding 20 mph.

Split web means a lengthwise crack along the side of the web of a rail and extending into or through it.

Superelevation means the actual elevation of the outside rail above the inside rail.

System headquarters means the location designated by the Railroad as the primary office for the Railroad system.

System safety plan means a document produced by the Railroad that states in detail the techniques, procedures, and tests to follow to reduce hazards and unsafe conditions to the lowest level possible through the most effective use of available resources. The system safety plan is used as part of the design process to ensure that the equipment and system meets all Federal safety standards and the Railroad's safety design requirements.

System safety program means the activities described in the system safety plan to be performed to ensure that the Railroad's equipment and operations meet all Federal safety standards and the Railroad's safety design requirements.

Target distance means the distance from the front of the train to the target.

Target speed means the maximum speed limit which takes effect at the target.

Terminal means the starting point or ending point of a single scheduled trip for a train. Normally, this location is where the trainset would reverse its direction.

TGV means a high speed rail system currently in use in France, on which some of the equipment and operations to be utilized by the Railroad subject to the requirements of this rule are based.

Thrust tube means the structural members in the trailer car end underframe that transmit longitudinal loads from the cross member located at the end of the trailer to the Car body side sills.

Tight/kinky rail means continuous welded rail that exhibits minute alignment irregularities, which indicate that the rail is undergoing a level of compression at which it may deform unacceptably.

Time locking means electric locking, which after a signal has been caused to display an aspect to proceed, prevents, until after the expiration of a predetermined time interval after such signal has been caused to display its most restrictive aspect, the operation of

any switch, movable-point frog, or derail in the route governed by that signal, and which prevents an aspect to proceed from being displayed for any conflicting route.

Track acceleration measurement system means an on-track vehicle used to measure lateral truck accelerations, lateral carbody accelerations, and vertical carbody accelerations. A Melusine car, used on the French TGV, is a type of track acceleration measurement system.

Track geometry measurement system means an on-track vehicle used to measure track surface, warp, alignment, and gage. The vehicle typically has eight axles spaced symmetrically from the centerline of the vehicle and conducts measurements by means of mechanical contact. A Mauzin car, used on the French TGV, is a type of track geometry measurement system.

Track lateral resistance means the resistance provided by the rail/crosstie structure against lateral displacement.

Track longitudinal resistance means the resistance provided by the rail anchors/rail fasteners and the ballast section to the rail/crosstie structure against longitudinal displacement.

Traffic locking means electric locking which prevents changing the direction of traffic on a section of track while that section is occupied or while a signal displays an aspect for a movement to proceed into that section.

Trailer car means a unit of a trainset designed to provide transportation for passengers, baggage, or mail.

Train means a combination of a single power car or locomotive with any other power car, locomotive, trailer car, or maintenance car. This term includes a trainset.

Train-induced forces means the vertical, longitudinal, and lateral dynamic forces which are generated during train movement and which can contribute to the buckling potential of track.

Trainset means a passenger train including the locomotive(s) and power car(s) and passenger cars that are semi-permanently coupled to operate as a single unit. The individual components are uncoupled only for emergencies or maintenance conducted in repair facilities.

Transmission beacon to locomotive (TBL) means the system which provides interface between the interlocking signal system and the automatic train control system used by the Railroad, resulting in the proper speed and location of all train movements.

Transverse fissure means a progressive crosswise fracture starting from a crystalline center or nucleus inside the head from which it spreads outward as a smooth, bright, or dark, round or oval surface substantially at a right angle to the length of the rail. The distinguishing features of a transverse fissure from other types of fractures or defects are the crystalline center or nucleus and the nearly smooth surface of the development which surrounds it.

Trip means the length of any single-direction, scheduled journey taken by a trainset. Once a trainset completes a turnaround at a station or predetermined location along the right-of-way, a new trip begins.

Two-out-of-three voting architecture means three independent processors operating on dissimilar software in such a manner so as to compare the software output from each processor to ensure that safety-critical results are identical. If one processor produces an answer inconsistent with the other two processors, the conflicting processor is taken off-line and the two remaining processors continue to compare with each other, and drive safety-critical commands, only so long as they both agree. If the remaining two processors fail to agree, the system ceases to issue safety-critical commands, shuts down, and assumes a safe state.

Uncoupling mechanism means the arrangement for operating the coupler by any means.

Underframe means the lower horizontal structure of a car body.

Unit means car, trailer car, power car or locomotive of any type. For articulated equipment a unit means a piece of equipment located between two trucks.

Unoccupied volume means the sections of the passenger vehicle or power vehicle which do not contain seating and are not normally occupied by passengers or crew.

Validation means the process of evaluating a system or component during or at the end of the development process to determine whether it satisfies specified requirements.

Vehicle, rail means a car, trailer car, locomotive, power car, or similar vehicle.

Verification means the process of evaluating a system or component to determine whether the products of a given development phase satisfy the conditions imposed at the start of that phase.

Vertical split head means a vertical split through or near the middle of the head of a rail, and extending into or through it. A crack or rust streak may show under the head close to the web or pieces may be split off the side of the head.

Vestibule means an area of a trailer or passenger car that normally does not contain seating, that leads from the seating area to the side exit doors.

Vital design method means a method of designing any device, circuit or software module used to implement a function essential to the safe operation of trains, such that the probability of its failing to return to the prescribed safe state is so low as to be considered practically nonexistent.

Vital logic processor means a processor designed and operated according to vital design method.

Warp means a measure of the change in track cant over a short distance.

Window, emergency means that segment of a side facing glazing location which has been designed to permit rapid and easy removal during a crisis situation.

Windshield means the combination of individual units of glazing material of the power car or locomotive that are positioned in an end facing glazing location.

Yard means a system of tracks within defined limits provided for the making up of trains, storing of cars and other purposes.

Yield strength means the stress under which a material will exhibit permanent deformation.

§ 243.7 Responsibility for compliance.

(a) The Railroad shall not—

(1) Use, haul, permit to be used or hauled on its line(s) any train or passenger equipment, that

(i) has one or more defects not in compliance with this Part; or

(ii) has not been inspected and tested as required by a provision of this Part; or

(2) Operate over any track, except as provided in paragraph (d) of this section, that has one or more conditions not in compliance with a provision of this Part, if the Railroad has actual knowledge of the facts giving rise to the violation, or a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge; or

(3) Violate any other provision of this Part.

(b) For purposes of this rule, passenger equipment shall be considered in use prior to the train's departure as soon as it has received, or should have received, the inspection required under this Part for movement and is ready for service.

(c) Although many of the requirements of this Part are stated in terms of the duties of the Railroad, when any person (including, but not limited to, a contractor performing

safety-related tasks under contract to the Railroad subject to this part) performs any function required by this Part, that person (whether or not the Railroad) is required to perform that function in accordance with this Part.

(d) For purposes of this Part, the Railroad operator shall be responsible for compliance with all track safety provisions set forth in Subpart D. When the Railroad operator has actual knowledge of the facts giving rise to a violation, or a reasonable person acting in the circumstances and exercising reasonable care would have knowledge that the track does not comply with the requirements of this Part, it shall—

(1) Bring the track into compliance;

(2) Halt operations over that track;

(3) Continue operations over the segment of noncomplying track at a speed of 10 mph for a period not to exceed 30 days, under the authority of a person qualified under section 243.705 of this Part to supervise restorations and renewal of track under traffic conditions; or

(4) Operate in accordance with the appropriate operational limits established for track classes 1 through 5 as set forth in 49 CFR part 213.

§ 243.9 Enforcement.

(a) *Civil penalties.* Any person who violates any requirement of this Part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $10,000 per violation, except that, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury or has caused death or injury, a penalty of up to $20,000 per violation may be assessed. Penalties may be assessed against individuals only for willful violations. Each day a violation continues shall constitute a separate offense. See 49 CFR part 209, Appendix A for a detailed statement of agency civil penalty policy.

(b) *Criminal penalties.* Any person who knowingly and willfully falsifies a record or report required to be made under this Part, or knowingly and willfully fails to make, prepare, or preserve such a record or report may be liable for criminal penalties of a fine up to $5,000, imprisonment up to two years, or both, under the authority of 49 U.S.C. 21311.

(c) *Other remedies.* FRA has other enforcement remedies available to it, including the authority to seek injunctive relief and to issue compliance orders, special notices for repair, orders disqualifying individuals from safety-sensitive service, and emergency orders. FRA may use these other remedies, in addition to or instead of civil or criminal penalties, to ensure the system's compliance with the Federal railroad safety regulations and statutes, and to otherwise address safety concerns with respect to the system.

§ 243.11 Preemptive effect.

Under 49 U.S.C. 20106, issuance of this Part preempts any State law, rule, regulation, order, or standard covering the same subject matter, except for a provision directed at an essentially local safety hazard if that provision is consistent with this part and does not impose an undue burden on interstate commerce.

§ 243.13 System description.

(a) *General.* This section describes the components, operations, equipment, systems, and geographic limits of the Railroad's high speed rail system. Conditions that exceed or differ from the description set forth in this section are prohibited. In addition, the Railroad shall adhere to the following general requirements:

(1) The Railroad shall operate between Miami, Orlando, and Tampa, Florida only. Operation beyond these locations is prohibited without prior approval by FRA.

(2) The Railroad shall not under any circumstance exceed 200 mph, and at all times shall operate at speeds consistent with all requirements of this Part.

(3) The Railroad shall not transport or permit to be transported any product that has been established to be a hazardous material pursuant to 49 CFR part 172, as amended.

(4) The Railroad shall not permit smoking on any trainset while that trainset is in passenger service.

(b) *Right-of-Way.* (1) The Railroad shall operate on a completely dedicated right-of-way. The Railroad shall not operate or conduct joint operations with rail freight or other rail passenger traffic. Other than its passenger trainsets and power cars, only the equipment listed in paragraph (h)(6) of this section may be operated on the Railroad's tracks.

(2) There shall be no public at-grade crossings. Animal and non-Railroad equipment crossings shall be accomplished by means of an underpass or overpass. Private at-grade crossings shall be for the exclusive use of the Railroad's internal operations.

(3) The entire perimeter of the system's right-of-way shall be permanently fenced.

(4) The Railroad shall install fall intrusion, intrusion, flood, wind, hot box and dragging equipment detectors in accordance with the requirements set forth in Subpart C.

(5) Access to the right-of-way for roadway worker staff or emergency personnel shall be provided at intervals not to exceed 3.2 km (2 mi). This access shall be protected against entry by unauthorized persons.

(6) Throughout the length of the right-of-way, the Railroad shall install walkways, located at a safe distance from the tracks, at a minimum distance of 2.4 m (7.87 ft) from the outside rail for a design speed of 350 km/h (217 mph). The walkways shall be used primarily for track and right-of-way inspection, and when required by emergency crews.

(7) The right-of-way shall be designed for the high operating speeds planned which necessitate large curve radii in both the horizontal and vertical planes.

(8) The Railroad shall record all difficulties and special situations regarding geology, hydrology, settlement, landslide, concrete and quality criteria that arise during construction of the right-of-way. After construction, the Railroad shall monitor the stability and quality standards of structures such as bridges, viaducts and earth structures.

(9) The Railroad shall make available for review by the FRA the track layout drawings which show, at a minimum, the following information:

(i) Length of straight sections, spirals and curves, curve radius, superelevation, superelevation variations, gradients, vertical curve radii;

(ii) Turnouts and crossover location, technology and geometry;

(iii) Maximum operating speed and allowable cant deficiencies;

(iv) Signal boxes, block sectioning, wayside signal and communication devices;

(v) Power feeding equipment and cut-out devices;

(vi) Location of accesses to the right-of-way;

(vii) Designated track crossing locations for Railroad personnel; and

(viii) The Railroad shall also submit the specifications for the track layout, permissible track forces, components such as rail, ballast, ties, rail fasteners, switches.

(10) *Highway bridges.* In order to guarantee a clear view for drivers of motor vehicles, highway bridges shall be constructed in a straight line and sharp bumps shall be avoided. Protection devices shall be installed to restrict to the maximum extent possible motor vehicles from falling onto the right-of-way.

(11) *Rail bridges.* There shall be no movable bridges in the Railroad's system. Stationary rail bridges located over highways shall have their foundations protected against the impact of road vehicles.

(12) *Tunnels.* There shall be no tunnels in the Railroad's system.

(13) *Track Crossing Device for Roadway Workers.* Crossing of the tracks where operations occur above 160 km/h (100 mph) is not permitted except where designated track crossing devices are installed. Such track crossing devices shall be installed at all locations where the need for track crossing by workers is expected to occur on a regular basis, such as turnout areas and substations.

(14) *Emergency Traffic Stops.* Emergency traffic stopping or slowing devices, or both, shall be installed at regular intervals on both sides of the tracks, at intervals not to exceed 3.2 km (2 mi), and at all special locations including block section limits, turnouts, substations or autotransformers. These devices shall act directly on the signaling system and establish voice connection to the central traffic control system.

(c) *Railroad system components.* (1) *System safety program.* The Railroad shall develop, implement, and use a comprehensive system safety program, as described in detail in Subpart B of this Part, to ensure the identification, analysis, resolution, and documentation of all safety-critical processes and hazards.

(2) *Inspection, testing, and maintenance procedures and criteria.* The Railroad shall develop, implement and use a system of inspection, testing, maintenance procedures and criteria, which meet the standards set forth in this Part, to ensure the integrity and safe operation of the Railroad's equipment, infrastructure, signal system, and power distribution.

(3) *Operating practices.* The Railroad shall develop, implement, and use operating rules, which meet the standards set forth in Subpart F of this Part, which are based on the practices and procedures used on the French TGV system, to ensure the integrity and safe operation of the Railroad's system.

(4) *Emergency preparedness plan.* The Railroad shall develop, implement, and use an emergency preparedness plan, which meets the standards to be set forth in 49 CFR part 239, to reduce the risk of injury to passengers and employees in the event of an emergency. This emergency plan shall incorporate proven safety procedures used on the French TGV system.

(5) *Personnel qualification requirements.* The Railroad shall develop, implement, and use a training and testing program, which meets the standards set forth in Subpart H of this Part, to ensure that all personnel, including Railroad employees and employees of Railroad contractors, possess the skills and knowledge necessary to effectively perform their duties.

(6) *System qualification tests.* The Railroad shall develop, implement, and use a series of operational and design tests, which meet the standards set forth in Subpart G of this Part, to demonstrate the safe operation of system components, and the system as a whole.

(d) *Track and infrastructure.* (1) The Railroad shall construct its track and infrastructure to meet all material and operational design criteria, within normal acceptable construction tolerances, and to meet the requirements set forth in Subpart D of this Part.

(2) The Railroad shall operate on nominal standard gage, 1.435 m (56.5 in.), track.

(3) The Railroad shall install and operate on double track throughout its entire length, with a minimum nominal distance between track centerlines of 4.5 m (14.75 ft). Generally, each track will be used for a single direction of traffic, and trains will not overtake each other. The Railroad shall install crossover connections between the double track at each station, and at regular intervals along the line to permit flexibility in train operations, maintenance, and emergency rescue.

(4) The Railroad's track shall consist of continuous welded rail that is shop-welded in continuous welded strings of approximately 396 m (1,300 ft.). Once installed, the rail will be field-welded to form one continuous track segment. The rail shall be nominal 130-pound rail, or equivalent.

(5) The Railroad shall install concrete ties, nominally spaced at .6 m (23.6 in.) center-to-center.

(6) The Railroad shall use ballast to support the track structure, as required by Subpart D of this Part. The Railroad shall use ballast that does not excessively degrade when used in combination with concrete ties. The ballast shall be of 20–60 mm (.8 to 2.4 in.) specification and layered to a nominal depth of .35 m (14 in.) under the ties.

(7) The substructure layer shall consist of compacted sandy granular material, 20% maximum fines, layered to a depth selected on the basis of the prepared subgrade and ballast compatibility. The nominal depth of this layer will be .20 m (8 in.).

(8) The formation layer shall consist of compacted granular sandy material, 15% maximum fines, layered to a depth selected on the basis of embankment and ballast compatibility. The nominal depth of this layer shall be .70 m (27.6 in.).

(9) The embankment shall consist of compacted granular sandy material, 15% maximum fines, layered to a depth selected on the basis of embankment and ballast compatibility. The nominal depth of this layer will be .80 m (31.5 in.).

(10) Excavated decomposed organic materials shall be replaced with compacted granular sandy materials, 20% maximum fines.

(11) Mainline high speed movable frog turnouts shall be the same as those developed for and used on the TGV lines in France.

(12) In yards and maintenance facilities, where operations will be at lower speeds, the Railroad shall install 50 kg/m (100 lb/yd) rail, a reduced ballast thickness of 25 cm (10 in.), and concrete or timber ties at turnouts with 50 kg/m (100 lb/yd) rail or equivalent.

(e) *Signal system.* (1) The Railroad's signal system shall include an automatic train control system (ATC), interlocking equipment, wayside detectors, and centralized traffic control (CTC).

(2) The Railroad's ATC shall be a transmission beacon-to-locomotive system, and shall interface with the interlocking system. The interlocking system shall generate movement authorizations, and the transmission beacon system will notify the power car and locomotive engineer of movement information.

(3) The Railroad's ATC shall incorporate speed and distance-to-go principles; safety-based multiple processor architecture and on-board equipment; wayside encoders that send messages through the track beacons and short cable loops, and provide notifications of upcoming curves and gradients, distances to point, and speed restrictions; and on-board equipment that calculates the braking curve requirements with respect to the data received.

(4) The Railroad's ATC shall provide continuous speed monitoring and interface with the train braking systems. The ATC shall initiate braking to control speed in the event the locomotive engineer exceeds the maximum authorized speed.

(5) The on-board ATC computers shall be based on a two-out-of-three voting architecture. Operations shall be accomplished by the use of three processors that shall operate simultaneously.

(6) The Railroad's ATC shall receive information from interlockings, that shall be transmitted to on-board equipment through track beacons and short cable loops. Track beacons shall transmit speed limit and line data for each block section. Cable loops shall be used for specific local information and, at the end of each block section, for permission to proceed.

(7) Braking profiles shall be calculated in the on-board controller to comply with necessary speed limits and target points determined by the track profile and wayside equipment data.

(8) Each block section will be denoted by a block section marker. On open line, block sections shall be equipped with one train detection system each. In areas managed by interlockings, the length of the section will vary according to the configuration of the line.

(9) Track circuits shall be of two types:

(i) Jointless audio frequency track circuits shall be used on the main line; in crossover areas, these circuits will be combined with sequential release logic in the interlocking controllers to ensure protection against poor wheel-rail contact on little-used rail; and

(ii) Jointed high-voltage impulse track circuits shall be used in the yards and maintenance facilities.

(10) The interlocking equipment shall:

(i) interface with the wayside signal equipment, track circuits, switch machines, and wayside signals;

(ii) Monitor all track circuits;

(iii) Interface with the automatic train control system;

(iv) Exchange supervisory control and status information with central control;

(v) Provide local back-up control at each interlocking location; and

(vi) Control switch machines and monitor devices used to verify switch position.

(11) The vital logic processor module of the interlocking controller shall employ two processors that operate simultaneously in a redundant checking system architecture.

(12) All wayside detectors shall interface with the train control system and be monitored from the central traffic control facility through the interlocking equipment.

(13) The Railroad's central traffic control shall regulate, from a single point, all train routes and movements.

(f) *Communications.* (1) The Railroad shall install a dedicated, fiber-optic communication system along the right-of-way to transmit data, telephone, and radio communications. To ensure transmission reliability, the system shall include back-up transmission routes.

(2) For train operation and maintenance, the Railroad shall install:

(i) A dedicated telephone system with fixed telephones and field sockets along the tracks, yards, and platforms;

(ii) A portable radio system for maintenance and service use; and

(iii) A train radio, which shall facilitate communication between each trainset and central control at any time.

(g) *Power distribution.* (1) The Railroad shall install a 25 kV (60 alternating current) overhead catenary electrification system.

(2) The Railroad shall protect against local lightning conditions in the design and operation of the power distribution system.

(3) All power substations located along the right-of-way shall be provided with remote control operating features that permit operation from a centrally-located control center.

(4) Supervisory control equipment at remote locations and power substations shall have battery-powered back-up capability in the event of total utility service failure.

(h) *Rolling stock.* (1) The Railroad's rolling stock shall be designed, operated, and maintained in accordance with the requirements set forth in Subpart E of this Part.

(2) The Railroad's trainsets shall be bi-directional, articulated, fixed-consist trains with a power car at each end and eight passenger or trailer cars between the power cars. The power cars and trailer cars shall not be coupled together, but shall be semi-permanently connected into one unit that is capable of being disconnected only in a repair facility. The trailing and leading ends of each trainset shall be equipped with automatic couplers. The trailer cars shall be arranged so that adjacent car body ends are supported by a common truck. The end trailers shall be supported by a separate truck at the carbody end adjacent to the power car.

(3) Each truck of a trainset shall be continuously monitored by on-board computer while in operation to ensure proper function. The on-board computer screen shall alert the locomotive engineer if malfunction occurs.

(4) Each trainset shall be equipped with wheelslide control, independent trucks, and fault-tolerant braking.

(5) All trainsets shall include operating smoke and fire detection systems.

(6) The Railroad shall operate other rail vehicles for maintenance and rescue purposes, including a grinding train, a tamping lining machine, a track stabilizing machine, a track geometry measurement car or Mauzin car, a track acceleration measurement car or Melusine car, an ultrasonic test car to measure the integrity of the rails, a ballast-plowing railway car, and electric and diesel locomotives for shunting and rescue purposes.

(7) Each maintenance center and maintenance employee shall be fully equipped with tools, autonomous motorized railway motorized cars, and road vehicles needed for performance of duties required by this Part.

(8) Each power car and trailer car shall incorporate crash energy management, and each power car shall contain a structural anti-penetration wall ahead of the locomotive engineer cab, and energy absorbing structures at the front and rear of the car body.

(9) The power cars shall be equipped with an alternating current propulsion system. Two self-commutated, synchronous traction motors on each truck of each power car shall provide maximum power at the wheel rims.

(10) The locomotive engineer cab shall be arranged to enhance safety of operation, range of vision, visibility and readability of controls and indicators, accessibility of controls, climate control, noise control, engineer comfort and vigilance, and efficiency. The engineer's control stand shall be centrally located.

(11) The Railroad's passenger equipment brake system shall meet the following standards:

(i) Each trainset shall be equipped with a two-pipe, electro-pneumatic brake system, which shall ensure that each truck respond independently to a brake demand from a reduction.

(ii) The pressure in each brake pipe shall be controlled by the locomotive engineer's automatic brake valve in the leading cab. In the event of a failure of this device, a purely pneumatic control shall be available for use by the locomotive engineer.

(iii) The maximum brake cylinder pressure shall vary depending on the speed range. At speeds above 200 km/h (125 mph), the maximum brake cylinder pressure will be reduced to avoid excessive demand of the adhesion.

(iv) Independent of the automatic brake valve, the ATC, deadman control, two emergency brake valves located in each cab, and emergency brake valves located in two trailer cars, shall each be capable of producing a rapid and complete evacuation of the brake pipe and initiate an emergency application.

(v) Each powered truck shall be independently controlled by the brake pipe, and shall have electric braking that is battery operated as a back-up in case of main power failure. The brake system shall perform so that the electric brake shall have priority action. The electric brake control shall be performed by the same electronic equipment that

controls the traction equipment on each truck. During emergency braking, electro-mechanical relays, independent of electronic control, shall check the level of electric braking and in case of failure, the friction brake shall be automatically applied at its maximum value. If the electronic equipment controlling the powered truck is out of service, friction braking shall be available in an emergency through a pneumatic application.

(vi) The control of the powered truck electric brake shall be available to the locomotive engineer through the traction-braking master controller to slow the trainset or maintain speed down a gradient. This brake application shall be provided with an electric signal without any reduction in the brake pipe pressure.

(vii) A separate microprocessor shall control the traction and the braking functions on each powered truck. Each microprocessor for the traction motor units shall be programmed so that the retarding force is distributed effectively between motors and air brake equipment. Each microprocessor shall also monitor the power dissipation in the rheostats.

(viii) Each power car and trailer car shall be equipped with wheelslide protection.

An anti-skid device for each truck shall be included in the traction system controls. The anti-skid function shall be controlled by a separate microprocessor for each power car truck. The anti-skid function for each truck shall be backed up a system that detects and notifies the engineer of nonrotating axles.

(ix) Each trainset shall be equipped with an operative on-board detection system. During operation, all power equipment shall be continuously monitored by microprocessor. The detection system shall store all failures detected. Failures of the nature described in § 243.425 of Subpart E of this Part shall appear on the display screen in the locomotive or power car cab.

(x) The Railroad's system safety plan shall establish a maximum authorized speed and brake reduction matrix to address brake failures that occur in service or in passenger service. In the event of any brake failure on a trainset, the locomotive engineer shall reduce train speed to the maximum authorized speed for that failure, as established in the Railroad's safety system plan.

(xi) The brake system on each trainset shall be designed and operated fail-safe. System redundancy and notification procedures shall ensure continuous monitoring and back-up in the event of failure.

(12) *Hot box detectors.* The Railroad shall install and maintain hot box detectors along the length of the right-of-way that detect the journal bearing temperature of all moving rail equipment. The detectors shall be interconnected to the central traffic control and shall alert the Railroad and the locomotive engineer of defective equipment.

§ 243.15 Movement of defective equipment.

(a) Except as provided in paragraphs (b) and (c) of this section and after departure in compliance with the daily inspection required by section 243.433(f)(1), a trainset with one or more conditions not in compliance with the list in section 243.433(f)(1) of this Part may be moved in revenue service only after the Railroad has complied with all of the following:

(1) A qualified person determines that it is safe to move the trainset, consistent with the Railroad's operating rules developed and approved in accordance with the requirements of Subpart F of this Part;

(2) The qualified person making the non-compliance determination notifies the locomotive engineer in charge of movement of the trainset and crew, in writing, that the trainset is non-complying, but safe to move, and of the maximum authorized speed, and any other restrictions that may apply; and

(3) A tag bearing the words ''non-complying trainset'' and containing the following information, are securely attached to the control stand on each control cab of the trainset:

(i) The trainset number;

(ii) The name and signature of the qualified person making the non-compliance determination;

(iii) The location and date of the inspection that led to the non-compliance determination;

(iv) A description of each defect;

(v) Movement restrictions, if any; and

(vi) The authorized destination of the trainset.

A copy of this tag may be used to provide the notification required by paragraph (a)(2) above.

(b) A trainset that develops a non-complying condition en route may continue in revenue service, so long as the requirements of paragraph (a) are otherwise fully met, until the next daily inspection, examination in service, running gear inspection, wheel inspection, minor inspection, general inspection, or major inspection, whichever is required by this Part to occur first. Where en route defects or failures of the brake system occur, trainset movement shall be governed by section 243.409 of this Part.

(c) A non-complying trainset, power car, or locomotive may be moved without passengers within a yard, at speeds not in excess of 16 km/h (10 mph), without meeting the requirements of paragraph (a) of this section where the movement is solely for the purpose of repair. The Railroad shall insure that the movement is made safely.

Subpart B—System Safety Program and Plan

§ 243.101 General system safety requirements.

(a) One year after the date that this Part takes effect, the Railroad shall adopt a written system safety plan that describes the railroad's system safety program, using MIL–STD–882(C) as a guide. The Railroad shall submit the system safety plan to FRA for approval. The Railroad shall update the system safety plan as new information and knowledge concerning systems and equipment arise in the course of operations. The Railroad shall brief FRA's Associate Administrator for Safety annually on the status of the system safety program, including any changes proposed for the system safety plan.

(b) The system safety plan shall describe the system safety program to be conducted as part of the Railroad's system design and construction process to ensure that the Railroad identifies, addresses, and documents all safety issues and Federal safety requirements. The system safety plan shall also describe the system safety program to be conducted as part of the operation, maintenance, and overhaul of all system components. The system safety plan shall take into account the operation of system components as they operate in isolation, as well as how they operate within the system. The system safety program shall ensure that safety issues are considered as important as cost and performance issues in the design, construction, operation, maintenance, and overhaul of the Railroad's system.

(c) The system safety plan shall be the Railroad's principal safety document. It shall be used as guidance or, as applicable, as a requirement for the development and operation of the Railroad's system and subsystems. At a minimum, the system safety plan shall address:

(1) Fire protection;

(2) Software safety;

(3) Inspection, testing, and maintenance;

(4) Training and qualifications;

(5) Emergency preparedness;

(6) Pre-revenue service system qualification testing;

(7) Hazard identification and reduction;

(8) Operating procedures in the event of equipment that becomes defective while in passenger service;

(9) Identification of safety-critical subsystems;

(10) Relationships between safety-critical subsystems; and

(11) Adequate staffing.

(d) The system safety plan shall describe the approaches and processes to be used to:

(1) Identify all safety requirements, including Federal requirements governing the design of passenger equipment and its supporting systems;

(2) Evaluate the total system, including hardware, software, testing, and support activities, to identify known or potential safety hazards over the life cycle of the Railroad's system;

(3) Identify safety issues during design reviews;

(4) Eliminate or reduce the risk posed by the hazards identified;

(5) Monitor the progress made toward resolving safety issues, reducing hazards, and meeting safety requirements; and

(6) Develop a program of testing or analysis, or both, to demonstrate that safety requirements have been met.

(e) As part of the system safety program, adequate documentation shall be maintained to audit how the design and operation of the Railroad's system meets safety requirements, and to monitor how safety issues are raised and resolved.

(f) The system safety plan shall address how operational limits may be imposed on the use of the Railroad's system if the system design cannot meet certain safety requirements.

(g) The Railroads shall make the system safety plan and documentation required by paragraph (e) of this section available for inspection and copying by FRA.

§ 243.103 Fire protection program.

(a) As part of the system safety program, the Railroad shall include fire safety considerations and features in the design of the Railroad's system that reduce the risk of personal injury and equipment damage caused by fires on-board to a level established as acceptable in MIL–STD–882(C).

(b) As part of the system safety program, the Railroad shall complete a detailed, written analysis of the fire protection problem. In conducting this analysis, the Railroad shall:

(1) Ensure that good fire protection practice is used as part of the equipment design process;

(2) Take effective steps to design equipment to be sufficiently fire resistant so that fire detection devices permit evacuation of the equipment before fire, smoke, or toxic fumes cause injury to a passenger or crew member;

(3) Identify, analyze, and prioritize the fire hazards inherent in the design of equipment;

(4) Document and explain how safety issues are resolved in relation to cost and performance in the design of equipment so that the risk of fire hazard is minimized;

(5) Describe the analysis and tests necessary to demonstrate how the fire protection approach taken in the design of equipment will enable a train to meet the fire protection standards of this Subpart and of the Railroad's system safety plan;

(6) Describe the analysis and tests necessary in order to select materials that will provide sufficient fire resistance to ensure adequate time for fire detection and safe evacuation;

(7) Reasonably ensure that a ventilation system does not contribute to the lethality of a fire;

(8) Identify in writing the trainset components that are a risk of initiating fire and which require overheat protection. As prescribed in § 243.413(c), overheat detectors shall be installed in all components where the analysis determines that such equipment is necessary. If overheat protection is not provided for a component at risk of being a source of fire, the written rationale and justification for the decision shall be included as part of the system safety program documentation;

(9) Identify in writing all unoccupied train compartments that contain equipment or material that pose a fire hazard, and analyze the benefit provided by including a fire or smoke detection system in each compartment identified. As prescribed in § 243.413(d), fire or smoke detectors shall be installed in unoccupied compartments where the analysis determines that such equipment is necessary to ensure sufficient time for the safe evacuation of a train. The written analysis shall explain why a fire or smoke detector is not necessary, if the decision is made not to install one in any of the unoccupied compartments identified as a potential source of fire;

(10) Perform an analysis of the occupied and unoccupied spaces which require portable fire extinguishers. The analysis shall include the proper type and size of fire extinguisher for each location;

(11) Identify in writing all unoccupied train compartments that contain equipment or material that poses a fire hazard. On a case-by-case basis, analyze the benefit provided by including a fixed, automatic fire-suppression system in each compartment identified. The type and size of the automatic fire-suppression system for each necessary application shall be determined. As prescribed in § 243.413(e) a fixed, automatic fire suppression system shall be installed in unoccupied compartments where the analysis determines it is necessary and practical to ensure sufficient time for the safe evacuation of the train. The analysis shall provide the reasoning why a fixed, automatic fire-suppression system is not necessary or practical if the decision is made not to install one in any of the unoccupied compartments identified in the plan; and

(12) Develop and adopt written procedures for the inspection, testing, and maintenance of all fire safety systems and equipment. As prescribed in § 243.413(f), the Railroad shall comply with those procedures that it designates as mandatory.

(c) The Railroad shall reasonably ensure that the design criteria is followed and that the tests required by the fire protection portion of the Railroad's system safety plan and program are performed.

§ 243.105 Software safety program.

(a) The Railroad shall develop and maintain a software safety program to guide the design, development, testing, integration, and verification of computer programs used to control or monitor the Railroad's equipment, operations and systems.

(b) The software safety program shall:

(1) Treat system software that controls or monitors safety functions as safety-critical, unless a completely redundant, failsafe, non-software means to perform the same function is provided; and

(2) Describe the following items, objectives, or tasks to ensure that safe, reliable, and impenetrable system software is used to monitor or perform safety functions:

(i) The software design process to be used;

(ii) The software design documentation to be produced;

(iii) The software hazard analysis that will be performed, including a detailed explanation of the measures needed and taken by the Railroad to prevent the risk of penetration by unauthorized individuals or entities;

(iv) The software safety reviews that will be performed;

(v) The software hazard monitoring and tracking that will occur;

(vi) The hardware and software integration safety tests that will be conducted; and

(vii) The demonstration of overall software safety as part of the pre-revenue service tests of the Railroad's system.

(c) The Railroad shall adhere to the design criteria, and perform the tests required by the software safety portion of the system safety program. To fulfill this obligation in part, the Railroad shall include software safety requirements in each of its contracts for the purchase of new equipment or new components of existing equipment that contain safety-critical software.

(d) The Railroad shall use a formal safety methodology to develop electrical and electronic control systems that control safety functions. The safety methodology shall include a Failure Modes, Effects, Criticality Analysis (FMECA) and verification tests for all components of the control system and its interfaces, including computer software.

(e) Safety-related control systems driven by computer software shall include hardware and software design features that result in a control system that fails safe.

(f) The Railroad shall develop and comply with a comprehensive hardware and software integration program for safety-critical systems to ensure that the software functions as intended when installed in a hardware system identical to that to be used in service.

(g) The Railroad shall follow the software safety procedures required by the software safety portion of the system safety program.

§ 243.107 Inspection, testing, and maintenance program.

(a) *General.* The Railroad shall provide to FRA detailed information, consistent with the requirements of this rule and including those set forth in § 243.433(a), §§ 243.331 through 243.347, and §§ 243.258 through 243.279 of this Part, on the inspection, testing, and maintenance procedures necessary for the Railroad to safely operate its system. This information shall include a detailed description of:

(1) Safety inspection procedures, intervals, and criteria;

(2) Test procedures and intervals;

(3) Scheduled preventive maintenance intervals;

(4) Maintenance procedures; and

(5) Special testing equipment or measuring devices required to perform safety inspections and tests.

(b) *General inspection, testing, and maintenance procedures.* The inspection, testing, and maintenance program shall contain procedures that reasonably ensure that the Railroad's system is free from general conditions that endanger the safety of the crew, passengers, or equipment. This program shall include procedures to ensure that the system, all subsystems, and components are free from the following conditions that may endanger the safety of the crew, passengers, or equipment:

(1) A continuous accumulation of oil or grease on the rolling stock;

(2) Improper functioning of any component in the track, signal, rolling stock, or communication systems;

(3) A crack, break, excessive wear, structural defect, or weakness of a component in the track, signal, or rolling stock systems;

(4) A leak in any portion of the rolling stock;

(5) Use of a component or system under a condition that exceeds the design capabilities of that component or system; and

(6) Insecure attachment of a component of the track, signal or rolling stock systems.

(c) *Maintenance intervals.* Initial scheduled maintenance intervals should be based on analysis completed as part of the system safety program. The intervals should be changed only when justified by accumulated, verifiable operating data, and approved in conjunction with the system safety plan approval.

(d) *Standard procedures for safely performing inspection, testing, and maintenance, or repairs.* The Railroad shall establish written standard procedures for performing all safety-critical or potentially hazardous inspection, testing, maintenance, and repair tasks. These standard procedures shall be available to FRA upon request and shall:

(1) Describe in detail each step required to safely perform the task;

(2) Describe the knowledge necessary to safely perform the task;

(3) Describe any precautions that shall be taken to safely perform the task;

(4) Describe the use of any safety equipment necessary to perform the task;

(5) Be approved by the Railroad's official responsible for safety;

(6) Be enforced by the Railroad's supervisors responsible for accomplishing the tasks; and

(7) Be reviewed annually by the Railroad.

§ 243.109 Training, qualification, and designation program.

The Railroad shall adopt and comply with a training, qualification, and designation program for employees and contractors that perform emergency preparedness tasks or safety-related inspections, tests, or maintenance duties on the Railroad's system. This program shall meet the minimum requirements set forth in Subpart H of this Part, and it shall be submitted to FRA for approval as part of the Railroad's system safety plan.

§ 243.111 Emergency Preparedness Program.

The Railroad shall develop, adopt, and implement an emergency preparedness plan that complies with the requirements of FRA's proposed Passenger Train Emergency Standards as ultimately codified in 49 CFR part 239, as amended.

§ 243.113 Pre-revenue service system qualification testing plan.

The Railroad shall submit a pre-revenue service qualification testing plan, as part of the system safety plan, prior to testing the system. The pre-revenue service qualification testing plan shall cover all systems, including the signal, communication, infrastructure and track, rolling stock, software, and operating practices systems. The testing plan shall include all of the elements required by Subpart G of this Part and shall be approved in conjunction with the Railroad's system safety plan, prior to commencement of testing.

§ 243.115 Hazard identification and reduction.

(a) The Railroad shall include in its system safety program, an identification of all hazards that may arise in the system, which shall be reduced to writing and available for review and copying by FRA.

(b) The Railroad shall include in its system safety program, a written analysis of how the identified safety hazards may be reduced or eliminated through design, construction, equipment, or operations. Through system safety analysis, the Railroad shall choose the reduction or elimination method most appropriate for the safety of the system. A solution based in operations shall be discouraged. The Railroad's written analysis shall be available for review and copying by FRA.

§ 243.117 Operating procedures in the event of component failures.

(a) The Railroad shall include in its system safety program consideration of appropriate operating procedures in the event that rolling stock or any other system component becomes defective while in passenger service. The Railroad's system safety program shall include, at a minimum, appropriate operating procedures for all major component failures under all potential

operating conditions; a description of the limits of the fault tolerance for each fault-tolerant system; and the development of a process by which the Railroad and any locomotive engineer operating a trainset will become aware that a system is approaching the limits of its fault tolerance before those limits are reached or surpassed.

(b) As part of the system safety program, the Railroad shall complete a written explanation of the considerations completed under paragraph (a). The Railroad's written explanation shall be available for review and copying by FRA.

§ 243.119 Safety-critical subsystems.

The Railroad shall include in its system safety program an identification of all safety-critical subsystems. The Railroad shall also prepare an explanation of the relationship between all safety-critical subsystems. The Railroad's written identification and explanation shall be available for review and copying by FRA.

§ 243.121 Approval procedure.

(a) *General.* The following procedures govern consideration and action upon requests for approval of the Railroad's system safety plan and safety-critical changes to the Railroad's existing system safety plan.

(b) *Petitions for approval.* The Railroad's petition for approval of the system safety plan, or petition for approval of safety-critical changes to the system safety plan shall contain—

(1) The name, title, address, and telephone number of the Railroad's primary person to be contacted with regard to review of the petition;

(2) The system safety plan proposed, in detail, which addresses the Railroad's entire system as described in this Part; and

(3) In the case of the Railroad's initial petition for approval, appropriate data or analysis, or both, establishing that the system safety plan will provide a high level of safety; and in the case of petitions for approval of safety-critical changes to the system safety plan, data or analysis, or both, which establishes that the requested change(s) provides an equivalent or greater level of safety than provided in the Railroad's previous system safety plan.

(c) *Service.* The Railroad's petition for approval under paragraph (b) of this section shall be submitted in triplicate to the Associate Administrator for Safety, FRA, 400 7th Street, S.W., Stop 25, Washington, D.C. 20590.

(d) *Disposition of petition.* (1) If FRA finds that the petition complies with the requirements of this section and that the proposed plan is acceptable or proposed changes are justified, the petition shall be granted, normally within 90 days of its receipt. If the petition is neither granted nor denied within 90 days, the petition remains pending for decision. FRA may attach special conditions to the approval of the petition. Following the approval of a petition, FRA may reopen consideration of the petition for cause stated.

(2) If FRA finds that the petition does not comply with the requirements of this section and that the proposed plan is not acceptable or that the proposed changes are not justified, the petition shall be denied, normally within 90 days of its receipt.

(3) When FRA grants or denies a petition, or reopens consideration of the petition, written notice shall be sent to the petitioner.

(e) *Publication of Changes.* If FRA determines that changes to safety-critical standards, procedures, or inspection frequencies set forth in this rule are justified, the Administrator shall publish in the **Federal Register** a notice which explains those changes. The changes to the Railroad's system safety plan shall take effect 60 days after publication of such notice.

Subpart C—Signal System

General

§ 243.201 Plans, where kept.

As required for maintenance, plans shall be kept at all interlockings and intermediate track circuit cases. Plans shall be legible and correct.

§ 243.202 Grounds.

Each circuit, the functioning of which affects the safety of train operations, shall be kept free of any ground or combination of grounds which will permit a flow of current equal to or in excess of 75 percent of the release value of any relay or other electromagnetic device in the circuit, except circuits which include any track rail and except the common return wires of single-wire, single-break, signal control circuits using a grounded common, and alternating current power distribution circuits which are grounded in the interest of safety.

§ 243.203 Locking of signal apparatus housings.

Signal apparatus housings shall be secured against unauthorized entry.

§ 243.204 Design of control circuits on the failsafe principle.

The failure of a safety-critical control circuit shall not cause a condition more permissive than intended. Safety-critical circuits shall be designed on the failsafe principle.

§ 243.205 Power-operated switch use.

All switch movements shall be operated by power-operated electric switch machines. Hand-operated switches are prohibited in territory controlled by ATC.

§ 243.206 Yard operations.

Yard operations shall be controlled through the traffic control center for the yard, and movements in the yard shall be made at restricted speed. Relevant provisions of 49 CFR 236.1 through 236.109 shall apply to signals that are used in yard operations.

§ 243.207 Timetable instructions.

Interlockings, automatic train control territory, and yard limits shall be designated in timetable instructions.

Wayside and Cab Signals

§ 243.208 Location of wayside signals.

Each wayside signal shall be positioned and aligned so that its aspects can be visually associated with the track it governs.

§ 243.209 Aspects and indications.

(a) Aspects of wayside signals shall be shown by the color of lights, position of lights, flashing of lights, or any combination thereof. They may be qualified by marker plate, number plate, letter plate, marker light, or any combination thereof.

(b) The fundamental indications of wayside signal aspects shall conform to the following:

(1) A red light or a series of horizontal lights shall be used to indicate stop; and

(2) A yellow light or a lunar light shall be used to indicate that speed is to be restricted and stop may be required.

(3) A green light or a series of vertical lights shall be used to indicate proceed at authorized speed.

(c) The names, indications, and aspects of wayside and cab signals shall be defined in the Railroad's Operating Rule Book or Special Instructions. Modifications shall be filed with the FRA within thirty days after such modifications become effective.

(d) The absence of a qualifying appurtenance or the failure of a lamp in a light signal shall not cause the display of a less restrictive aspect than intended.

(e) Cab display:

(1) The aspects of the cab display shall include:

(i) the maximum authorized speed, shown by a bar-graph or a needle in periphery of the dial used for the indication of train speed;

(ii) the target speed, shown by numbers; and

(iii) the target distance corresponding to the indicated target speed, shown by a continuously refreshed bar-graph and numbers in case of overflow of the bar-graph.

(2) [Reserved]

(f) All bar-graphs and numbers shall be illuminated well enough to read clearly in all lighting conditions in which the equipment will be used.

§ 243.210 Markers.

(a) Block section markers and route origin markers shall be provided on high speed lines.

(b) Block section limits shall be indicated by marker plates installed along the right-of-way. The markers shall be located at adjoining block sections. Marker plates shall be illuminated for train operations that occur between one hour before sunset and one hour after sunrise, and during all other hours when weather conditions restrict visibility.

(c) Where route origin markers are used, the markers shall be located at the beginning of each route and each shall be equipped with a proceed light.

(d) Special shunting markers shall be provided at locations not equipped with route origin markers where turn-back operations may be required. Each such marker shall be equipped with a shunting light.

§ 243.211 Spacing of beacons.

The ATC system and beacon spacing shall be designed and operate such that:

(a) The locomotive engineer can comply with any imposed speed restriction through the use of a service brake application;

(b) if the locomotive engineer fails to react appropriately in response to speed restrictions or other safety-critical information conveyed, the safety of the trainset shall be ensured by an automatic brake application.

Track Circuits

§ 243.212 Track circuit requirements.

(a) The track relay controlling home signals or beacons shall be in de-energized position, or a device that functions as a track relay controlling home signals or beacons shall be in its most restrictive state, and the track circuit shall be de-energized where any of the following conditions exist:

(1) When a rail is broken or a rail or switch-frog is removed. It shall not be a violation of this requirement if a track circuit is energized:

(i) When a break occurs between the end of rail and track circuit connector; within the limits of rail-joint bond, appliance or other protective device, which provides a bypath for the electric current, or;

(ii) As a result of leakage current or foreign current in the rear of a point where a break occurs.

(2) When any portion of a trainset occupies any part of a track circuit.

(b) [Reserved]

§ 243.213 Track circuit shunting sensitivity.

Each track circuit controlling a home signal shall be maintained so that the track relay is in a de-energized position, or a device that functions as a track relay shall be in its most restrictive state if, when the track circuit is dry, a shunt is connected across the track rails of the circuit, including fouling sections of turnouts. The electric resistance of the shunt shall be:

(a) 0.15 Ohm on open track, for use with a ballast of 8 Ohm per kilometer (0.62 mi) resistance.

(b) 0.25 Ohm in interlocking areas, for use with a ballast of 8 Ohm per kilometer (0.62 mi) resistance.

§ 243.214 Insulated rail joints.

Insulated rail joints shall be maintained in a condition to prevent the failure of any track circuit due to track circuit current that flows between insulated rails.

§ 243.215 Fouling Wires.

Fouling wires shall consist of at least two discrete conductors, and each shall be of sufficient conductivity and maintained in such condition that the track relay will be in de-energized position, or device that functions as a track relay will be in its most restrictive state, when the circuit is shunted.

§ 243.216 Turnout, fouling section.

Rail joints within the fouling section shall be bonded, and fouling section shall extend at least to a point where sufficient track centers and allowance for maximum car overhang and width will prevent interference with trainset movement on an adjacent track.

Wires and Cables

§ 243.217 Protection of insulated wire; splice in underground wire; aerial cable.

Insulated wire shall be protected from mechanical injury. The insulation shall not be punctured for test purposes. A splice in underground wire shall have insulation resistance at least equal to the wire spliced. Aerial cable shall be supported by messenger.

§ 243.218 Tagging of wires and interference of wires or tags with signal apparatus.

Each wire shall be tagged or otherwise so marked that it can be identified at each terminal. Tags and other marks of identification shall be made of insulating material and so arranged that tags and wires do not interfere with moving parts of apparatus.

Standards

§ 243.219 Control circuits; requirements.

The circuits shall be so installed that each signal or beacon which governs train movements into a block section will convey its most restrictive state as long as any of the following conditions exist within the block:

(a) Occupancy by any portion of a trainset;

(b) When points of a switch are not closed in proper position; or

(c) When a track relay is in de-energized position or a device which functions as a track relay is in its most restrictive state; or when signal control circuit is de-energized.

§ 243.220 Control circuits for signals, selection through point detector operated by switch movement.

The control circuit for each signal aspect or beacon, which conveys an indication more favorable than ''proceed at restricted speed'' for a signal governing movement(s) over switches, shall be selected through a point detector operated directly by switch points for each switch, movable-point frog, and derail in the routes governed by such signal or beacon. Circuits shall be arranged so that such a signal or beacon can convey an indication more favorable than ''proceed at restricted speed'' only when each switch, movable-point frog, and derail in the route is in proper position.

§ 243.221 Time locking; where required.

Time locking shall be provided in conjunction with signal aspects or beacons which convey indications more favorable than ''proceed at restricted speed''. Time locking shall be provided for all interlocking signals where route or direction of traffic can be changed.

§ 243.222 Indication locking.

Indication locking shall be provided for switches, movable-point frogs and derails.

§ 243.223 Electric locking circuits.

Vital design methods in interlocking circuitry shall prevent ''proceed'' aspects from being displayed for conflicting movements.

§ 243.224 Loss of shunt protection; where required.

A loss of shunt protection shall not permit the release of the route locking circuit of each power-operated switch. The loss of shunt protection shall be based on a sequential release logic. Sequential release logic requires that when any track circuit becomes occupied in logical sequence from a previous track circuit, in combination with an established train route, its status will not be allowed to return to unoccupied, even though the detected shunt may be lost, until a specified safe time interval after the next track circuit in the route becomes occupied.

§ 243.225 Signal control circuits, selection through track relays or devices functioning as track relays.

The control circuits for signal aspects or beacons which convey indications more favorable than ''proceed at restricted speed'' shall be selected through track relays, or through devices that function as track relays, for all track circuits in the route governed.

§ 243.226 Switch, movable-point frog or split-point derail.

A switch, movable-point frog, or split-point derail shall be equipped with clamp locks and shall be maintained so that it cannot be locked when the point is open 6 mm (.25 in) or more.

§ 243.227 Point detector.

Point detectors shall be maintained so that when switch mechanisms are locked in normal or reverse position, contacts cannot be opened by manually applying force at the closed switch point. Point detector circuit controllers shall be maintained so that the contacts will not assume the position corresponding to switch point closure if the switch point is prevented by an obstruction from closing to within 6 mm (0.25 in).

§ 243.228 Signals controlled by track circuits.

The control circuits for aspects with indications more favorable than ''proceed at restricted speed'' shall be controlled by track circuits extending through the entire block.

§ 243.229 Circuits at interlocking.

Circuits at an interlocking shall be so interconnected that aspects to proceed cannot be displayed simultaneously for conflicting movements.

§ 243.230 Signals at adjacent interlockings.

Signals at adjacent interlockings shall be so interconnected that aspects to proceed on tracks signaled for movements at greater than restricted speed cannot be displayed simultaneously for conflicting movements.

§ 243.231 Track signaled for movements in both directions, change of direction of traffic.

On track signaled for movements in both directions, occupancy of the track between opposing signals at adjacent interlockings shall prevent changing the direction of traffic from that which was obtained at the time the track became occupied.

§ 243.232 Route locking.

Route locking shall be provided at all interlockings where power-operated switches are located.

§ 243.233 Wayside detectors.

(a) All wayside detectors, including flood, wind, hot box, fall intrusion, intrusion, and dragging equipment detection systems, shall be linked to the central traffic control system or to the signaling system, or both.

(b) The Railroad shall design and implement the wayside detection systems so that any detection of a potentially unsafe condition will be immediately conveyed to the central traffic control system or to the signaling system, or both.

(c) *Fall intrusion detectors.* The Railroad shall install fall intrusion detectors at all highway, animal, and non-Railroad equipment overpasses and underpasses. Fall intrusion detectors shall be activated when the network of protective wiring located at each overpass and underpass experiences a partial or complete break. The fall intrusion detectors' data output shall be transmitted to the central traffic control facility such that sensor information is continuously available to Railroad operations personnel. The Railroad's system safety plan shall list all locations where fall intrusion detectors are installed, and shall set forth the actions to be taken when specific conditions are detected.

(d) *Intrusion detectors.* The Railroad shall install a wayside intrusion detection system in the protective fencing along the Railroad right-of-way that shall restrict, to the maximum extent possible, all non-Railroad intrusion. The wayside intrusion detection system shall be installed at each location identified by the system safety plan as an area where intrusion is likely to occur. This system shall be connected to the Railroad's signal system and to the central traffic control system, and shall alert the Railroad when an intrusion occurs. The Railroad's system safety plan shall explain in detail where intrusion is likely to occur and why, and set forth specific actions to be taken by the Railroad when intrusion occurs.

(e) *Dragging equipment detectors.* The Railroad shall install dragging equipment detectors at all locations where underframe repair or maintenance work is performed, including locations where maintenance facility track joins the main line, and at other locations determined necessary by the system safety plan. The dragging equipment detector data output shall be transmitted to the central traffic control facility such that sensor information is continuously available to railroad operations personnel. The Railroad's system safety plan shall explain in detail where dragging equipment is likely to occur and why, and shall set forth specific actions to be taken by the Railroad when such dragging equipment is detected.

(f) *Flood detectors.* The Railroad shall install flood detectors along the right-of-way where determined necessary by the system safety plan, taking into account factors of drainage, culverts, bridges, overpasses, underpasses, and flood plain status. The flood detection system shall notify the signal system and central traffic control of any location where an accumulation of water exists in the right-of-way that may present a risk to a right-of-way structure, in service equipment, or passenger service equipment. The Railroad's system safety plan shall include specific actions to be taken when such water is detected.

(g) *Wind detectors.* The Railroad shall install wind detectors along the right-of-way where determined necessary by the system safety plan, taking into account area wind and weather patterns, topography, and proximity to large bodies of water. This wind speed data output shall be transmitted to the central traffic control facility such that sensor information is continuously available to Railroad operations personnel. The Railroad's system safety plan shall explain in detail the locations chosen for wind detectors and why; list the speeds and conditions at which operational safety is compromised; and set forth specific actions to be taken when those wind speeds are detected.

(h) *Hot box detectors.* The Railroad shall install and maintain hot box detectors along the length of the right-of-way that detect the journal bearing temperature of all moving rail equipment. Wayside detectors shall be arranged so as to check the journal bearing temperature on both sides of the trains, on each track. Detectors shall be located at intervals not to exceed 40 km

(25 mi). Hot box detectors shall be linked to the signal system to alert the locomotive engine or the central traffic control system, or both, depending on the level of the overheating, so that proper action will be taken by the Railroad. The hot box detector system shall include a tiered alarm system, as set forth below, to ensure that appropriate action accompanies journal box overheating.

(1) Danger alarms shall alert the Railroad when any journal box or journal box component fails in operation, which shall cause the defective train to stop at a designated block marker, and shall cause all passing trains to slow to a speed not in excess of 80 km/hr or 50 mph;

(2) Simple alarms shall alert the Railroad when journal box overheating that is likely to compromise safety occurs, which shall cause the defective trainset to reach the next siding where it shall be parked and inspected prior to resuming operations; and

(3) Inspection threshold alarms shall alert the Railroad when the temperature of the journal bearing is significantly higher than the average temperature taken on the other journal bearings. This alarm shall be transmitted to the central maintenance facility and the appropriate inspection and repair shall be completed.

The Railroad shall develop the hot box detection system in conjunction with the system safety plan, and shall explain in detail the location of the detectors and the temperatures that trigger corresponding remedial measures.

§ 243.234 Protection of maintenance-of-way personnel.

To protect maintenance-of-way personnel, the signaling system shall include circuitry to lock-out particular block sections and restrict the speed of passing trains on these block sections or adjacent trackage. The Railroad shall develop signal Operating Rules, as required in section 6 of this rule, in accordance with this requirement.

§ 243.235 ATC device installation.

Each power vehicle capable of being the lead vehicle in a trainset shall be equipped with an automatic train control (ATC) device which shall be operative at all times the trainset operates at a speed of more than 32 km/h (20 mph).

§ 243.236 Forestalling device and speed control.

(a) The ATC system shall be so arranged that if the authorization to proceed is not received from the wayside equipment and the train has reached the limit of its authorized progression, the trainset will be brought to a complete stop. The system shall not allow movement except upon the operation of an acknowledging device, and then only at slow speed until an authorization to proceed is received by the onboard train control device.

(b) The ATC system shall include the following features:

(1) Braking supervision, requiring the train to proceed at a speed ensuring compliance with the target speed at the target distance.

(2) Maximum speed supervision, effecting an automatic brake application whenever the maximum speed limit is exceeded.

§ 243.237 Cab signal indication in accordance with maximum speed limit.

While providing maximum speed supervision, the ATC system shall provide a cab signal indication of the maximum authorized speed.

§ 243.238 Automatic brake application; initiation when the maximum speed limit is exceeded.

The ATC system shall operate to initiate an automatic brake application when the speed of the train exceeds the maximum speed intervention curve. The automatic brake application can be interrupted by the locomotive engineer only when the speed of the train is lower than the maximum authorized speed. Absent intervention by the engineer, an automatic brake application shall bring the train to a speed of less than maximum authorized speed. Mere acknowledgment by the engineer does not constitute intervention.

§ 243.239 Advance cab signal indication.

The ATC system shall provide a cab signal indication of the target speed and distance before commencing the braking supervision, thus allowing the locomotive engineer to respond by a manual brake application.

§ 243.240 Automatic brake application initiated by the ATC.

In the absence of an appropriate response to a cab display indication on the part of the locomotive engineer, the ATC system shall initiate an automatic brake application to ensure compliance with target speed and target distance. The automatic brake application can be interrupted by the engineer only when the speed of the train is lower than the maximum authorized speed. Absent intervention by the engineer, an automatic brake application shall bring the train to a speed of less than maximum authorized speed. Mere acknowledgment by the engineer does not constitute intervention.

§ 243.241 Cab signal indication after authorization to enter a block section where conditions defined in § 243.219 exist.

(a) If a trainset is authorized to enter a block section in which any condition listed in § 243.219 of this Part exists, the ATC system shall display an indication to ''Proceed at Restricted Speed'.

(b) If the restricted speed is exceeded, the ATC shall initiate an automatic brake application. Absent intervention by the engineer, an automatic brake application shall bring the train to a speed of less than maximum authorized speed. Mere acknowledgment by the engineer does not constitute intervention.

§ 243.242 Audible indicator.

The audible cab indicator shall have two distinctive sounds as noted in (a) and (b) below, and be clearly audible throughout the cab under all operating conditions.

(a) When the cab display changes, the audible indicator shall sound briefly (for approximately 0.5 seconds) to draw the engineer's attention to the change.

(b) An audible warning shall sound before an automatic brake application is initiated. The warning shall be given in sufficient time to allow the engineer and the train brake equipment to respond to the change. The indicator shall sound continuously until the warning condition disappears.

§ 243.243 Delay time.

The delay time of the ATC train-borne equipment shall be such as to ensure that the trainset shall comply with the target speed and distance through the brake application initiated by the system.

§ 243.244 Automatic brake application; full service.

An automatic brake application initiated by the ATC system shall cause a full service application of the brakes.

§ 243.245 Interference with application of brakes by means of brake valve.

The ATC apparatus shall be so arranged as not to interfere with the application of the brakes by means of the brake valve and not to impair the efficiency of the brake system.

§ 243.246 Control from lead vehicle.

Each trainset shall be controlled and operated from the lead vehicle. Each lead vehicle shall be equipped with an ATC device. This device shall have a fail-safe and fault tolerant architecture, such as a two-out-of-three voting architecture.

§ 243.247 Proper operative relation between parts along roadway and parts on power car.

ATC track-side and power car components shall be designed and shall operate in compatibility under all conditions of speed, weather, wear, oscillation, and shock.

§ 243.248 Visibility of cab signals.

The cab signals shall be plainly visible to the locomotive crew or power car crew from their stations in the cab.

§ 243.249 Power supply.

The ATC system shall operate from a separate or isolated power supply.

§ 243.250 Seal, where required.

A seal shall be maintained on any device other than the brake-pipe cut-out cock (double-heading cock), by means of which the operation of the pneumatic portion of the automatic train-control apparatus can be cut out.

§ 243.251 Rate of pressure reduction; equalizing reservoir or brake pipe.

The equalizing-reservoir pressure or brake-pipe pressure reduction during an automatic brake application shall be at a rate not less than that which results from a manual service application.

§ 243.252 Restrictions imposed when device fails and/or is cut out en route.

(a) When the ATC system fails or is cut out en route, the train may proceed at restricted speed to the next available point of communication or siding, where a report must be made to a designated officer. An ATC system failure may result from a variety of conditions; for purposes of this Subpart, the failure of two or more of the on-board processors will be considered an ATC failure. Where an absolute block is established in advance of the train on which the device is inoperative, the train may proceed at a speed not to exceed 127 km/h (79 mph).

(b) Where an ATC system fails or is cut out en route, the Railroad shall test the ATC and record the results in accordance with §§ 243.276 and 243.278, and determine that the ATC is fully operative before the trainset leaves its next initial terminal.

§ 243.253 The trackage.

The trackage over which the Railroad operates trains in revenue service shall be completely equipped with wayside equipment designed to interface with and provide safety control commands to the lead vehicle of trainsets which operate over that trackage. Signaling beacons and antennas shall be installed and maintained in accordance with manufacturer's specifications.

§ 243.254 Cut out of the ATC system.

Any cut out of the ATC system or activation of the acknowledging device shall be registered in the on-board event recorder.

Reporting Requirements

§ 243.255 Accidents resulting from signal failure.

The occurrence of an accident/incident arising from the failure of an appliance, device, method or system to function or indicate as required by this rule that results in a more favorable aspect than intended or other conditions hazardous to the movement of a train, shall be reported within 24 hours to the FRA by toll free telephone number, 800–424–0201.

§ 243.256 Signal failure reports.

Each failure of an appliance, device, method, or system to function or indicate as required by this rule that results in a more favorable aspect than intended or other condition hazardous to the movement of a train shall be reported to the FRA within five days from the date of occurrence. Form FRA F6180–14, ''Signal Failure Report,'' shall be used for this purpose and completed in accordance with instructions printed on the form.

§ 243.257 Annual signal systems report.

The Railroad shall file an annual report with FRA which details the signal system configuration and operation, on a form provided by FRA in accordance with instructions and definitions on the reverse side of the form. The report shall be filed annually on or before April 1 of each year.

Inspection, Testing, and Maintenance

§ 243.258 General.

The Inspection, Testing and Maintenance program shall be designed to ensure that the safety of the railroad's signaling system does not deteriorate over time, in accordance with § 243.107 of this Part.

§ 243.259 Interference with normal functioning of device.

Inspection, testing and maintenance shall not interfere with or alter the normal functioning of any signal device except after measures are in place to provide for the safety of train operations that depend on normal functioning of such device. Where interference or alteration has occurred, the device must be functioning normally before train operations dependent on such functioning resume.

§ 243.260 Operating characteristics of electromagnetic, electronic, or electrical apparatus.

Signal apparatus, the functioning of which affects the safety of train operations, shall be maintained in accordance with the limits within which the device is designed to operate.

§ 243.261 Adjustment, repair, or replacement of component.

When any component of a signal system, the proper functioning of which is essential to the safety of train operation, fails to perform its intended signaling function or is not in correspondence with known operating conditions, the cause shall be determined and the faulty component adjusted, repaired or replaced without undue delay.

§ 243.262 Purpose of inspection and tests; removal from service of a relay or device failing to meet test requirements.

Inspections and tests shall be made in accordance with specifications of the Railroad, subject to approval by FRA in conjunction with the System Safety Plan set forth in Subpart B, to determine if the equipment is maintained in the proper condition to perform its intended function. Any electronic device, relay, or other electromagnetic device which fails to meet the requirements of specified tests shall be removed from service, and shall not be restored to service until its operating characteristics are in accordance with the limits within which such device or relay is designed to operate.

§ 243.263 Point detector test.

Point detectors operated by power-operated switch movement shall be tested at least once every three months.

§ 243.264 Relays; microprocessor testing.

(a) Each safety-critical, train-borne ATC relay shall be tested at least once each year.

(b) Each safety-critical, wayside relay shall be tested at least once every four years.

(c) Each safety-critical, train-borne electronic subsystem which is not verified internally on a continuous basis shall be tested at least once each year.

(d) Each safety-critical, train-borne electronic subsystem in which proper operation is verified internally in a closed loop fashion shall not require periodic tests.

(e) Each safety-critical wayside electronic subsystem which is not verified internally on a continuous basis shall be tested at least once every two years.

(f) Each safety-critical wayside electronic subsystem, in which proper

operation is verified internally in a closed loop fashion, shall not require periodic tests.

§ 243.265 Ground tests.

(a) Except as provided in paragraphs (b) and (c) below, a test for grounds on each safety-critical energy bus furnishing power to circuits shall be made at least once every three months.

(b) The provisions of this section 315 shall not apply to track circuit wires, common return wires of grounded common single-break circuits, or alternating current power distribution circuits grounded in the interest of safety.

(c) Periodic ground tests are not required if ground detection devices are properly functioning, or if the design of circuits is such that a grounded energy bus could not impact the safety of train operation. An inspection of each ground detection device to ensure proper operation of such device shall be made at least once every three months.

§ 243.266 Insulation resistance tests; wires in trunking and cables.

(a) Insulation resistance of wires and cables, except conductors connected directly to track rails, shall be tested when wires, cables, and insulation are dry. Insulation resistance tests shall be made between all conductors and ground, and between conductors in each multiple conductor cable, and between conductors in trunking, when wires or cables are installed and at least once every 10 years.

(b) In no case shall a circuit be permitted to function on a conductor having an insulation resistance to ground or between conductors of less than 200,000 ohms.

§ 243.267 Time releases, timing relays, and timing devices.

Time releases, timing relays, and timing devices shall be tested at least once each year. The timing shall be maintained at not less than 90 percent of the predetermined time interval, which shall be shown on the plans or marked on the time release, timing relay, or timing device. Where time releases are an integral part of a safety-critical, processor-based controller and are specified in the applications program, such intervals shall be tested only at the time of installation and whenever a change is made in the applications program.

§ 243.268 Time locking.

Where time locking is an integral part of a safety-critical, processor-based controller and is specified in the applications program, such locking shall be tested at the time of installation and whenever a change is made in the applications program.

§ 243.269 Route locking.

Where route locking is an integral part of a safety-critical, processor based controller and is specified in the applications program, such locking shall be tested at the time of installation, whenever a change is made in the applications program, and when route locking has been disarranged.

§ 243.270 Indication locking.

Where indication locking is an integral part of a safety-critical, processor based controller and is specified in the applications program, such locking shall be tested at the time of installation, whenever a change is made in the applications program, and when the indication locking has been disarranged.

§ 243.271 Traffic locking.

Where traffic locking is an integral part of a safety-critical, processor based controller and is specified in the applications program, such locking shall be tested at the time of installation and whenever a change is made in the applications program.

§ 243.272 Switch obstruction test.

A switch obstruction test of each switch shall be made when a lock rod is installed and at least once every 3 months.

§ 243.273 Locomotive or power car power supply voltage requirement.

The output voltage of power supply for power car or locomotive ATC shall be maintained within 10 percent of rated voltage.

§ 243.274 Power car or locomotive insulation resistance; requirement.

When the periodic test prescribed in § 243.266 is performed, insulation resistance between wiring and ground of the automatic train control system shall be not less than one megohm.

§ 243.275 Antennas and beacons.

(a) Signaling beacons and antennas shall be inspected and maintained in accordance with the manufacturer's specifications.

(b) Antennas and beacons which have been repaired or rewound shall have the same operating characteristics which they possessed originally or as specified for new equipment.

§ 243.276 Departure test.

(a) The train-borne ATC equipment shall be tested using one of the following methods:

(1) Operation over track elements;

(2) Operation over a test circuit; or

(3) Onboard test device.

(b) The extent of the departure test shall be defined by the Railroad in accordance with the system safety plan required by Subpart B of this Part, but shall include at least the following:

(1) Ground-to-train transmission;

(2) The cab display indications; and

(3) The interface with the train brakes.

(c) The Railroad shall perform a departure test, and onboard ATC equipment shall be put in service, before the trainset operates over equipped territory. If the ATC is cut out, the Railroad shall perform another departure test before the ATC equipment is considered operative.

(d) If a locomotive or power car makes more than one trip in a 24-hour period, only one departure test is required in such a 24-hour period, except as provided in section 3.119(b) concerning failures or cut-outs en route.

(e) Each test run and its outcome shall be recorded in the train-borne event recorder. These records shall be downloaded and retained for at least one year.

§ 243.277 Periodic test.

A periodic test of the train borne ATC equipment shall be performed at least once every two months and on multiple-unit cars as specified by the Railroad, subject to approval by the FRA.

§ 243.278 Results of tests.

(a) Results of tests made in compliance with § 243.252(b), §§ 243.262 through 243.272, § 243.276, and § 243.277, shall be recorded on pre-printed or computerized forms provided by the Railroad or by electronic means. Such forms shall show the name of the Railroad, place and date, equipment tested, results of tests, repairs, replacements, adjustments made, and condition in which the apparatus was left. Each record shall be signed by the employee making the test and shall be filed in the office of a supervisory official having jurisdiction. Results of tests shall be retained until the next record is filed, but in no case less than one year.

(b) For purposes of compliance with the requirements of this section, the Railroad may maintain and transfer records through electronic transmission, storage, and retrieval provided that:

(1) The electronic system be designed so that the integrity of each record is maintained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons shall have the same electronic identity;

(2) The electronic system shall ensure that each record cannot be modified in any way, or replaced, once the record is transmitted and stored;

(3) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall be uniquely identified as to the person making the amendment;

(4) The electronic system shall provide for the maintenance of inspection records as originally submitted without corruption or loss of data; and

(5) Paper copies of electronic records and amendments to those records, that may be necessary to document compliance with this Subpart, shall be made available for inspection and copying by the FRA.

§ 243.279 Independent verification and validation.

(a) *General.* The Railroad shall undergo a third-party safety audit of all safety-critical processor-based equipment and system elements as finally configured, prior to commencing operations. In order to complete this requirement, the Railroad shall contract with an independent reviewer, deemed ''Reviewer'' for purposes of this section, that is experienced in conducting verification and validation audits of safety-critical processor-based equipment and systems. The Reviewer shall use as a comparable standard for appropriate methodology and performance, all of the following standards:

(1) *Railway Applications: The specifications and demonstration of dependability, reliability, availability, maintainability and safety.* prEN 50126, European Committee for Electrotechnical Standardization (November 1995).

(2) *Railway Applications: Software for Railway Control and Protection Systems.* prEN 50128, European Committee for Electrotechnical Standardization (August 1996).

(3) *Railway Applications: Safety Related Electronic Systems for Signaling, version 0.9.* prEN 50129, European Committee for Electrotechnical Standardization (March 1996).

(4) *On-board Electronic Equipment and Computer Hardware.* CF 67–001, Societe Nationale des Chemins de Fers Francais (June 1990).

(5) *Methodology for the Development of On-board Micro-computer Equipment.* prCF 67–004, and NF F71–004, Societe Nationale des Chemins de Fers Francais (February 1989).

(6) *Railway Applications: Electronic Equipment used on Rolling Stock.* EN 50155, European Committee for Electrotechnical Standardization (November 1995).

(b) *Items included in audit.* (1) The Reviewer shall assess and comment on the adequacy of the processes which the Railroad applied to the design and development of the signal system. The Reviewer shall identify and document any safety vulnerabilities that are not adequately mitigated by the Railroad's processes.

(2) The Reviewer shall evaluate the adequacy of the Railroad's system safety plan concerning the signal system.

(3) The Reviewer shall analyze the Railroad's hazard analysis for comprehensiveness and adherence to the system safety plan.

(4) The Reviewer shall analyze the Railroad's fault tree analysis for completeness, accuracy, and adherence to the system safety plan.

(5) The Reviewer shall randomly select various safety-critical modules for audit to verify whether the Railroad's system safety plan were followed. The number of modules selected should be determined jointly by the Railroad and the Reviewer to ensure that a representative number sufficient to provide confidence that all unaudited modules were developed in adherence to the Railroad's system safety plan.

(6) The Reviewer shall evaluate and comment on the Railroad's plan for installation and test procedures for revenue service.

(c) *Reviewer's report.* (1) The Reviewer shall prepare a report of the audit and provide copies to the Railroad and FRA.

(2) The Reviewer's report shall be submitted to the Railroad and FRA prior to the commencement of installation testing and contain, at a minimum, the following:

(i) The Reviewer's evaluation of the adequacy of the Railroad's system safety program concerning the signal system, including any vulnerabilities that were not adequately mitigated;

(ii) The method by which the Railroad would assure system safety in the event of hardware or software failures, including an explanation of how the Railroad will assure that all potentially hazardous operating circumstances are identified;

(iii) The method by which the Railroad addresses the comprehensiveness of the system design for the requirements of the railroad operations it will govern, including an explanation of how the Railroad will assure that all potentially hazardous operating circumstances are identified, how the Railroad records deficiencies identified in the design process, and how the Railroad tracks the correction of these deficiencies;

(iv) The identification of any documentation that was denied, incomplete, or inadequate;

(v) The identification of each system procedure or process that was not properly followed;

(vi) The identification of each deficiency or criticism not adequately mitigated in which the positions of the Reviewer and Railroad are clearly stated;

(vii) The identification of the Railroad's software verification and validation procedures for its safety-critical applications, and adequacy of these procedures;

(viii) The methods used by the Railroad to develop safety-critical software, such as the use of structured language, code checks, modularity, or other similar techniques; and

(ix) A brief outline of what would be required to determine a mean time between unsafe failure value for the Railroad's hardware, a mean time between unsafe execution of the Railroad's software, and a mean time between hazardous events of the Railroad's system.

(d) *FRA acceptance.*

(1) FRA shall analyze the Reviewer's report upon receipt. Based on its analysis of the report, FRA shall notify the Railroad in writing that the signal system as finally configured is accepted or not accepted.

(2) In the event that FRA does not accept the signal system as finally configured, FRA shall provide a written explanation of the reasons for the non-acceptance.

(3) In the event that FRA does not accept the signal system as finally configured, the Railroad shall have an opportunity to respond to the Reviewer's report and to FRA's non-acceptance.

(4) The Railroad shall conform the signal system to the Reviewer's recommendations and FRA acceptance prior to revenue operations.

Subpart D—Track Safety Standards

§ 243.301 Restoration or renewal of track under traffic conditions.

(a) Restoration or renewal of track under traffic conditions is limited to the replacement of worn, broken, or missing components or fastenings that do not affect the safe passage of trains.

(b) The following activities are expressly prohibited under traffic conditions:

(1) Any work that interrupts rail continuity, e.g., as in joint bar replacement or rail replacement;

(2) Any work that adversely affects the lateral or vertical stability of the track with the exception of spot tamping an isolated condition where not more than 5 m (16.4 lineal ft) of track are involved at any one time and the ambient air temperature is not above 35 C (95 F); and

(3) Removal and replacement of the rail fastenings on more than one tie at a time within 5 m (16.4 ft).

§ 243.303 Measuring track not under load.

When unloaded track is measured to determine compliance with requirements of this Part, evidence of rail movement, if any, that occurs while the track is loaded shall be added to the measurements of the unloaded track.

§ 243.305 Drainage.

Each drainage or other water carrying facility under or immediately adjacent to the roadbed shall be maintained and kept free of obstruction, to accommodate expected water flow for the area concerned.

§ 243.307 Vegetation.

Vegetation on railroad property which is on or immediately adjacent to roadbed shall be controlled so that it does not:

(a) Become a fire hazard to track-carrying structures;

(b) Obstruct visibility of railroad signs and signals;

(c) Interfere with railroad employees performing normal trackside duties;

(d) Prevent proper functioning of signal and communication lines; or

(e) Prevent railroad employees from visually inspecting moving equipment from their normal duty stations.

Geometry

§ 243.309 Track Geometry; General.

If any value listed in the following Safety Level One Geometry Table are exceeded, the Railroad shall initiate remedial action within two calendar days. If the values listed in the following Safety Level Two table are exceeded, the Railroad shall initiate immediate remedial action. For either the Level One or Level Two tables, a reduction in operating speed so that the condition complies with the limits listed for a lower speed shall constitute bringing the track into compliance.

SAFETY LEVEL ONE GEOMETRY TABLE

	Max. speed km/h (mph)	322 (200)	230 (143)	170 (105)	100 (62)	80 (50)	60 (37)	40 (25)
Alignment (mm)	10	9	10	13	16	17	21	24
	20	9	10	13	16	17	21	24
	31	15	18	18	NA	NA	NA	NA
Surface (mm)	[5] 12.2	11	13	16	18	19	21	52
	31	18	22	22	NA	NA	NA	NA

SAFETY LEVEL ONE GEOMETRY TABLE

	Max. speed km/h (mph)	322 (200)	230 (143)	170 (105)	100 (62)	80 (50)	60 (37)	40 (25)
Gage (mm) [1]	minimum	−7	−9	−12	−12	−12	−12	−12
	min. mean value [2]	−4	−7	−7	−7	NA	NA	NA
	maximum [3]	+27	+27	+35	+35	+35	+35	+37
Gage Variation [4]	mm on 10 m base	15	15	15	15	NA	NA	NA
Cant (mm)	maximum Chord (m)	180	180	180	180	180	180	180
Alignment (mm)	10	12	14	17	21	23	28	32
	20	12	14	17	21	23	28	32
	31	20	24	24	NA	NA	NA	NA
Surface (mm)	[5] 12.2	15	18	22	24	26	28	70
	31	24	30	30	NA	NA	NA	NA
Warp (mm)	[6] 10	15	15	18	18	18	24	24

[1] With respect to the nominal track gage, 1435 mm (56.5 in).
[2] Mean value on a 100 m (328 ft) length of track.
[3] Local defect value > +20 mm (0.79 in) has to be corrected.
[4] Gage variation is defined as the difference between the minimum and maximum gage measurements within 10 meters.
[5] The maximum values indicated on this line are not mid-chord offsets but are the difference between the average level at eight locations spaced symmetrically from the center at 0.675 m, 2.075 m, 3.64 m, and 6.11 m and a location at 0.675 m from the center. $Surface_{12.2} = \frac{1}{8}(Z_{-6.11} + Z_{-3.64} + Z_{-2.075} + Z_{-0.675} + Z_{0.675} + Z_{2.075} + Z_{3.64} + Z_{6.11}) - Z_{0.675}$
[6] Difference between the cross level value at any location and the mean value of the crosslevel over a distance of +/−5.0 m (16.4 ft).

§ 243.311 Track gage.

(a) Gage is measured between the heads of the rails at right-angles to the rails in a plane 15 mm (0.6 in) below the top of the rail head.

(b) The minimum gage, maximum gage, minimum mean value, and gage variation shall comply with the requirements defined in the Safety Level Two Geometry table given in Section 4.11.

§ 243.313 Curves, elevation and speed limitations.

(a) The maximum operating speed for each curve shall be determined by the following formula:

$$V_{max} = 3.6 * \sqrt{g * R * \frac{E_a + E_u}{D}}$$

where:

V_{max} = Maximum allowable operating speed (km/h).

E_a = Actual elevation of the outside rail above the inside rail (mm) 1.

R = Curve radius (m) 2.

E_u = Maximum allowable unbalanced elevation (mm).

D = Distance between wheel contact circles (mm).

g = acceleration due to gravity (m/s2).

In U.S. Engineering Units this formula becomes:

$$V_{max} = \sqrt{\frac{E_a + E_u}{0.0007 * D}}$$

where:

V_{max} = Maximum allowable operating speed (mph).

E_a = Actual elevation of the outside rail above the inside rail (in).[1]

D = Degree of curvature (degrees).[2]

E_u = Unbalanced elevation.

(b) Equipment meeting the standards of this section may be operated at curving speeds determined by the formula in paragraph (a) of this section, provided:

(1) It is demonstrated that when positioned on a track with uniform superelevation, Ea, reflecting the intended target cant deficiency, Eu, no wheel of the equipment unloads to a value of 60 percent or less of its static value on perfectly level track and the roll angle between the floor of the vehicle and the horizontal does not exceed 5.7 degrees;

(2) It is demonstrated that when positioned on a track with a uniform 180 mm (7 in) superelevation, no wheel unloads to a value less than 60% of its static value on perfectly level track and the angle, measured about the roll axis, between the floor of the vehicle and the horizontal does not exceed 8.6 degrees;

(3) The Railroad provides a complete description of the class of equipment involved, including schematic diagrams of the suspension system and the location of the center of gravity above top of rail;

(4) The Railroad provides a complete description of the test procedure and instrumentation used to qualify the equipment and the maximum values for wheel unloading and roll angles which were observed during testing; the test procedure may be conducted in a test facility, where all wheels on one side (right or left) of the equipment are raised or lowered by the intended cant deficiency, the vertical wheel loads under each wheel are measured, and a level is used to record the angle through which the floor of the vehicle has been rotated;

(5) The Railroad describes the procedures or standards in effect which detail the maintenance of the suspension system for the particular class of equipment; and

(6) The Railroad identifies the line segment on which the higher curving speeds are proposed to be implemented.

(c) Upon receipt of the information contained in paragraph (b), FRA shall approve use of the equipment and curving speeds established pursuant to paragraph (a). The Railroad shall notify the FRA Associate Administrator for Safety, in writing, no less than thirty calendar days prior to any proposed implementation of curving speeds higher than Vmax when the ''Eu'' term (above) will exceed 100 mm (4 in).

Track Structure

§ 243.315 Track strength.

(a) Track shall have a sufficient vertical strength to withstand the maximum vehicle loads generated at maximum permissible train speeds, cant deficiencies and surface limitations. For purposes of this section, vertical track strength is defined as the track capacity to constrain vertical deformations so that the track shall return, following maximum load, to a configuration in compliance with the track performance and geometry requirements of this Part.

(b) Track shall have sufficient lateral strength to withstand the maximum thermal and vehicle loads generated at maximum permissible train speeds, cant deficiencies and lateral alignment limitations. For purposes of this section lateral track strength is defined as the track capacity to constrain lateral deformations so that track shall return, following maximum load, to a configuration in compliance with the track performance and geometry requirements of this Part.

§ 243.317 Crossties.

(a) Crossties shall be made of a material to which rail can be securely fastened. They shall be of concrete construction for all tracks over which trains run in revenue service.

(b) Each 12 m (39 ft) segment of track shall have:

(1) A sufficient number of crossties which, in combination, provide effective support that will:

(i) Hold gage within the limits prescribed in § 243.311;

(ii) Maintain surface within the limits prescribed in Safety Level Two Geometry Table prescribed in § 243.309; and

(iii) Maintain alignment within the limits prescribed in Safety Level Two Geometry Table prescribed in § 243.309.

(2) The minimum number and type of crossties specified in paragraph (c) or (d) of this section effectively distributed to support the entire segment; and

(3) Crossties of the type specified in paragraph (c) or (d) of this section that are located at a joint location as specified in paragraph (f) of this section.

(c) For non-concrete tie construction, each 12 m (39 ft) segment of track shall have 18 crossties which are not:

(1) Broken through;

(2) Split or otherwise impaired to the extent the crossties would allow the ballast to work through, or would not hold spikes or rail fasteners;

(3) So deteriorated that the tie plate or base of rail could move laterally 10 mm (0.4 in) relative to the crossties;

(4) Cut by the tie plate through more than 40 percent of the thickness of the tie; or

(5) Configured with less than 2 rail holding spikes or fasteners per tie plate.

(6) So unable, due to insufficient fastener toe load, to maintain longitudinal restraint and maintain rail hold down and gage.

(d) For concrete-tie construction, each 12 m (39 ft) segment of track shall have 16 crossties which are not:

(1) So deteriorated that the pre-stress strands are ineffective or withdrawn into the tie at one end and the tie exhibits structural cracks in the rail seat or in the gage of track;

(2) Configured with less than 2 fasteners on the same rail;

(3) So deteriorated in the vicinity of the rail fastener that the fastener assembly may pull out or move laterally more than 10 mm (0.4 in) relative to the crosstie;

(4) So deteriorated that the fastener base plate or base of rail could move laterally more than 10 mm (0.4 in) relative to the crossties;

(5) So deteriorated that rail seat abrasion is sufficiently deep to cause loss of rail fastener toeload;

(6) Completely broken through; or

(7) So unable, due to insufficient fastener toe load, to maintain longitudinal restraint and maintain rail hold down and gage.

(e) The following speed limitation shall apply in case the number of

[1] 1 Actual elevation for each 50 m (164 ft) track segment in the body of the curve is determined by averaging the elevation for 10 points through the segment at 5 m (16.4 ft) spacing. If the curve length is less than 50 m (164 ft), the points through the full length of the body of the curve shall be averaged. If Eu exceeds 100 mm (4 in), the Vmax formula applies to the spirals on both ends of the curve.

[2] Curve radius (Degree of curvature) is determined by averaging the degree of curvature over the same track segment as the elevation.

nondefective ties on each 12 m (39 ft) segment defined in paragraph (c) and (d) of this section is not achieved:

Max. speed	Number of non defective ties
170 km/h (110 mph)	14
145 km/h (90 mph)	12
95 km/h (60 mph)	8
25 km/h (15 mph)	5

(f) Service track, including sidings, yards, sheds, and workshops, shall have at least one non-defective crosstie, the centerline of which is within 0.5 m (1.6 ft) of the rail joint location, or two crossties, the center lines of which are within 0.65 m (2.1 ft) either side of the rail joint location. All other tracks shall have two non-defective ties within 0.65 m (2.1 ft) each side of the rail joint.

(g) For track constructed without crossties, such as slab track and track connected directly to bridge structural components, the track structure shall meet the requirements of paragraphs (b)(1)(i), (ii) and (iii).

(h) On all tracks where the operating speeds exceed 170 km/hr (105 mph), there shall be at least three non-defective ties each side of a defective tie.

(i) Where wooden crossties are used there must be tie plates under the running rails on at least nine of ten consecutive ties.

(j) No metal object which causes a concentrated load by solely supporting a rail shall be allowed between the base of the rail and the bearing surface of the tie plate.

§ 243.319 Continuous welded rail (CWR).

The Railroad shall have in effect written procedures which address the installation, adjustment, maintenance and inspection of CWR, and a training program for the application of those procedures, in accordance with § 243.107 of this Part. These procedures shall be submitted to the FRA Associate Administrator for Safety as part of the Railroad's system safety plan, and shall include:

(a) Procedures for the installation and adjustment of CWR which include:

(1) Designation of a desired rail installation temperature range for the geographic area in which the CWR is located; and

(2) Destressing procedures/methods which address proper attainment of the desired rail installation temperature range when adjusting CWR.

(b) Rail anchoring or fastening requirements that will provide sufficient restraint to limit longitudinal rail and crosstie movement to the extent practical, and that specifically address CWR rail anchoring or fastening patterns on bridges, bridge approaches, and at other locations where possible longitudinal rail and crosstie movement—associated with normally expected train-induced forces—is restricted.

(c) Procedures which specifically address maintaining a desired rail installation temperature range when cutting CWR including rail repairs, in-track welding, and in conjunction with adjustments made in the area of tight track, a track buckle, or a pull-apart. Rail repair practices shall take into consideration the existing rail temperature so that:

(1) When rail is replaced, the length installed shall be determined by taking into consideration the existing rail temperature and the desired rail installation temperature range; and

(2) Under no circumstances should rail be added when the rail temperature is below that designated by paragraph (a)(1) of this section, without provisions for adjustment.

(d) Procedures which address the monitoring of CWR in curved track for inward shifts of alignment toward the center of the curve as a result of disturbed track.

(e) Procedures which control train speed on CWR track when:

(1) Maintenance work, track rehabilitation, track construction, or any other event occurs which disturbs the roadbed or ballast section and reduces the lateral or longitudinal resistance of the track.

(2) In formulating the procedures under this paragraph, the track owner shall:

(i) Determine the speed required, and the duration and subsequent removal of any speed restriction based on the restoration of the ballast, along with sufficient ballast re-consolidation to stabilize the track to a level that can accommodate expected train-induced forces. Ballast re-consolidation can be achieved through either the passage of train tonnage or mechanical stabilization procedures, or both; and

(ii) Take into consideration the type of crossties used.

(f) Procedures which prescribe when physical track inspections are to be performed to detect conditions prone to buckling in CWR track. At a minimum, these procedures shall address inspecting track to identify:

(1) Locations where tight or kinky rail conditions are likely to occur; and

(2) Locations where track work of the nature described in paragraph (e)(1) of this section has recently been performed.

(3) In formulating the procedures under this paragraph, the Railroad shall—

(i) Specify the timing of the inspection; and

(ii) Specify the appropriate remedial actions to be taken when conditions prone to buckling are found.

(g) The Railroad shall have in effect a comprehensive training program for the application of these written CWR procedures, with provisions for periodic retraining for those individuals designated as qualified in accordance with Subpart H to supervise the installation, adjustment, and maintenance of CWR track and to perform inspections of CWR track.

(h) The Railroad shall prescribe recordkeeping requirements in order to maintain a history of track constructed with CWR. At a minimum, these records shall include:

(1) Rail laying temperature, location and date of CWR installations. This record shall be retained for the life of the rail; and

(2) A record of any CWR installation or maintenance work that does not conform with the written procedures. Such record must include the location of the rail and be maintained until the CWR is brought into conformance with such procedures.

§ 243.321 Rail end mismatch.

Any mismatch of rails at joints may not be more than that prescribed by the following table:

Any mismatch of rails at joints may not be more than the following—	
On the tread of the rail ends	On the gage side of the rail ends
3 mm (.13 in).	3 mm (.13 in).

§ 243.323 Rail joints and torch cut rails.

(a) Each rail joint, insulated joint, and compromise joint shall be of a structurally sound design and appropriate dimensions for the rail on which it is applied.

(b) If a joint bar is cracked, broken, or permits excessive vertical movement of either rail when all bolts are tight, it shall be replaced.

(c) If a joint bar is cracked or broken between the middle two bolt holes it shall be replaced.

(d) Each rail shall be bolted with at least two bolts at each joint.

(e) Each joint bar shall be held in position by track bolts tightened to allow the joint bar to firmly support the abutting rail ends and to allow longitudinal movement of the rail in the joint to accommodate expansion and

contraction due to temperature variations.

(f) No rail shall have a bolt hole which is torch cut or burned.

(g) No joint bar shall be reconfigured by torch cutting.

(h) No rail having a torch cut or flame cut end may be used, except as a temporary repair during emergency situations. When a rail end is torch cut in emergency situations, speed over that rail end must not exceed 25 km (40 mph) until removed.

§ 243.325 Turnouts and crossovers, generally.

(a) In turnouts and track crossings, the fastenings shall be intact and maintained to keep the components securely in place. Also, each switch, frog, and guard rail shall be kept free of obstructions that may interfere with the passage of wheels.

(b) The track through and on each side of track crossings and turnouts shall be equipped with rail anchoring to restrain rail movement affecting the position of switch points and frogs. Elastic fasteners designed to restrict longitudinal rail movement are considered rail anchoring.

(c) Each flangeway at turnouts shall be at least 38 mm (1.5 in) wide.

(d) For all turnouts and crossovers, the Railroad shall prepare an inspection and maintenance Guidebook for use by Railroad employees which shall be submitted to the FRA Associate Administrator for Safety. The Guidebook shall contain at a minimum:

(1) Inspection frequency and methodology, including limiting measurement values for all components subject to wear or requiring adjustment; and

(2) Maintenance procedures and techniques.

§ 243.327 Frog guard rails and guard faces; gage.

The guard check and guard face gages in frogs shall be within the limits prescribed in the following table, applicable for a nominal track gage of 1435 mm (56.5 in).

Guard check gage	*Guard face gage*
The distance between the gage line of a frog to the guard line [1] of its guard rail or guarding face, measured across the track at right angles to the gage line,[2] may not be less than— 1435 − 45=1390 mm	The distance between guard lines,[1] measured across the track at right angles to the gage line,[2] may not be more than— 1435 − 80=1355 mm

[1] A line along that side of the flangeway which is nearer to the center of the track and at the same elevation as the gage line.

[2] A line 10 mm (0.4 in) below the top of the center line of the head of the running rail, or corresponding location of the tread portion of the track structure.

§ 243.329 Derails.

(a) All sidetracks connecting with main tracks shall be equipped with protection switches or functioning derails of the correct size and type, unless Railroad equipment on the track cannot move to foul the main track because of grade characteristics.

(b) Each derail shall be clearly visible to Railroad personnel operating rail equipment on the affected track and to Railroad personnel working adjacent to the affected track. When in a locked position, a derail shall be free of any lost motion that would allow it to be operated without removal of the lock.

(c) If a track protected by a derail is occupied by standing railroad rolling stock, the derail shall be in derailing position.

(d) Each derail shall be interlocked with the signal system so as to produce a maximally restrictive signal aspect if the device is not deployed in a completely functional position.

Inspection

§ 243.331 Track Geometry Measurement Systems.

(a) A Track Geometry Measurement System (TGMS) vehicle shall be operated at least twice within each 180 calendar days with not less than 30 days between inspections to demonstrate compliance with the geometry requirements in § 243.309.

(b) The TGMS Car shall have the following capabilities:

(1) It shall be equipped with three bogies and have a rigid body which acts as the datum plane for all measurements.

(2) The body shall rest on two end bogies which are spaced at 9.700 m (31.82 ft) between center lines.

(3) The four-axle middle bogie shall move laterally when the vehicle travels through a curve.

(4) The TGMS car shall have eight axles spaced symmetrically from the centerline of the vehicle at 0.675 m, 2.075 m, 3.64 m, and 6.11. Each axle shall have a 9 tonne (20 kips) axle load.

(5) Information shall be gathered at rail level by means of mechanical contact:

(i) vertically, through the 16 high carbon steel wheels with a cylindrical profile; and

(ii) laterally, through double sensors, each with a roller which follows the rail head's internal profile at an angle of 70 degrees placed between the outer bogies, 5 meters from the centerline of the vehicle.

(6) Measurements shall be recorded by two means on the vehicle:

(i) A continuous plot, on a constant distance basis, of the geometry parameters identified in the tables in § 243.309; and

(ii) Electronic records of elementary signals from transducers measuring displacements of different cables from the measuring points. In addition, the electronic record shall include all the computed track geometry parameters developed to determine compliance with the geometry tables in § 243.309. Calculations of the extended base measurements are performed through real-time analog or digital processing of the alignment and level signals and are electronically recorded and displayed on charts.

(7) The following parameters shall be measured vertically:

(i) Surface: The surface or longitudinal level must be developed over two rail bases; the fundamental base of 12.2 m (40 ft) and the extended base of 31 m (102 ft) base. The fundamental surface measurement is the difference between the average level at eight locations spaced symmetrically from the center of the vehicle at 0.675 m, 2.075 m, 3.64 m, and 6.11 m and the level at 0.675 m. $Surface_{12.2} = \frac{1}{8}(Z_{-6.11} + Z_{-3.64} + Z_{-2.075} + Z_{-0.675} + Z_{0.675} + Z_{2.075} + Z_{3.64} + Z_{6.11}) - Z_{0.675}$. The extended base measurement is calculated using the same transducers as used in the fundamental measurement. The displacement must be combined and appropriately filtered to produce a signal equivalent to the offset from the middle of a 31 meter chord.

(ii) Warp: The cant variation shall be obtained by calculating the difference between the cant of an axle on the middle bogie and the average cant of the 4 axles of the end bogies.

(8) The following parameters shall be measured laterally:

(i) Alignment: The alignment for each rail must be developed based on three chords; the fundamental chord of 10 m

(32.8 ft), a middle distance chord of 20 m (65.6 ft) and an extended chord of 31 m (102 ft) base. The fundamental chord is measured through three double sensors: one at the center of the vehicle and the others symmetrically spaced 5 meters from the center. The long chords are developed through combinations and appropriate filtering of the fundamental measurements.

(ii) Gage: The gage is measured by a pair of central double sensors.

(9) The extended base graph shall be obtained by analog or digital computation of the level and alignment signals, and shall be printed out in real time on-board the vehicle.

(10) Long wavelength values of level and alignment are calculated by low-pass filtering of the actual measurements with a transfer function specific to the signals for level (12.20 m (40 ft) base) and alignment (versine of 10 m (32.8 ft) chord) recorded by the TGMS vehicle.

(11) The low-pass filtering shall be accomplished in the spatial frequency range, due to the monitoring of the cut-off frequency of the low-pass filters as a function of the running speed.

(c) The TGMS shall, at a minimum, meet design requirements which specify that—

(1) Track geometry measurements shall be taken no more than 1 m (3.3 ft) away from the contact point of wheels carrying a vertical load of no less than 4500 kg (10,000 lb) per wheel;

(2) Track geometry measurements shall be taken and recorded on a distance-based sampling interval which shall not exceed 0.6 m (2 ft);

(3) Calibration procedures and parameters assigned to the system assure that measured and recorded values accurately represent track conditions; and

(4) Track geometry measurements recorded by the system shall not differ by more than 3 mm (0.13 in) on repeated runs at the same site at the same speed.

(d) A qualifying TGMS shall measure and process the necessary track geometry parameters that enable the system to determine compliance with:

(1) Track gage; mean gage within 100 m (328 ft.); and gage variation within 10 m (32.8 feet);

(2) Alignment; 10 m (32.8 ft.), 20 m (65.6 ft.), and 31 m (102 ft.) Mid Chord Offsets;

(3) Curvature, Cant and V_{max};

(4) Surface; 12.2 m (40 ft.) averaged chord; 31 m (102 ft.) Mid Chord Offset; and

(5) Warp.

(e) A qualifying TGMS shall be capable of producing, within 24 hours of the inspection, output reports that:

(1) Provide a continuous plot, on a constant-distance axis, of all measured track geometry parameters required in paragraph (d) of this Section; and

(2) Provide an exception report containing a systematic listing of all track geometry conditions which constitute an exception to the speed limits over the segment surveyed.

(f) The output reports required under paragraph (e) of this Section shall contain sufficient location identification information so that maintenance workers may easily locate indicated exceptions.

(g) Following a track inspection performed by a qualifying TGMS, the Railroad shall, within two days after the inspection, field verify and institute remedial action for all exceptions.

(h) The Railroad shall maintain a record for a period of one year following an inspection performed by a qualifying TGMS that includes a copy of the plot, the track segment involved, a copy of the exception printout, the date of the inspection, and the location, date, and type of remedial action taken for all listed exceptions.

(i) If the Railroad elects to substitute a geometry vehicle with different properties than those identified in paragraphs (b) and (c) of this section for the TGMS car, the Railroad shall use a geometry vehicle consistent with the requirements of Subpart G, Train Operations at Track Classes 6 and Higher of FRA's proposed Track Safety Standards, 62 FR 36138 (July 3, 1997), and as ultimately codified in 49 CFR part 213.

§ 243.333 Track/vehicle performance Measurement Systems.

(a) A Track Acceleration Measurement System (TAMS) vehicle shall be operated at least twice within each 45 calendar days, with not less than 7 days between inspections, to determine whether a representative vehicle responds to the existing track conditions within the limits defined in the Vehicle/Track Interaction Performance Limits table for accelerations.

(b) A TAMS vehicle must operate within 5% of the maximum authorized speed over any section of track in order to qualify as a valid survey.

(c) A qualifying TAMS shall be capable of measuring and processing the necessary acceleration parameters, at an interval which shall not exceed 0.6 m (2 ft), which enables the system to determine compliance with:

(1) Lateral truck acceleration;

(2) Lateral carbody acceleration; and

(3) Vertical carbody acceleration.

(d) A qualifying TAMS shall be capable of producing, within 24 hours of the inspection, output reports that:

(1) Provide a continuous plot, on a constant-distance axis, of all measured acceleration parameters required in paragraph (c) of this section; and

(2) Provide an exception report containing a systematic listing of all acceleration conditions which constitute an exception to the speed limits over the segment surveyed, as indicated in the table of Vehicle/Track Interaction Performance Limits contained in § 243.335.

(e) If the carbody lateral, carbody vertical, or truck frame lateral accelerations exceed the safety limits as stated in the table, the Railroad must immediately initiate remedial action, which shall include reducing the maximum authorized speed for that section of track to a speed at least 8 km/h (5 mph) below the speed at which the acceleration limits were reached.

(f) The Railroad shall maintain a record for a period of one year following an inspection performed by a qualifying TAMS that includes, a copy of the plot, a description of the track segment involved, the exception printout for the track segment involved, the date of the inspection, and the location, date, and remedial action taken for all listed exceptions to the class.

§ 243.335 Wheel/Rail Force Measurement System.

(a) A Wheel/Rail Force Measurement System (WRFMS) shall be operated over the track bi-annually with not less than 240 days between inspections to determine whether a representative vehicle responds to the existing track conditions within the limits defined in the Vehicle/Track Interaction Performance Limits table for wheel rail forces.

(b) A WRFMS vehicle must operate at the revenue speed profile speed for a section of track to qualify as a valid survey.

(c) A qualifying WRFMS shall be equipped with instrumented wheelsets to measure wheel/rail forces and shall be capable of measuring and processing the necessary wheel rail force parameters, at an interval which shall not exceed 0.6 m (2 ft), which enables the system to determine compliance with:

(1) Minimum vertical wheel load;

(2) Wheel L/V ratio, the ratio of the lateral wheel load to the vertical wheel load;

(3) Net axle lateral load; and

(4) Truck side L/V ratio.

(d) A qualifying WRFMS shall be capable of producing, within 24 hours of the inspection, output reports that:

(1) Provide a continuous plot, on a constant-distance axis, of all measured wheel force and force ratio parameters required in paragraph (c) of this section;

(2) Provide an exception report containing a systematic listing of all wheel force and force ratio conditions which constitute an exception to the speed limits over the segment surveyed, as indicated in the following table of Vehicle/Track Interaction Performance Limits.

(e) If the wheel forces or force ratios exceed the safety limits as stated in the table, the Railroad must immediately initiate remedial action, which may include reducing the maximum authorized speed for that section of track, until these wheel forces and force ratios are within the safety limits.

(f) The Railroad shall maintain a record for a period of two years following an inspection performed by a qualifying WRFMS that includes, a description of the track segment involved, the exception printout for the track segment involved, the date of the inspection, and the location, date, and remedial action taken for all listed exceptions to the class, and at a copy of the plot specified in paragraph (d) of this section for a distance along the track of at least 10 feet, centered on each exception.

VEHICLE/TRACK INTERACTION LIMITS

Parameter	Safety limit	Filter/window	Requirements
Wheel/Rail Forces:[1]			
Single Wheel Vertical Load Ratio	≤0.1	5 ft	No wheel of the equipment shall be permitted to unload to less than 10% of the static vertical wheel load. The static vertical wheel load is defined as the load that the wheel would carry when stationary on level track. The vertical wheel load limit shall be increased by the amount of measurement error.
Single Wheel L/V Ratio	≤ (tan − .5)/ (1 + .5 tan).	5 ft	The ratio of the lateral force that any wheel exerts on an individual rail to the vertical force exerted by the same wheel on the rail shall be less than the safety limit calculated for the wheel's flange angle ().
Net Axle L/V Ratio	≤0.5	5 ft	The net lateral force exerted by any axle on the track shall not exceed 50% of the static vertical load that the axle exerts on the track.
Truck Side L/V Ratio	≤0.6	5 ft	The ratio of the lateral forces that the wheels on one side of any truck exert on an individual rail to the vertical forces exerted by the same wheels on that rail shall be less than 0.6.
Accelerations:[2]			
Carbody Lateral	≤0.5 g peak-to-peak.	10 Hz 1 sec window.	The peak-to-peak accelerations, measured as the algebraic difference between the two extreme values of measured acceleration in a one second time period, shall not exceed 0.5 g.
Carbody Vertical	≤0.6 g peak-to-peak.	10 Hz 1 sec window.	The peak-to-peak accelerations, measured as the algebraic difference between the two extreme values of measured acceleration in a one-second time period, shall not exceed 0.6 g.
Truck Lateral[3]	≤0.4 g RMS mean-removed.	10 Hz 2 sec window.	Truck hunting[4] shall not develop below the maximum authorized speed.

[1] The lateral and vertical wheel forces shall be measured with instrumented wheelsets with the measurements processed through a low pass filter with a minimum cut-off frequency of 25 Hz. The sample rate for wheel force data shall be at least 250 samples/sec.

[2] Carbody lateral and vertical accelerations shall be measured near the car ends at the floor level.

[3] Truck accelerations in the lateral direction shall be measured at a position directly above the axle. The measurements shall be processed through a filter having a pass band of 0.5 to 10 Hz.

[4] Truck hunting is defined as a sustained cyclic oscillation of the truck which is evidenced by lateral accelerations in excess of 0.4 g root mean square, mean-removed, for 2 seconds.

§ 243.337 Daily inspection trainset.

(a) An inspection trainset shall be operated each morning over the Railroad's system prior to commencing revenue service. The inspection trainset shall operate at a speed no greater than 170 km/h (105 mph) to conduct a visual inspection of the track and ensure that the right of way is clear of obstacles within the clearance envelope and to identify conditions that could cause accidents.

(b) The inspection trainset shall be equipped with on-board truck side and carbody accelerometers. The Railroad shall have in effect written procedures for the notification of track maintenance personnel when the acceleration measurements indicate a possible track-related condition.

§ 243.339 Inspection of rail in service.

(a) Prior to revenue service and as part of the system safety plan, the Railroad shall submit to the FRA Associate Administrator for Safety written procedures for the inspection of rails.

(b) A continuous search for internal defects shall be made of all rail within 90 days after initiation of revenue service and, thereafter, at least annually, with not less than 240 days between inspections.

(c) Inspection equipment shall be capable of detecting defects between joint bars and within the area enclosed by joint bars.

(d) Each defective rail shall be marked with a highly visible marking on both sides of the rail.

(e) If the person assigned to operate the rail defect detection equipment being used determines that, due to rail surface conditions, a valid search for internal defects could not be made over a particular length of track, the test on that particular length of track cannot be considered as a search for internal defects under this section.

(f) When an owner of track to which this part applies learns, through inspection or otherwise, that a rail in that track contains any of the defects listed in the following table, a person designated under § 243.705 or § 243.707

shall determine whether or not the track may continue in use. If he determines that the track may continue in use, operation over the defective rail is not permitted until—

(1) The rail is replaced; or

(2) The remedial action prescribed in the table is initiated—

REMEDIAL ACTION

Defect	Length of defect (inch)		Percent of rail head cross-sectional area weakened by defect		If defective rail is not replaced, take the remedial action prescribed in note
	More than	But not more than	Less than	But not less than	
Transverse fissure	.....	.....	70	5	B.
	.....	.....	100	70	A2.
	.....	.....	.....	100	A.
Compound fissure	.....	.....	70	5	B.
	.....	.....	100	70	A2.
	.....	.....	.....	100	A.
Detail fracture	.....	.....	25	5	C.
Engine burn fracture	.....	.....	80	25	D.
Defective weld	.....	.....	100	80	A2 or E and H.
	.....	.....	.....	100	A or E and H.
Horizontal split head	1	2	.....	.....	H and F.
Vertical split head	.....	4	.....	.....	I and G.
Split web	2	.....	.....	.....	B.
Piped rail	4	(1)	(1)	.....	A.
Head web separation	(1)	.....	.....	.....	
Bolt hole crack	½	1	.....	.....	H and F.
	1	1½	.....	.....	H and G.
	1½	.....	.....	.....	B.
	(1)	(1)	(1)	.....	A.
Broken base	1	6	.....	.....	D.
	6	.....	.....	.....	A or E and I.
Ordinary break	.....	.....	.....	.....	A or E.
Damaged rail	.....	.....	.....	.....	D.
Flattened rail	.....	.....	.....	.....	H.

[1] Break out in rail head.
[2] Depth ≥ ⅜ and Length ≥ 8.

Notes

A. Assign person designated under § 243.705 or § 243.707 to visually supervise each operation over defective rail.

A2. Assign person designated under § 243.705 or § 243.707 to make visual inspection. That person may authorize operation to continue without visual supervision at a maximum of 10 mph for up to 24 hours prior to another such visual inspection or replacement or repair of the rail.

B. Limit operating speed over defective rail to that as authorized by a person designated under § 243.705. The operating speed may not exceed 30 mph.

C. Apply joint bars bolted only through the outermost holes to defect within 20 days after it is determined to continue the track in use. Limit operating speed over defective rail to 30 mph until angle bars are applied; thereafter, limit speed to 50 mph. When a search for internal rail defects is conducted under this section and defects are discovered which require remedial action C, the operating speed shall be limited to 50 mph, for a period not to exceed 4 days. If the defective rail has not been removed from the track or a permanent repair made within 4 days of the discovery, limit operating speed over the defective rail to 30 mph until joint bars are applied; thereafter, limit speed to 50 mph.

D. Apply joint bars bolted only through the outermost holes to defect within 10 days after it is determined to continue the track in use. Limit operating speed over the defective rail to 30 mph or less as authorized by a person designated under § 243.705 until angle bars are applied; thereafter, limit speed to 50 mph.

E. Apply joint bars to defect and bolt in accordance with § 243.323.

F. Inspect rail 90 days after it is determined to continue the track in use.

G. Inspect rail 30 days after it is determined to continue the track in use.

H. Limit operating speed over defective rail to 50 mph.

I. Limit operating speed over defective rail to 30 mph.

§ 243.341 Initial inspection of new rail and welds.

(a) The Railroad shall provide for the initial inspection of newly manufactured rail, and for initial inspection of new welds made in either new or used rail. The Railroad may demonstrate compliance with this section by providing for:

(1) *Mill inspection.* A continuous inspection at the rail manufacturer's mill shall constitute compliance with the requirement for initial inspection of new rail, provided that the inspection equipment meets the applicable requirements specified in § 243.339 of this Part. The Railroad shall obtain a copy of the manufacturer's report of inspection and retain it as a record until the rail receives its first scheduled inspection under § 243.339 of this Part;

(2) *Welding plant inspection.* A continuous inspection at a welding plant, if conducted in accordance with the provisions of paragraph (a)(1) of this section, and accompanied by a plant operator's report of inspection which is retained as a record by the Railroad, shall constitute compliance with the requirements for initial inspection of new rail and plant welds, or of new plant welds made in used rail; and

(3) *Inspection of field welds.* Initial inspection of new field welds, either those joining the ends of CWR strings or those made for isolated repairs, shall be conducted not less than one day and not more than 30 days after the welds have been made. The initial inspection may be conducted by means of portable test equipment. The Railroad shall retain a record of such inspections until the welds receive their first scheduled inspection under § 243.339 of this Part.

(b) Each defective rail found during inspections conducted under paragraph (a)(3) of this section shall be marked with highly visible markings on both sides of the rail and the appropriate remedial action as set forth in § 243.339 of this Part will apply.

§ 243.343 Visual inspections.

(a) All track shall be visually inspected in accordance with the schedule prescribed in paragraph (c) of this section by person qualified under § 243.705 or § 243.707.

(b) With the exception of paragraph (e) below, each inspection shall be made by riding over the track in a vehicle at a speed that allows the person making the inspection to visually inspect the track structure for compliance with this rule. However, mechanical, electrical, and other track inspection devices may be used to supplement visual inspection. If a vehicle is used for visual inspection, the speed of the vehicle may not be more than 8 km/h (5 mph) when operating over track crossings or turnouts.

(c) Each inspection shall be made at a minimum frequency of once every seven days with at least three days between inspections.

(d) If a deviation from the requirements of this rule is found during the visual inspection, remedial action shall be initiated immediately.

(e) Each turnout and crossover shall be inspected on foot at least once each week. The inspection shall be in accordance with the guidebook prepared as required under § 243.325 of this Part.

§ 243.345 Special inspections.

In the event of fire, flood, severe storm, temperature extremes or other occurrence which might have damaged track structure, a special inspection shall be made of the track and ROW involved as soon as possible after the occurrence.

§ 243.347 Inspection records.

(a) The Railroad shall keep a record of each inspection required to be performed on that track under this Subpart.

(b) Except as provided in paragraph (f) of this section, each record of an inspection under § 243.343 shall be prepared on the day the inspection is made and signed by the person making the inspection.

(c) Records shall specify the track inspected, date of inspection, location and nature of any deviation from the requirements of this part, and the remedial action taken by the person making the inspection.

(d) Rail inspection records shall specify the date of inspection, the location and nature of any internal defects found, the remedial action taken and the date thereof, and the location of any intervals of track not tested pursuant to § 243.339 of this Part. The Railroad shall retain a rail inspection record for at least two years after the inspection and for one year after remedial action is taken.

(e) The Railroad required to keep inspection records under this section shall make those records available for inspection and copying by the FRA.

(f) For purposes of compliance with the requirements of this section, the Railroad may maintain and transfer records through electronic transmission, storage, and retrieval provided that:

(1) The electronic system be designed so that the integrity of each record may be maintained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons shall have the same electronic identity;

(2) The electronic storage of each record shall be initiated by the person making the inspection within 24 hours following the completion of that inspection;

(3) The electronic system shall ensure that each record cannot be modified in any way, or replaced, once the record is transmitted and stored;

(4) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall be uniquely identified as to the person making the amendment;

(5) The electronic system shall provide for the maintenance of inspection records as originally submitted without corruption or loss of data; and

(6) Paper copies of electronic records and amendments to those records, that may be necessary to document compliance with this part, shall be made available for inspection and copying by the FRA and qualified State track inspectors. Such paper copies shall be made available to the track inspectors and at the locations specified in paragraph (c) of this section.

(g) Track inspection records shall be kept available to persons who performed the inspection and to persons performing subsequent inspections.

(h) Each Track/Vehicle Performance record required under § 243.333 and § 243.335 of this Part shall be made available for inspection and copying by the FRA at the locations specified in paragraph (c) of this section.

Subpart E—Rolling Stock

§ 243.401 Clearance requirements.

The rolling stock shall be designed to meet all applicable clearance requirements of the Railroad. At a minimum, the Railroad shall make the following diagrams available to FRA upon request:

(a) Rolling stock static clearance diagram;

(b) Rolling stock dynamic clearance diagram; and

(c) Obstacle clearance diagram.

§ 243.413 Structural strength of trainset.

(a) *General.* (1) The trainset shall be permanently coupled with articulated trucks between the trailer cars. Trainsets shall be uncoupled only in repair facilities, in accordance with the operating procedures set forth in § 243.433.

(2) The trainset shall be operated with a power car at each end.

(b) *Power Car.* (1) Each power car shall resist, without permanent deformation, the following loads:

(i) A compressive load of 2000 kN (450,000 lb.) applied at the underframe level;

(ii) A compressive load of 700 kN (157,500 lb.) uniformly distributed and applied on a 100 mm (4 in.) high band to the cab end of the carbody at any height between the underframe and the structure below the front window, reacted at the buffer location at the opposite end of the car;

(iii) A compressive load of 300 kN (67,500 lb.), applied on the rear end of the power car shell, at the carbody waist level, reacted at the coupler position at the cab end;

(iv) A uniformly distributed compressive load of 300 kN (67,500 lb.), applied on the cab end of the power car shell, at cantrail level, reacted at the buffer location at the rear of the power car;

(v) A compressive load of 300 kN (67,500 lb.), applied at the middle of the obstacle deflector over a width of 500 mm (20 in.) at a height of 500 mm (20 in.) above top of rail, reacted at buffer location at the rear of the power car;

(vi) A compressive load of 250 kN (56,200 lb.) applied at the side edges of the obstacle deflector over a width of 500 mm (20 in.) at a height of 500 mm (20 in.) above top of rail, reacted at the buffer location at the rear of the power car;

(vii) A tensile load of 1000 kN (225,000 lb.) applied on the front and rear coupling devices.

(2) Each power car shall be equipped with an anti-penetration wall ahead of the cab which is capable of resisting:

(i) A longitudinal compressive load of 3000 kN (675,000 lb) at the top of the underframe, without exceeding the ultimate strength of the joint; and

(ii) A longitudinal compressive load of 1500 kN (337,000 lb) applied at a height of 760 mm (30 in) above the top of the underframe, and reacted at the rear of the cab structure, without exceeding the ultimate strength of the structure. Compliance shall be verified by either linear static analysis or equivalent means.

(3) In unoccupied areas, each power car shall be designed to absorb a minimum 4.2 MJ through controlled structural deformation.

(4) In occupied areas, each power car shall be designed to resist without permanent deformation of the sidesill, cantrail, and side post structural members, a longitudinal compressive load of 3560 kN (800,000 lb) when applied uniformly at the front of the cab between the underframe and waist level, and reacted at the cross section of the carbody at the back of the cab.

(5) Each power car shall be designed to withstand a uniformly distributed vertical load of 1.3 times its static laden weight, when supported at the truck centers, without permanent deformation. Compliance shall be verified by either linear static analysis or equivalent means.

(6) Rollover strength of power cars shall be designed to permit those cars to:

(i) Rest on their sides, uniformly supported at the top (cantrail) and the bottom (sidesill) chords of the side frame. The allowable stress in the main structural members for occupied volumes for this condition shall be one-half yield; and

(ii) Rest on their roofs with damage limited to roof sheathing and framing. Deformation of the roof sheathing and framing to the extent necessary to permit the vehicle to be supported directly on the top chords of the side frames and end frames shall be allowed. The allowable stress in the main structural members for occupied volumes for this condition shall be one-half yield.

Compliance with this requirement shall be verified by either linear static analysis or equivalent means.

(c) *Trailer Car.* (1) Each trailer car of the trainset shall resist, without permanent deformation, the following loads:

(i) A compressive load of 2000 kN (450,000 lb) applied at the level of the thrust tubes;

(ii) A uniformly distributed compressive load of 300 kN (67,500 lb), applied to the end of the trailer carshell, at cantrail level; and

(iii) A tensile load of 1000 kN (225,000 lb) applied at the level of the thrust tube. and

(2) Each trailer car shall be designed to withstand a uniformly distributed vertical load of 1.3 times its static laden weight, when supported at the truck centers, without permanent deformation.

(3) The occupied volumes of trailer cars shall be designed to resist without permanent deformation of the sidesill, cantrail, and side post structural members, a longitudinal compressive load of 3560 kN (800,000 lb.) when applied as distributed over the carbody cross section at the seated passenger compartment. Compliance with this requirement shall be verified by either linear static analysis or equivalent means.

(4) Rollover Strength of trailer cars shall be designed to permit those cars to:

(i) Rest on their sides, uniformly supported at the top (cantrail) and the bottom (sidesill) chords of the side frame. The allowable stress in the main structural members for occupied volumes for this condition shall be one-half yield; and

(ii) Rest on their roofs with damage limited to roof sheathing and framing. Deformation of the roof sheathing and framing to the extent necessary to permit the vehicle to be supported directly on the top chords of the side frames and end frames shall be allowed. The allowable stress in the main structural members for occupied volumes for this condition shall be one-half yield.

Compliance with this requirement shall be verified by either linear static analysis or equivalent means.

§ 243.405 Trailer car interior.

(a) *Seat and seat attachment strength.* (1) Seat backs shall be designed to withstand, with deflection and permanent deformation allowed, but without total failure, the load due to a 95th-percentile male (85 kg or 187 lb.) seat occupant accelerated with the following pulse:

(i) 0 to 6g in 0.05 s;

(ii) 6g for 0.125 s; and

(iii) 6 to 0g in 0.05 s.

(2) The ultimate strength of a seat attachment to the trailer carbody shall be sufficient to withstand the following individually-applied accelerations acting on the mass of the seat plus the mass of a seat occupant who is a 95th-percentile male (85kg or 187 lb.):

(i) Longitudinal: 6 g;

(ii) Lateral: 2 g; and

(iii) Vertical: 2 g.

(b) *Interior Fittings.* (1) Interior fittings shall be attached to the trailer carbody with sufficient strength to withstand the following individually-applied accelerations acting on the mass of the fitting:

(i) Longitudinal: 3 g;

(ii) Lateral: 2 g; and

(iii) Vertical: 2 g.

(2) To the extent possible, interior fittings shall be recessed or flush-mounted, and corners and sharp edges shall be either avoided or padded to mitigate the consequences of impact with such surfaces.

(c) *Luggage Stowage Compartments.* Luggage stowage compartments shall include a means to restrain luggage, and have sufficient strength to resist loads due to the following individually-applied accelerations acting on the mass of the luggage that the compartment is designed to accommodate:

(1) Longitudinal: 3 g;

(2) Lateral: 2 g; and

(3) Vertical: 2 g.

(g = 1 gravity; s = seconds)

§ 243.407 Glazing.

(a) *Exterior Impact Performance.* (1) End-facing exterior glazing shall resist the impact of a 10 kg (22 lb) solid aluminum sphere with an impact energy of 30 kJ at 22°C (72°F) and 25 kJ at 0°C (32°F).

(2) Driver's cab side-facing exterior glazing shall resist the horizontal impact of a 600g (1.3 lb) steel sphere with an energy of 15 kJ.

(3) Trailer car side-facing exterior glazing shall resist, without spall or penetration, the impact of a 2.46g (38 grains) bullet at an impact speed of 442 m/s (1,450 ft/s).

(4) Glazing and frame shall resist the forces due to air pressure differences under all operations caused by trains passing with the minimum separation for two adjacent tracks while traveling in opposite directions, each traveling at maximum operating speed.

(b) *Interior Performance.* Interior equipment glazing shall meet the minimum requirements of AS1 type laminated glass as defined in American National Standard ''Safety Code for Glazing Materials for Glazing Motor Vehicles Operating on Land Highways,'' ASA Standard Z26.1–1990.

(c) *Frame.* The glazing frame shall hold glazing in place against all forces generated in the tests specified in this section.

§ 243.409 Brake system.

(a) The brake system shall be capable of stopping the trainset within the prevailing signal spacing from its

maximum authorized speed, under test conditions of adhesion as defined in UIC leaflet 541.05, with flow of detergent. The flow rate of detergent shall be doubled for speeds in excess of 180 km/h (112 mph).

(b) The braking on each truck shall be independently controlled by the brake pipe.

(c) The electric brake on each powered truck shall be completely independent and shall operate with the loss of the overhead power supply.

(d) Any failure of the electric portion of the brake system on any power truck shall be displayed for the locomotive engineer in the control cab.

(e) The brake system shall be designed to prevent thermal damage to wheels or discs. The Railroad shall demonstrate, through analysis and test that is confirmed by the system safety plan and pre-revenue service tests, that no thermal damage results to the wheels or discs under conditions resulting in maximum friction braking effort being exerted.

(f) The Railroad shall demonstrate, through analysis and test that is confirmed by the system safety plan and pre-revenue service tests, the maximum authorized speed of the trainset at which no thermal damage to wheels or discs occurs, for various combinations of electric and friction brake failures. The Railroad shall develop a matrix that clearly lists potential brake failures or combinations of failures, to which each speed corresponds, that shall be displayed in each power car.

(g) In the event of an en route failure of the electric or friction portion of the brake, or both, a train may proceed at a speed no greater than the maximum authorized speed as set forth in the matrix required by paragraph (f) of this section. The locomotive engineer shall notify central traffic control of any brake failure that requires a speed restriction in a trip.

(h) The trainset shall be equipped with an emergency application feature that produces an irretrievable stop, using a brake rate consistent with prevailing adhesion, passenger safety, and brake system thermal capacity. An emergency application shall be available at any time. A means to apply the emergency brake shall be provided at two locations accessible to the train crew in each trailer car.

(i) The brake system shall be designed so that an inspector may determine whether the brake system is functioning properly without being placed in a dangerous position on, under or between the equipment. This determination may be made through automated inspection equipment that utilizes sensors to verify that the brakes have been applied and released.

(j) The brake system design shall allow a disabled train's pneumatic brakes to be controlled by a rescue locomotive through brake pipe control alone.

(k) The train shall be equipped with a spring-applied, air-released parking brake that is capable of holding the train on any part of the Railroad system and, at a minimum, on a 0.5% grade.

(l) An independent failure detection system shall compare brake commands with brake system output to determine if a failure has occurred. The failure detection system shall report immediately brake system failures to the automated train monitoring system.

(m) Each truck of the trainset shall be equipped with a wheelslide system designed to automatically adjust the braking force on each wheel to prevent axle-locking during braking. In the event of failure of a truck's wheelslide system, control shall be automatically provided by the wheelslide system of an adjacent truck. A visual or audible alarm, or both, shall be provided in the cab of the controlling power car if a blocked axle is detected.

§ 243.411 Truck and suspension system.

(a) *Truck-to-car-body attachment.* (1) For all power cars and trailer cars, the strength of the truck-to-car-body attachment shall be sufficient to resist without permanent deformation a longitudinal force equivalent to 2.5g acting on the mass of the truck.

(2) Components of the truck, which include axles, wheels, bearings, truck mounted brake system, suspension system components, and any other components integral to the design of the truck, shall remain attached to the truck when a force equivalent to 2g acting on a mass of any component is exerted in any direction on that component.

(b) *Wheel climb.* Suspension systems shall prevent wheel climb, wheel lift, rail roll-over, track shift, and vehicle over-turning and provide safe, stable performance and ride quality. Suspension systems shall meet these design requirements in all safety-critical operating environments, track conditions, and loading conditions. Compliance with these requirements shall be demonstrated as part of the System Qualification Tests set forth in Subpart G of this Rule.

(c) *Lateral accelerations.* The trainsets shall not operate under conditions that correspond to a steady-state lateral acceleration to the outside of the curve of 0.1g or greater, as measured parallel to the car floor.

(d) *Hunting oscillations.* Each truck shall be equipped with a permanently installed lateral accelerometer mounted on the truck frame. The accelerometer output signals shall be calibrated and filtered, and shall pass through signal conditioning circuitry designed to determine if hunting oscillations of the truck are occurring. If hunting oscillations are detected, the train monitoring system shall provide an alarm to the locomotive engineer and the train shall be slowed by the locomotive engineer to a speed 8 km/h (5 mph) less than speed at which hunting oscillations stopped. This requirement shall be included in the Railroad's Operating Rules.

(e) *Ride vibration.* Compliance with ride quality requirements contained in this paragraph shall be demonstrated during equipment pre-revenue service qualification tests in accordance with § 243.113 and Subpart G of this Part. The Federal Railroad Administration shall verify ride quality performance of trainset equipment through the use of instrumentation. While traveling at the maximum revenue service speed over the intended route, the train suspension system shall:

(1) Limit the vertical acceleration as measured by a vertical accelerometer mounted on the car floor to no greater than 0.55g single event, peak-to-peak.

(2) Limit the lateral acceleration as measured by a lateral accelerometer mounted on the car floor to no greater than 0.3g single event, peak-to-peak.

(3) Limit the combination of lateral acceleration (L) and vertical acceleration (V) occurring within any time period of 2 consecutive seconds as expressed by the square root of (V^2+L^2) to no greater than 0.604g, where L may not exceed 0.3g and V may not exceed 0.55g.

(f) *Bearing overheat sensors.* Bearing overheat sensors shall be provided on board each trainset or at wayside intervals, as determined by the system safety plan.

§ 243.413 Fire safety.

(a) All materials used in constructing the interior of both a trailer car and a power car shall meet the flammability and smoke emission characteristics testing standards contained in Appendix B to this rule, or alternative standards issued or recognized by an expert consensus organization after approval by FRA in conjunction with approval of the Railroad's system safety plan required by Subpart B of this Part. For purposes of this section, the interior of a trailer car and a power car includes walls, floors, ceilings, seats, doors, windows, electrical conduits, air ducts, and any other internal equipment.

(b) The railroad shall require certification that combustible materials to be used in the construction of trainset interiors have been tested by a recognized independent testing laboratory, and that the results comply with the requirements of paragraph (a) of this section.

(c) Overheat detectors shall be installed in all components of the trainset where the written analysis required by Subpart B determines that such equipment is necessary.

(d) Fire or smoke detectors shall be installed in unoccupied compartments of a train if the analysis required by Subpart B determines that such equipment is necessary to ensure sufficient time for the safe evacuation of the train.

(e) A fixed, automatic fire suppression system shall be installed in unoccupied compartments of a train if the analysis required by Subpart B determines that such a system is necessary and practical to ensure sufficient time for the safe evacuation of the train.

(f) The railroad shall comply with those elements of its written procedures, under Subpart B, for the inspection, testing, and maintenance of all fire safety systems and equipment that it has designated as mandatory.

(g) The Railroad shall prohibit smoking on all trainsets in passenger service.

§ 243.415 Doors.

(a) *Powered, exterior side doors.* (1) Each trailer car shall have a minimum of four exterior side doors, or the functional equivalent of four side doors, that each permit at least one 95th-percentile male to pass through at a single time.

(2) The status of each powered, exterior door shall be displayed to the crew in the operating power car. If door interlocks are used, the sensors used to detect train motion shall be nominally set to operate at 5 km/h (3 mph).

(3) Powered, exterior doors shall be powered by the compressed air system or by electricity. If powered by electricity, the doors shall be connected to an emergency back-up power system.

(4) Each powered, exterior door shall be equipped with a manual override that is:

(i) Located adjacent to the door that it controls;

(ii) Capable of opening the door without power from both inside and outside the car; and

(iii) Designed and maintained so that a person may access the override device from both inside and outside the car without the use of any tool or other implement.

(5) Instructions for manual override shall be clearly posted in the car interior at door locations.

(6) A means for emergency responders to access the manual override from outside the car shall be provided. Instructions for access and use of the handle shall be clearly posted outside the car at all door locations.

(7) Manual door releases shall be easily operable by a 5th-percentile female without requiring the use of any tools to accomplish the manual override in the event of head-end power loss.

(8) The Railroad may protect a manual override device used to open a powered, exterior door with a cover or a screen capable of removal by a 5th-percentile female without requiring the use of a tool or other implement. If the method of removing the protective cover or screen entails breaking or shattering it, the cover or screen shall be scored, perforated, or otherwise weakened so that a 5th-percentile female can penetrate the cover or screen with a single blow of her fist without injury to her hand.

(b) Passenger compartment end doors shall be equipped with a kick-out panel, pop-out window or other equivalent means of egress in the event the door will not open.

§ 243.417 Emergency equipment.

(a) Emergency system requirements set forth in this Subpart shall apply to each trailer car.

(b) Emergency lighting shall be provided and shall include the following:

(1) An illumination level of a minimum of 55 lux (5.1 ft-candles) at floor level for all normal passenger and crew evacuation routes from the equipment;

(2) A back-up power system capable of operating all emergency lighting for a period of at least two hours;

(3) A back-up power system capable of operating in all equipment orientations; and

(4) A back-up power system capable of operating after the initial shock of a collision or derailment due to individually applied shock loads at 3g/2g/2g, longitudinal/vertical/lateral respectively.

(c) A means of emergency communication throughout the trainset shall be provided and shall include the following:

(1) Transmission locations that are clearly marked with luminescent material at each end of each unit adjacent to the unit or car end doors;

(2) Back-up power for a minimum time period of two hours; and

(3) Clear and understandable operating instructions at or near each transmission location.

(d) Locations of emergency equipment shall be clearly marked with luminescent material that makes the identity and location of the equipment recognizable from a distance equal to the width of the car.

(e) *Emergency exits.* (1) Locations of all emergency exits shall be clearly marked with luminescent material that makes the identity and location of the emergency exit recognizable from a distance equal to the width of the car.

(2) Clear and understandable instructions for use of the emergency exits shall be posted at each emergency exit and they must be visible from a distance of 30 inches.

(3) Each trailer car shall have a minimum of four emergency window exits, arranged in a staggered configuration or with one located at each end of each side of the trailer car.

(4) Each trailer car sealed window emergency exit shall have a minimum free opening of 1.6 m (63 in) wide by 0.6 m (24 in) high.

(5) Each emergency window exit shall be easily operable by a 5th percentile female without requiring the use of a tool or implement other than a hammer designed to break the glazing that shall be located adjacent to each emergency window.

(6) Each power car shall have an emergency roof hatch with a minimum opening of 0.45 m (18 in) by 0.6 m (24 in) and an emergency escape exit in the cab sidewall.

(f) The Railroad shall have in place a redundant means for the train crew to communicate with the pertinent railroad operations center to summon aid in the event of an emergency situation. These may include operating portable radios or cellular telephones.

§ 243.419 Operator's controls and power car layout.

(a) Operator controls in the power vehicle or control cab shall be arranged to be comfortably within view and easy reach when the locomotive engineer is seated in the normal train control position.

(b) The control panels shall be laid out to minimize the risk of human error.

(c) An alerter (Vigilance Device System) shall be provided. This system shall be operative at all speeds above 8 km/h (5 mph). If not acknowledged, the alerter shall cause a brake application to stop the train.

(d) Cab information displays shall be designed with the following characteristics:

(1) Simplicity and standardization shall be the driving criteria for design of

formats for the display of information in the cab;

(2) Essential, safety-critical information shall be displayed as a default condition at the most visible place for the locomotive engineer.

(3) Operator selection shall be required to display other than default information.

(4) Cab or train control signals shall be displayed for the locomotive engineer.

(5) Displays shall be readable from the locomotive engineer's normal position under all lighting conditions.

(e) The power car shall be equipped with an obstacle deflector which extends across both rails of the track. The height of the obstacle deflector shall be more than 150 mm (5.9 in) and less than 300 mm (11.8 in) off the rails.

(f) The cab layout shall be arranged to meet the following requirements:

(1) The crew has an effective field of view in the forward direction, and the right and left of the direction of travel; and

(2) Field-of-view obstructions due to required structural members shall be minimized.

(g) Each seat provided for a crew member shall:

(1) Be secured to the carbody with an attachment having an ultimate strength capable of withstanding the loads due to individually applied accelerations of 3g/2g/2g acting longitudinally/ laterally/ vertically respectively on the mass of the seat and the crew member occupying it; and

(2) Be designed according to *Layout of Drivers' Cabs in Locomotives, Railcars, Multiple Unit Trains and Driving Trailers,* UIC 651, International Union of Railways Standard (First Edition, 1986), which requires that:

(i) All adjustments have the range necessary to accommodate a 5th-percentile to a 95th-percentile male;

(ii) The seat is equipped with a force-assisted 200 mm longitudinal adjustment, operated from the seated position; and

(iii) The seat has a 20 degrees manually reclining seat back, adjustable from the seated position.

(h) The ultimate strength of power car control cab interior fitting and equipment attachments shall be sufficient to resist without failure loads due to individually applied accelerations of 3g/2g/2g longitudinally/ laterally/vertically respectively acting on the mass of the fitting or equipment.

(i) Sharp edges and corners on interior surfaces of the cab likely to be impacted by the crew during a collision or derailment shall be eliminated, where possible, and if not, padded.

(j) Each power car used in revenue service shall be equipped with operating heat and air conditioning systems.

§ 243.421 Exterior lights.

(a) *Headlights.* Each power car shall be equipped with two or more headlights. Each headlight shall produce 12,000 or more candela.

(b) *Taillights.* (1) Each trailing power car shall be equipped with two or more red taillights;

(2) Each taillight shall be located at least 1.2 m (3.9 ft) above rail;

(3) Each taillight shall produce 15 or more candela; and

(4) Taillights of the trailing power car must be on when the trainset is on a section of the system that is in revenue service.

§ 243.423 Electrical system design.

(a) *Circuit protection.* (1) The main propulsion power line shall be protected with a lightning arrestor, automatic circuit breaker, and overload relay. The lightning arrestor shall be run by the most direct path possible to ground with a connection to ground of not less than No. 6 AWG. These overload protection devices shall be housed in an enclosure designed specifically for that purpose with arc chute vented directly to outside air.

(2) Head end power, including trainline power distribution, shall be provided with both overload and ground fault protection.

(3) Circuits used for purposes other than propelling the equipment shall be connected to their power source through circuit breakers or equivalent current-limiting devices.

(4) Each auxiliary circuit shall be provided with a circuit breaker located as near as practical to the point of connection to the source of power for that circuit. Such protection may be omitted from circuits controlling safety-critical devices.

(b) *Main battery system.* (1) The main batteries shall be isolated from the cab and passenger seating areas by a non-combustible barrier.

(2) Battery chargers shall be designed to protect against overcharging.

(3) Battery circuits shall include an emergency battery cut-off switch to completely disconnect the energy stored in the batteries from the load.

(4) If batteries are of the type to potentially vent explosive gases, the batteries shall be adequately ventilated to prevent accumulation of explosive concentrations of these gases.

(c) *Power dissipation resistors.* (1) Power dissipation resistors shall be adequately ventilated to prevent overheating under worst-case operating conditions.

(2) Power dissipation grids shall be designed and installed with sufficient isolation to prevent combustion between resistor elements and combustible material.

(3) Power dissipation resistor circuits shall incorporate warning or protective devices for low ventilation air flow, over-temperature and short circuit failures.

(4) Resistor elements shall be electrically insulated from resistor frames, and the frames shall be electrically insulated from the supports that hold them.

§ 243.425 Automated monitoring.

(a) Each trainset shall be equipped to monitor the performance of the following systems or components:

(1) Reception of cab and train control signals;

(2) Truck hunting;

(3) Electric brake status;

(4) Friction brake status;

(5) Fire detection systems;

(6) Head end power status;

(7) Alerter;

(8) Horn; and

(9) Wheelslide.

(b) The monitoring system shall alert the locomotive engineer immediately when any of the monitored parameters are out of predetermined limits. The Railroad's operating rules, developed pursuant to § 243.117 and Subpart F of this Part, shall control train movement when the monitored parameters are out of predetermined limits. If the locomotive engineer fails to act in accordance with these procedures, the Railroad's central traffic control shall initiate corrective action.

(c) The Railroad shall develop, in the course of the system safety analysis and pursuant to § 243.117 of this Part, appropriate operating rules to address locomotive engineer and equipment performance in the event that the automatic monitoring system becomes defective en route, or is defective when the daily inspection required by § 243.433 is completed.

(d) Each lead power car shall be equipped with an operative event recorder that monitors and records all safety data required by § 243.425(a) of this Part and 49 CFR 229.135, Event Recorders.

(e) All monitored systems set forth in paragraph (a) of this section shall be tested during each daily inspection required by § 243.433(f).

§ 243.427 Trainset system software and hardware integration.

(a) The trainset system hardware and software integration shall conform with *On-Board Electronic Equipment and*

Computer Hardware, CF 67–001, Bureau of Railroad Standards, (June 1990).

(b) The trainset system hardware and software integration shall conform with *Methodology for the Development of On-Board Micro-Computer Equipment,* Pr CF 67–004 and NF F71–004, Bureau of Railroad Standards, (February 1989).

§ 243.429 Control system design requirements.

The Railroad's trainset computer hardware and software shall meet the requirements set forth in § 243.105 of this Part.

§ 243.431 Safety appliance.

(a) *Couplers.* (1) The leading and trailing ends of each semi-permanently connected trainset shall be equipped with an automatic coupler that couples on impact and uncouples by either activation of a traditional uncoupling lever, or some other type of uncoupling mechanism that does not require a person to go between equipment units.

(2) The leading and trailing end couplers and uncoupling devices may be stored within a removable shrouded housing.

(3) Leading and trailing automatic couplers of trains shall be compatible with the Railroad's rescue locomotives without the use of special adapters.

(4) All couplers shall be equipped with an anti-climbing mechanism capable of resisting an upward or downward vertical force of 250 kN (56,200 lb) without permanent deformation.

(b) *Safety appliance mechanical strength and fasteners.* (1) All handrails and sill steps shall be made of approximately 25 mm (1 in.) diameter steel pipe.

(2) All safety appliances shall be securely fastened to the carbody structure with mechanical fasteners that have mechanical strength greater than or equal to that of a M10 diameter SAE steel bolt mechanical fastener.

(c) *Handrails and handholds.* (1) Handrails and handholds shall be made of stainless steel.

(2) Vertical handrails shall conform to the following:

(i) The maximum distance above top of rail to the bottom of the handrail shall be 1250 mm (49.2 in) and the minimum distance shall be 500 mm (19.7 in);

(ii) Minimum hand clearance distance between the handrail and the vehicle body shall be 50 mm (1.97 in) for the entire length; and

(iii) Vertical handrails shall be securely fastened to the vehicle body.

(3) Handholds and handrails are not required on units of the trainset which are semi-permanently connected, which can be disconnected only in a repair facility.

(4) Handholds and handrails are not required at the leading and trailing ends of the trainset equipped with automatic couplers, as these couplers are to be used only for rescue operations, and coupling can be achieved without requiring personnel to go between units.

(5) Passenger handrails or handholds shall be provided at both side access doors used to board or depart the train.

(6) Power vehicle side exits shall be equipped with handholds and handrails.

(d) *Sill steps.* (1) Each power vehicle or control cab shall be equipped with sill steps below each side door;

(2) Power vehicle or control cab sill steps shall be made of expanded metal or equivalent anti-skid material;

(3) Sill steps shall be designed and installed so that:

(4) The minimum tread length of the sill step shall be 250 mm (9.8 in);

(5) The minimum clear depth shall be 150 mm (5.9 in);

(6) Sill steps shall not have a vertical rise between treads exceeding 450 mm (17.7 in). The lowest sill step tread shall be not more than 500 mm (19.7 in) above the top of the rail;

(7) All sill steps shall be securely fastened;

(8) Sill steps are not required on units of the trainset that are semi-permanently connected, which can be disconnected only in a repair facility;

(9) Sill steps are not required at the leading and trailing ends of the trainset equipped with automatic couplers as these couplers are to be used only for rescue operations, and coupling can be achieved without requiring personnel to go between units.

(10) Power vehicle side exits shall be equipped with sill steps.

(e) *Semi-permanent connectors between trainset vehicles.* Each trailer car and power car in a trainset shall be connected to the adjacent trailer car or power car by use of a semi-permanent connector. Semi-permanent connectors may be disconnected only in repair facilities, with the use of special tools, and in such a manner that do not require employees to go on, under, or between equipment. Semi-permanent connectors are not couplers.

§ 243.433 Trainset inspection, testing and maintenance requirements.

(a) The Railroad shall develop a written inspection program for the rolling stock, in accordance with and approved under the requirements of Subpart B, prior to implementation of that program and prior to commencing operations. At a minimum, this program shall include the complete inspection, testing, and maintenance program for the TGV trainset as it is performed in France, including all inspections set forth in paragraph (f) below. This information shall include a detailed description of:

(1) Safety inspection procedures, intervals and criteria;

(2) Test procedures and intervals;

(3) Scheduled preventive maintenance intervals;

(4) Maintenance procedures;

(5) Special test equipment or measuring devices required to perform safety inspections and tests;

(6) Training and qualification of employees and contractors to perform safety inspections, tests and maintenance; and

(7) Methods of ensuring accurate records of required inspections.

(b) *Identification of safety-critical items.* In the program required by paragraph (a), the Railroad shall identify all inspection and testing procedures and criteria, and maintenance intervals that the Railroad deems to be safety-critical. Operation of emergency equipment, emergency back-up systems, and trainset exits shall be deemed safety-critical.

(c) *Program changes.* The Railroad must obtain FRA approval for any changes to the safety-critical portion of the trainset inspection, testing, and maintenance program required by paragraph (a).

(d) *Compliance.* After the Railroad's inspection, testing, and maintenance program is approved by FRA pursuant to the requirements and procedures set forth in Subpart B, the Railroad shall adopt the program and shall perform:

(1) All inspections and tests described in the program in accordance with the procedures and criteria that the Railroad identified as safety-critical; and

(2) All maintenance tasks and procedures described in the program in accordance with the procedures and intervals that the railroad identified as safety-critical.

(e) The inspection, testing, and maintenance program shall ensure that all systems and components of the equipment are free of conditions that endanger the safety of the crew, passengers, or equipment. These conditions include, but are not limited to:

(1) A continuous accumulation of oil or grease;

(2) Improper functioning of a component;

(3) A crack, break, excessive wear, structural defect or weakness of a component;

(4) A leak;

(5) Use of a component or system under conditions that exceed those for which the component or system is designed to operate; and

(6) Insecure attachment of a component.

(f) *Specific safety inspections.* The program under paragraph (a) of this section shall specify that all passenger equipment shall receive thorough safety inspections by qualified personnel at regular intervals. At a minimum, each trainset shall have:

(1) *Daily inspection.* Each trainset in use shall be inspected at least once each calendar day by qualified personnel. The inspection shall verify the correct operation of all on-board safety systems. If any of the conditions listed below are found during this inspection, the trainset shall not be put into revenue service until that condition is rectified. If the existence of any condition listed below cannot be determined by use of the on-board automated monitoring system, the Railroad shall perform a visual inspection to determine if the condition exists.

(i) Malfunction of the driving assistance system (SIAC);

(ii) Malfunction of the fire detection system;

(iii) Indication of an unbalanced tripod;

(iv) Indication of a broken tripod;

(v) Indication of blocked axle;

(vi) A single phase pantograph or its circuit breaker out of order;

(vii) Power car failure or cut-out;

(viii) Isolated roof disconnecting switch H(HT);

(ix) Transformer cooling or ventilation out of order;

(x) Two or more motor blocks isolated;

(xi) Mechanical brake on one or more trucks isolated;

(xii) Total failure of the anti-slide device on one truck;

(xiii) Failure of locomotive engineer's vigilance system (VACMA);

(xiv) Speedometer failure;

(xv) Failure of on-board signaling system;

(xvi) Failure of the speed measuring system (the warning flag of the speedometer does not disappear when the driving cab is activated);

(xvii) Locomotive engineer's console out of order;

(xviii) Locomotive engineer's brake valve not operating;

(xix) Leak in the main reservoir line;

(xx) Leak in the main brake pipe;

(xxi) Failure indication during the required brake test;

(xxii) Trailer car battery charger out of order; and

(xxiii) Total failure of the trainset interior lighting.

(2) *Examination in service.* A visual inspection conducted by qualified personnel every 4000 km (2,485 mi), at a location where there is a repair pit and access to the top of the trainset. At a minimum, the items listed below shall be inspected. All conditions found that do not comply with the safety inspection criteria required by paragraph (a) of this section shall be corrected before the trainset is put into revenue service.

(i) Condition of the pantographs and roof insulators;

(ii) Condition of sanding nozzles;

(iii) Fixation and condition of dampers;

(iv) Condition of suspension springs;

(v) Fixation and condition of grounding straps;

(vi) Condition of side skirts and underbody panels;

(vii) Condition of trucks;

(viii) Oil levels;

(ix) Traction motor-to-carbody securement;

(x) Presence of brake pads;

(xi) Condition of brake shoes;

(xii) Condition of wheel tread;

(xiii) Condition of drive train.

(3) *Running gear inspection.* The running gear shall be inspected by qualified personnel once every 18 days. At a minimum, the items listed below shall be inspected. All conditions found that do not comply with the safety inspection criteria required by paragraph (a) of this section shall be corrected before the trainset is put into revenue service.

(i) A visual inspection of trucks;

(ii) An inspection of the operation of flange-lubricating devices;

(iii) An inspection of the condition and attachment of dampers, roof mounted elements, and suspension components;

(iv) An inspection of the brake rigging, journal bearings, and tripod transmission

(v) A visual inspection of the condition and attachment of brake pads;

(vi) An inspection of the oil levels on drive train;

(vii) An inspection of the securement of drive train and wheel slide sensors;

(viii) An inspection of the condition of the pantographs and roof insulators; and

(ix) Check for audible leaks on pneumatic system.

(4) *Wheel inspection.* Each trainset wheel and reprofile shall be inspected by qualified personnel at an interval not to exceed 50,000 km of travel. Equipment not in compliance with the inspection criteria established in paragraph (a) of this section shall be replaced before the wheel or reprofile returns to revenue service.

(5) *Minor inspection.* At an interval not to exceed 150,000 km of travel or 7 months of time, whichever comes first, the Railroad shall perform a Minor Inspection on all trainsets in accordance with the test procedures and inspection criteria established in paragraph (a) of this section. All conditions found that do not comply with the safety inspection criteria required by paragraph (a) shall be corrected before the trainset is put into revenue service. The Minor Inspection shall include:

(i) Electrical Parts:

(A) Inspect current return devices, antennas, and transponders;

(B) Examine batteries;

(C) Check operation of lighting;

(D) Check operation of speedometer unit and of cab signal receptor;

(E) Check sensors and sensor protectors;

(F) Check roof switches and contacts;

(G) Check circuit breakers; and

(H) Check traction motors and main transformers.

(ii) Mechanical Parts:

(A) Inspect axles, axle boxes and trucks;

(B) Check tightening torque of shock absorber and support mounting bolts;

(C) Check buffing gear;

(D) Inspect pantographs;

(E) Check attachment of anti-roll bars;

(F) Examine condition of guard-irons;

(G) Check setting of sanders;

(H) Verify proper operation of flange-lubricating devices;

(I) Check level and condition of oil on motor and reducing gears;

(J) Check attachment of geared motors;

(K) Check for grease projections from the motive force transmission components, and carrying and fixed rings of the articulation joint;

(L) Check attachment of motive force transmission components and tripod transmission;

(M) Check condition of motorized axle torque reaction rods;

(N) Check condition of brake-units and brake shoes;

(O) Check condition of disk brake pads and of the brake rigging cylinder assembly;

(P) Check condition of bellows;

(Q) Check for attachment defects and distortions on car body components, including underside panels, skirts, windows, and fairings;

(R) Verify proper operation of all doors, including locking devices;

(S) Check for defects on front power car windows;

(T) Inspect fire extinguishers, emergency safety equipment and tools, including the tink hammer; and

(U) Inspect tachometer and odometer sensors.

(iii) Pneumatic Parts:
(A) Inspect main compressor for proper operation;
(B) Check oil level and leaks in the compressor;
(C) Inspect condition of pneumatic suspension components; and
(D) Inspect brake equipment and brake indicator lamps.

(6) *General inspection.* At an interval not to exceed 300,000 km of travel or 13 months of time, whichever comes first, the Railroad shall perform a General Inspection of all trainsets in accordance with the tests procedures and inspection criteria established in paragraph (a) of this section. All conditions found that do not comply with the safety inspection criteria required by paragraph (a) shall be corrected before the trainset is put into revenue service. The General Inspection shall include all items required in the Minor Inspection and:

(i) Electrical Parts:
(A) Inspect circuit breakers;
(B) Examine insulators;
(C) Inspect main transformers;
(D) Inspect braids and connecting shunts, sensors and sensor protectors;
(E) Examine electro-pneumatic and electromagnetic contacts;
(F) Inspect freon enclosures;
(G) Check for anomalies on resistors;
(H) Check operation of signaling lights;
(I) Visual inspection of diodes and antennas;
(J) Check condition of electronic plug-in units;
(K) Check condition of switches, controls, and joints;
(L) Check condition of master controller;
(M) Check operation of clock and indicator of imposed speed;
(N) Check operation of ground-to-train radio link and speed supervision by transponder;
(O) Check operation of passenger alarms;
(P) Inspect antenna;
(Q) Verify that headlights, tail lights, indicators, lighting, desks operate properly in full and dimmed status;
(R) Verify power supply to electrical outlets that are accessible to passengers and service personnel;
(S) Check operation of lights and indicators in electrical cabinets;
(T) Inspect traction, main, auxiliary compressor, and ventilation motors; and
(U) Check operation of refrigeration system and circuit breakers.
(ii) Mechanical Parts:
(A) Check operation of pantographs;
(B) Check for defects, including cracks and distortions, on trucks;
(C) Check for defects and check play on fixed and carrying rings of articulation joint;
(D) Check for defects on intercar passageways;
(E) Check for defects on doors, locks, and joints;
(F) Check interbody and anti-tilt dampers;
(G) Check tread brake units; and
(H) Check underbody rotation stops.
(iii) Pneumatic Parts:
(A) Check pressure gauge;
(B) Check operation of braking gear;
(C) Check operation of the anti-wheelslide device;
(D) Check operation of the emergency brake valve;
(E) Clean driver's brake valve and check its operation;
(F) Inspect flexible and half-couplings;
(G) Check operation of valves which control alarms, windshield washers, windshield wipers, and of differential valves; and
(H) Check brake indicator lights.

(7) *Major inspection.* At an interval not to exceed 600,000 km of travel or 25 months of time, whichever comes first, the Railroad shall perform a Major Inspection on all trainsets in accordance with the tests procedures and inspection criteria established in paragraph (a) of this section. All conditions found that do not comply with the safety inspection criteria required by paragraph (a) shall be corrected before the trainset is put into revenue service. The Major Inspection shall include all items required in the General Inspection and:

(i) Electrical Parts:
(A) Inspect roof cable and lightning arresters;
(B) Inspect operation of the roof switch;
(C) Inspect battery switches;
(D) Inspect battery charger and battery voltmeter;
(E) Inspect inverters;
(F) Examine coils;
(G) Clean electronic gear;
(H) Inspect couplers and connecting cables;
(I) Inspect driver's console switch box;
(J) Test driver's vigilance system;
(K) Pre-departure sensors;
(L) Inspect operation of cab signal;
(M) Clean switchgear cabinets;
(N) Lubricate traction motors;
(O) Inspect ammeters and key switch panel;
(P) Inspect 30 KVA inverter; and
(R) Inspect spare light bulb supply.
(ii) Mechanical Parts:
(A) Inspect calibration of pantographs;
(B) Inspect for defects on motorized axle reaction rods;
(C) Inspect the constituents of fixed and carrying rings of articulation joint;
(D) Inspect that headlight covers are tightly secured; and
(E) Inspect for defects on car body exterior paint.
(iii) Pneumatic Parts:
(A) Inspect air and oil filters;
(B) Inspect main compressor couplings;
(C) Inspect operation of the main air dryer;
(D) Inspect operation of pressure gauges;
(E) Inspect pneumatic suspension reservoirs;
(F) Inspect operation of power car and trailer car brakes;
(G) Inspect operation of pneumatic pressure regulators;
(H) Inspect truck-to-car body coupling and pneumatic suspension connections; and
(I) Inspect operation of the spring-applied parking brake.

(g) *Brake system repair points.* The Railroad shall designate brake system repair point(s) in the inspection criteria established in paragraph (a) of this section. No trainset shall depart a brake system repair point unless that trainset has a 100 percent operational brake system.

(h) *Maintenance intervals.* The Railroad's program established pursuant to paragraph (a) of this section shall include the Railroad's scheduled maintenance intervals for equipment based on TGV operations in Europe, and on an analysis required the system safety program set forth in Subpart B of this Part. The maintenance interval of a safety-critical components shall be changed only when justified by accumulated, verifiable operating data, and approved by FRA as part of a system safety plan amendment.

(i) *Training and qualification program*. The Railroad shall establish a training and qualification program as defined in Subpart H of this Part to qualify individuals to perform inspections, testing, and maintenance on the equipment. Only qualified individuals shall perform inspections, testing, and maintenance of the equipment. An employee or contractor employee shall have knowledge of standard procedures described in paragraph (h) of this section in order to qualify to perform a task.

(j) *Standard procedures for safely performing inspection, testing, maintenance, or repairs.* The Railroad's program required by paragraph (a) of this section shall include the Railroad's written standard procedures for performing all safety-critical equipment inspection, testing, maintenance, or repair tasks. These standard procedures shall:

(1) Describe in detail each step required to safely perform the task;

(2) Describe the knowledge necessary to safely perform the task;

(3) Describe any precautions that must be taken to safely perform the task;

(4) Describe the use of any safety equipment necessary to perform the task;

(5) Be approved by the railroad's chief mechanical officer;

(6) Be approved by the railroad's official responsible for safety;

(7) Be enforced by supervisors with responsibility for accomplishing the tasks; and

(8) Be reviewed annually by the Railroad.

(k) *Quality control program.* The Railroad shall establish an inspection, testing, and maintenance quality control program enforced by the Railroad or its contractor(s) to reasonably ensure that inspections, tests, and maintenance are performed in accordance with Federal safety standards and the procedures established by the railroad.

(l) *Recordkeeping.* The Railroad shall make and maintain a written or electronic record of each required inspection under this section. Each record shall be maintained for at least one year from the date of the inspection.

Subpart F—Operating Rules

§ 243.501 Purpose.

Through the requirements of this Subpart, FRA learns the condition of the operating and emergency preparedness rules and practices in use by the Railroad. The Railroad's operating rules, and any amendments thereto, are subject to FRA approval in accordance with the procedures set forth in § 243.509 of this Subpart. The rules and practices covered by this Subpart include the procedures for instruction and testing of all employees involved with the movement of rail vehicles, including locomotive engineers, on-board attendants, central control staff, and all maintenance staff, which are necessary to ensure that they possess the requisite skill and knowledge of the rules and operating practices to maintain the safety of the system.

§ 243.503 Operating rules; filing and recordkeeping.

(a) The Railroad shall file with FRA one copy of its code of operating rules, timetables, timetable special instructions six months prior to commencing internal operations, and one year prior to commencing any revenue passenger transportation operations. The Railroad shall designate those rules, practices, and procedures that it deems safety-critical. Upon FRA approval of the operating rules pursuant to the procedures set forth in § 243.509, FRA will adopt and incorporate the safety-critical operating rules as Appendix C to this Part. The Railroad's Emergency Preparedness Plan shall be filed in accordance with the requirements of FRA's Passenger Train Emergency Standards as ultimately codified in 49 CFR part 239, as amended.

(b) The Railroad shall file each amendment to its code of operating rules, each new timetable, and each new timetable special instruction within 30 days after it is issued.

(c) The Railroad shall keep one copy of its current code of operating rules, timetables, timetable special instruction, at its system headquarters, and shall make such records available to representatives of the FRA for inspection and copying during normal business hours. These records shall be retained at the Railroad's system headquarters for one year after the end of the calendar year to which they relate.

(d) Any person who fails to comply with a safety-critical operating rule or practice, including timetables, timetable special instructions, or operational directives, issued pursuant to this Subpart and adopted and incorporated by reference in Appendix C to this rule, is subject to a civil penalty or other enforcement action for violation of those safety-critical rules and practices, in accordance with § 243.9 of this Part.

§ 243.505 Program of operational tests and inspections; recordkeeping.

(a) *Requirement to conduct operational tests and inspections.* The Railroad shall periodically conduct operational tests and inspections to determine the extent of compliance with its code of operating rules, timetables, timetable special instructions, and inspection, testing, and maintenance program in accordance with a written program retained at its system headquarters.

(b) *Written program of operational tests and inspections.* Three months prior to commencing operations, and six months prior to commencing any revenue passenger service operations, the Railroad shall file and retain one copy of its current program for periodic performance of the operational tests and inspections required by paragraph (a) of this section, and shall file and retain one copy of each subsequent amendment to such program as amendments are made. These records shall be retained at the system headquarters of the Railroad for three calendar years after the end of the calendar year to which they relate. These records shall be made available to representatives of the FRA for inspection and copying during normal business hours. The program shall:

(1) Provide for operational testing and inspection under the various operating conditions on the Railroad;

(2) Describe each type of operational test and inspection adopted, including the means and procedures used to carry it out;

(3) State the purpose of each type of operational test and inspection;

(4) State, according to operating divisions where applicable, the frequency with which each type of operational test and inspection is conducted;

(5) Begin within 30 days after the date of commencing operations; and

(6) Include a schedule for making the program fully operative within 210 days after it begins.

(c) *Records of individual tests and inspections.* The Railroad shall keep a record of the date, time, place, and result of each operational test and inspection that was performed in accordance with its program. Each record shall specify the officer administering the test and inspection and each employee tested. These records shall be retained at the system headquarters of the Railroad for one calendar year after the end of the calendar year to which they relate. These records shall be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.

(d) *Annual summary on operational tests and inspections.* Before March 1 of each calendar year, the Railroad shall retain, at its system headquarters, one copy of a written summary of the following with respect to its previous year's activities: The number, type, and result of each operational test and inspection that was conducted as required by paragraphs (a) and (b) of this section. These records shall be retained for three calendar years after the end of the calendar year to which they relate and shall be made available to representatives of FRA for inspection and copying during normal business hours.

(e) *Electronic recordkeeping.* The Railroad is authorized to retain by electronic recordkeeping the information prescribed in paragraphs (b) through (d) of this section, provided that all of the following conditions are met:

(1) The Railroad adequately limits and controls accessibility to such information retained in its electronic

database system and identifies those individuals who have such access;

(2) The Railroad has a terminal at the system headquarters and at each division headquarters;

(3) Each such terminal has a desk-top computer (i.e., monitor, central processing unit, and keyboard) and either a facsimile machine or a printer connected to the computer to retrieve and produce information in a usable format for immediate review by FRA representatives;

(4) The Railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of the electronically kept records; and

(5) The Railroad provides representatives of the Federal Railroad Administration with immediate access to these records for inspection and copying during normal business hours and provides printouts of such records upon request.

§ 243.507 Program of instruction on operating rules; recordkeeping; electronic recordkeeping.

(a) To ensure that each Railroad employee whose activities are governed by the Railroad's operating rules understands those rules, the Railroad shall periodically instruct each such employee on the meaning and application of its operating rules in accordance with a written program retained at its system headquarters and at the division headquarters.

(b) Three months before commencing operations, and six months before commencing any revenue passenger service operations, the Railroad shall file and retain one copy of its current program for the periodic instruction of its employees as required by paragraph (a) of this section and shall file and retain one copy of any amendment to that program as amendments are made. These records shall be retained at the Railroad's system headquarters for one calendar year after the end of the calendar year to which they relate. These records shall be made available to representatives of the FRA for inspection and copying during normal business hours. This program shall:

(1) Describe the means and procedures used for instruction of the various classes of affected employees;

(2) State the frequency of instruction and the basis for determining that frequency;

(3) Include a schedule for completing the initial instruction of employees who are already employed when the program begins;

(4) Begin on the date of commencing operations; and

(5) Provide for initial instruction of each employee hired after the program begins.

(c) The Railroad to which this Subpart applies is authorized to retain by electronic recordkeeping its program for periodic instruction of its employees on operating rules, provided that the requirements stated in § 243.505(e)(1)–(5) of this Subpart are satisfied.

§ 243.509 Operating rules approval.

(a) The Railroad shall submit its operating rules to FRA's Associate Administrator for Safety for review, within the time intervals required by this Subpart. FRA shall notify the Railroad, in writing, within 90 days of receipt of the Railroad's submission, that the rules are approved, disapproved, or disapproved in part. If disapproved or disapproved in part, FRA shall explain the reason on which the disapproval is based, and the measures needed to obtain approval.

(b) The Railroad shall submit any amendment to its operating rules to FRA's Associate Administrator for Safety for review, within 30 days after it is issued. The Railroad's amendment shall go into effect until such time that FRA notifies the Railroad, in writing, that such amendment is disapproved or disapproved in part. If disapproved, FRA shall explain the reason on which the disapproval is based, and the measures needed to obtain approval.

(c) In the course of the approval process set forth in this section, the Railroad shall provide to FRA supporting documentation that FRA deems necessary to assess accurately the level of safety provided for in the Railroad's operating rules.

Subpart G—System Qualification Tests

§ 243.601 Responsibility for verification demonstrations and tests.

The Railroad shall comply with the pre-revenue qualification tests and verification requirements set forth in this Subpart and in Subpart B to demonstrate the overall safety of the system, prior to revenue operations.

§ 243.603 Preparation of test plan.

(a) Prior to commencing revenue service operations and in accordance with Subpart B of this Part, the Railroad shall develop a system-wide test plan, that includes testing procedures, to demonstrate the operability of all system elements, including track and infrastructure, signal, communications, rolling stock, software, and operating practices, and the system as a whole. After receiving FRA approval of the pre-revenue service test plan as part of the system safety plan approval, and prior to commencing revenue service, the Railroad shall adopt and comply with the approved plan, including completion of all tests required by the plan.

(b) The plan shall be made available to FRA for inspection and copying upon request.

(c) The plan shall include all of the following elements:

(1) A clear statement of the test objectives. One of the principal test objectives shall be to demonstrate that the Railroad's system meets the safety design and performance requirements specified in this Part when operated in the environment in which it will be used;

(2) A schedule for conducting the tests;

(3) A description of the Railroad property or facilities to be used to conduct the tests;

(4) A detailed description of how the tests are to be conducted. This description shall include:

(i) An identification of the systems and equipment to be tested;

(ii) The method by which the systems and equipment shall be tested;

(iii) The criteria to be used to evaluate the system's and equipment's performance; and

(iv) The means by which the test results will be reported to FRA.

(5) A description of any special instrumentation to be used during the tests;

(6) A description of the information or data to be obtained;

(7) A description of how the information or data obtained is to be analyzed or used;

(8) A clear description of any criteria to be used as safety limits during the testing;

(9) A description of the criteria to be used to measure or determine the success or failure of the tests. If system qualification is to be based on extrapolation of less than full-level testing results, the analysis done to justify the validity of the extrapolation shall be described.

(10) A description of any special safety precautions to be observed during the testing;

(11) A written set of standard operating procedures to be used to ensure that the testing is done safely;

(12) Quality control procedures to ensure that the inspection, testing, and maintenance procedures are followed; and

(13) A demonstration of the inspection criteria to be used for the revenue service operation of the Railroad's system.

(d) The test plan shall include steps to:

(1) Verify results of installation tests performed by contractors and manufacturers;

(2) Conduct pre-operational testing of individual safety-related equipment, facilities, and subsystems; and

(3) Conduct operational testing of the system safety.

(e) The test plan shall include detailed, written procedures for the testing and start-up of all safety-critical equipment, facilities, and subsystems installed on the line, in passenger stations, in maintenance shops, and on the trainsets.

§ 243.605 Pre-operational qualification tests.

(a) The Railroad shall conduct pre-operational qualification tests, prior to commencing revenue operations, to verify that all safety-critical components meet all functional and all performance specifications.

(b) The pre-operational qualification tests of equipment, facilities, and subsystems shall include, at a minimum:

(1) Verification of the correct utility supply circuits, procedures for energization and de-energization, and formal permit-to-work procedures;

(2) Verification of the installation of radio communication equipment that is compatible with existing systems and suitable for integration into the planned network; and

(3) Verification of the operation of the dedicated telephone systems in facilities and along the right-of-way;

(4) Verification of the operation of all safety-related equipment in the maintenance shop;

(5) Verification of local control of substation equipment;

(6) Energization of substations and verification of formal permit-to-work procedures;

(7) Continuity testing of the overhead catenary system and rail return circuits;

(8) High-potential testing of traction power supply feeders and the overhead catenary system;

(9) Energization of each section of the overhead catenary system and verification of formal permit-to-work procedures;

(10) Verification of yard and shop overhead catenary system sectionalizing for power isolation during vehicle maintenance;

(11) Verification of compliance with civil works and track standards;

(12) Verification that all civil works, support structures, and installations are correctly positioned with respect to mechanical and electrical clearance envelopes, and with the Railroad's structure and clearance diagrams;

(13) Verification that the dimensions of the vehicles are in compliance with the Railroad's structure and clearance diagrams;

(14) Verification of correct operation of all wayside detectors;

(15) Verification of safe operation of signal system and central traffic control functions;

(16) Verification of local operation of track switching and signal system equipment;

(17) Verification of all on-board trainset safety-critical components;

(18) Verification of all emergency preparedness procedures; and

(19) Verification that the system's software operates as intended, is reliable and crash-resistant, is impenetrable to unauthorized entry, and interacts redundantly as designed.

§ 243.607 Integrated operational testing of systems.

(a) Prior to commencing revenue operations, the Railroad shall conduct high speed tests of the trainsets throughout the system to:

(1) Apply dynamic loads to track and bridge structures;

(2) Verify vehicle clearances to structures and platforms;

(3) Verify mechanical positioning of the overhead catenary system; and

(4) Verify performance of the vehicle, track, power supply, signal and communication systems.

(b) The Railroad shall demonstrate safe operation of the system during normal and degraded-mode operating conditions. At a minimum, the following operation tests shall be performed:

(1) Short-circuit tests to check power supply protection circuits and signal system immunization;

(2) Slow-speed operation of a trainset;

(3) Verification of correct overhead catenary and pantograph interaction;

(4) Verification of vehicle clearance at structures and passenger platforms;

(5) Incremental increase of train speed;

(6) Performance tests on vehicles to verify braking rates;

(7) Verification that vehicle noise and vibration are in compliance with codes and regulations;

(8) Verification of correct vehicle suspension characteristics;

(9) Verification of ride quality at operating speeds established in test plan;

(10) Verification of track and civil structure performance under dynamic load, which shall meet the following requirements:

(i) Each rolling stock type shall be qualified for its intended speed in order to demonstrate that the vehicle dynamic response to track alignment and geometry variations are within acceptable limits to assure safe operation;

(ii) The qualification testing shall insure that the equipment will not exceed the wheel/rail force safety limits specified in the table in section 4.37 and the limits for ride vibration specified in section 5.13(e) at any speed less than 16 km/h (10 mph) above the proposed maximum operating speed;

(iii) The Railroad shall establish a target maximum testing speed that is at least 16 km/h (10 mph) above the proposed maximum revenue service speed, appropriate target test and operating conditions, and conduct a test program sufficient to evaluate the operating limits of the track and equipment in order to gather the test data required to support the analysis required above. The test program shall demonstrate vehicle dynamic response as speeds are incrementally increased from 160 km/h (100 mph) to the target maximum test speeds. The test shall be suspended at that speed where any of the vehicle/track performance limits in this section are exceeded;

(iv) At the conclusion of the testing phase, the Railroad shall complete test runs with the subject equipment over the entire route proposed for revenue service, when maximum safe operating speed has been determined taking into account permissible levels of cant deficiency. These concluding tests shall be conducted:

(A) At the speeds the Railroad will request FRA to approve for service; and

(B) At 16 km/h (10 mph) above such speed; and

(v) The Railroad shall submit a report of the test procedures and results to FRA upon completion of the tests. The test report shall include the design flange angle of the equipment that applied to the criteria for the ratio of lateral forces that any wheel exerts on an individual rail to the vertical force exerted on the rail. This flange angle shall be used in the determination of the lateral to vertical wheel load safety limit for the track/vehicle performance measurements required by Subpart D.

(11) Load tests with vehicles to verify relay settings and signal and communication system immunization;

(12) Monitoring of utility supply circuits and telephone circuits to ensure the adequacy of power supplies, and to verify that transit-related disturbances are within acceptable limits;

(13) Verification of vehicle detection due to shunting of signal system circuits;

(14) Verification of correct signal status indications;

(15) Verification of safe operation of automatic train control (ATC) system;

(16) Tests of vehicle radio reception during system-wide vehicle operation; and

(17) Verification that the system's software operates as intended, is reliable and crash-resistant, is impenetrable to unauthorized entry, and interacts redundantly as designed.

§ 243.609 Pre-revenue service testing.

For a period of four or more months prior to revenue operations, the Railroad shall conduct pre-revenue service tests that include simulation of full revenue service operation to verify overall system performance, and provide operating and maintenance experience. The frequency and duration of the tests shall be determined in conjunction with preparation of the Railroad's system safety plan and approved by FRA, as set forth in Subpart B of this Part.

§ 243.611 Verification of compliance.

(a) The Railroad shall prepare a report detailing the results of all pre-operational and pre-revenue service qualification tests. The report shall identify any problems encountered during testing, and alternative actions necessary to correct defects in workmanship, materials, equipment, design, or operating parameters.

(b) The Railroad shall implement all alternative actions necessary to correct defects, as identified by the report.

(c) The Railroad shall submit the report to FRA 60 days prior to commencing revenue operations.

Subpart H—Personnel Qualification Requirements

§ 243.701 General requirements.

(a) The Railroad shall develop and implement a personnel qualification training program to meet the requirements set forth in § 243.109 of this Part, to provide all employees who perform safety-related duties the knowledge and skills necessary to effectively complete safety-related duties.

(b) As part of this program, the Railroad shall, at a minimum:

(1) Identify the safety-related tasks that must be performed on the Railroad's system, including all emergency preparedness tasks required by this Part;

(2) Develop written procedures for the performance of the tasks identified;

(3) Identify the skills and knowledge necessary to perform each task;

(4) Develop a training course that includes classroom and ''hands-on'' instruction designed to impart the skills and knowledge identified as necessary to perform each task;

(5) Require all employees to successfully complete the training course that covers the system, equipment, and tasks for which they are responsible;

(6) Require all employees to pass a written examination covering the system, equipment, and tasks for which they are responsible;

(7) Require all employees to demonstrate ''hands-on'' capability to perform their assigned tasks;

(8) Require supervisors to complete the program that covers the employees that they supervise;

(9) Require supervisors to exercise oversight to ensure that all the identified tasks are performed in accordance with the Railroad's written procedures;

(10) Complete required training of the work force prior to the start of revenue service;

(11) Designate in writing that each employee has the knowledge and skills necessary to perform the safety-related tasks for which she or he is responsible;

(12) Require periodic refresher training at an interval not to exceed three years that includes classroom instruction, ''hands-on'' training, and testing;

(13) Add new systems and equipment to the qualification and designation program prior to introduction into revenue service; and

(14) Maintain records for the duration of the employee's employment which demonstrate that each employee performing safety-related tasks on the Railroad's system is currently qualified to do so. These records shall distinguish the qualifications of the employee as a qualified person.

(c) The personnel qualification training program shall define the process by which the Railroad will ensure that all employees who perform safety-related duties are qualified to complete those duties. The program shall define the method by which the Railroad measures the knowledge and skills of all employees who perform safety-related duties.

(d) With regard to the types of employees for whom specific qualification requirements are set forth in this Subpart, the Railroad's training program shall be designed and implemented to ensure that those employees meet those requirements.

(e) The Railroad's personnel qualification training program for locomotive engineers shall follow the requirements set forth in 49 CFR part 240.

(f) The Railroad may not permit any individual, whether an employee of the Railroad or of a contractor, to perform the functions described in this Subpart unless that individual meets the qualification standards of this Subpart and has been trained in a program that is designed to ensure that the individual meets those requirements.

(g) All records required by this Subpart shall be maintained by the Railroad and available for FRA review for the duration of an employee's employment.

Track Personnel

§ 243.703 Personnel qualifications for track maintenance and inspection personnel.

(a) *General.* The Railroad shall designate qualified individuals responsible for the maintenance and inspection of track in compliance with the safety requirements prescribed in Subpart D of this Part. Each designated individual, including contractors and their employees, must meet the minimum qualifications set forth in this Subpart.

(b) *Recordkeeping.* With respect to the designation of individuals under this section, the Railroad shall maintain written records of:

(1) Each designation in effect;

(2) The basis for each designation, including but not limited to:

(i) The exact nature of any training courses attended and the dates thereof;

(ii) The manner in which the Railroad has determined a successful completion of that training course, including test scores or other qualifying results;

§ 243.705 Personnel qualified to supervise track restoration and renewal.

(a) Each individual designated to supervise restorations and renewals of track shall have:

(1) At least five years of responsible supervisory experience in railroad track maintenance of FRA track Class 4 or higher, and the successful completion of a course offered by the employer or by a college level engineering program, supplemented by special on-the-job training that emphasizes the techniques to be employed in the supervision, restoration, and renewal of high speed track;

(2) A combination of at least one year of responsible supervisory experience in track maintenance in FRA Track Class 4 or higher and the successful completion of a minimum of 80 hours of specialized

training in the maintenance of high speed track provided by the employer or by a college level engineering program, supplemented by special on-the-job training provided by the employer with emphasis on the maintenance of high speed track; or

(3) A combination of at least two years of experience in track maintenance in FRA Track Class 4 or higher and the successful completion of a minimum of 120 hours of specialized training in the maintenance of high speed track provided by the employer or by a college level engineering program supplemented by special on the job training provided by the employer with emphasis on the maintenance of high speed track.

(b) Each individual designated to supervise restorations and renewals of track shall demonstrate annually to the Railroad that the individual:

(1) Knows and understands the requirements of Subpart D of this Part;

(2) Can detect deviations from those requirements; and

(3) Can prescribe appropriate remedial action to correct or safely compensate for those deviations.

(c) Each individual designated to supervise restorations and renewals of track shall have written authorization from the Railroad to prescribe remedial actions to correct or safely compensate for deviations from the requirements of Subpart D of this Part and shall have successfully completed a recorded examination on Subpart D as part of the qualification process.

§ 243.707 Personnel qualified to inspect track.

(a) Each individual designated to inspect track for defects, shall have:

(1) At least five years of responsible experience inspecting track in FRA Track Class 4 or above, and the successful completion of a course offered by the Railroad or by a college level engineering program, supplemented by special on-the-job training that emphasizes the techniques to be employed in the inspection of high speed track; or

(2) A combination of at least one year of responsible experience in track inspection in FRA Class 4 or above and the successful completion of a minimum of 80 hours of specialized training in the inspection of high speed track provided by the Railroad or by a college level engineering program, supplemented by special on-the-job training provided by the Railroad with emphasis on the inspection of high speed track; or

(3) A combination of at least two years of experience in track maintenance in FRA Class 4 or above and the successful completion of a minimum of 120 hours of specialized training in the inspection of high speed track provided by the Railroad or from a college level engineering program, supplemented by special on-the-job training provided by the Railroad with emphasis on the inspection of high speed track.

(b) Each individual designated to inspect track for defects shall demonstrate annually to the Railroad that the individual:

(1) Knows and understands the requirements of Subpart D of this Part;

(2) Can detect deviations from those requirements; and

(3) Can prescribe appropriate remedial action to correct or safely compensate for those deviations.

(c) Each individual designated to inspect track for defects shall have written authorization from the Railroad to prescribe remedial actions to correct or safely compensate for deviations from the requirements in Subpart D of this Part and shall have successfully completed a recorded examination on Subpart D as part of the qualification process.

§ 243.709 Personnel qualified to inspect and restore continuous welded rail.

(a) Individuals designated under §§ 243.705 and 243.707 may inspect continuous welded rail track (CWR) or supervise the installation, adjustment, and maintenance of CWR in accordance with the written procedures established by the Railroad, provided they have:

(1) Current qualifications under either § 243.705 or § 243.707;

(2) Successfully completed a training course of at least eight hours duration developed specifically for the application of written CWR procedures issued by the Railroad; and

(3) Demonstrated to the Railroad that the individual:

(i) Knows and understands the requirements of those written CWR procedures;

(ii) Can detect deviations from those requirements; and

(iii) Can prescribe appropriate remedial action to correct or safely compensate for those deviations.

(b) Individuals designated to inspect CWR or supervise the installation, adjustment, and maintenance of CWR shall have written authorization from the Railroad to prescribe remedial actions to correct or safely compensate for deviations from the requirements in those procedures and must have successfully completed a recorded examination on those procedures as part of the qualification process. The recorded examination may be written, or in the form of a computer file with the results of an interactive training course.

Signal Personnel

§ 243.711 Personnel qualifications for signal maintenance and inspection personnel.

(a) *General.* The Railroad shall designate qualified individuals responsible for the maintenance and inspection of the signal system in compliance with the safety requirements prescribed in Subpart C of this Part. Each designated individual, including contractors and their employees, shall meet the minimum qualifications set forth in this Subpart.

(b) *Recordkeeping.* With respect to the designation of individuals under this section, the Railroad shall maintain written records of:

(1) Each designation in effect;

(2) The basis for each designation, including but not limited to:

(i) The exact nature of any training courses attended and the dates thereof;

(ii) The manner in which the Railroad has determined a successful completion of that training course, including test scores or other qualifying results;

(3) Signal inspections made by each individual as required by Subpart C. These records must be made available for inspection and copying by the Federal Railroad Administrator during regular business hours.

§ 243.713 Personnel qualified signal inspector.

(a) Each individual designated to inspect the Railroad's signal system shall have:

(1) Six or more years of signal maintenance experience that includes specialized training in each three-year period provided by the Railroad; or

(2) Four or more years of signal maintenance experience, and an associate degree in electrical engineering or related technical specialization, that includes training in each three-year period provided by the Railroad; or

(3) Two or more years of signal maintenance experience and a bachelor's degree in electrical engineering or related technical specialization, that includes training in each three-year period provided by the Railroad.

(b) Each individual designated to inspect the signal system for defects shall demonstrate annually to the Railroad that the individual:

(1) Knows and understands the requirements of subpart C;

(2) Can detect deviations from those requirements; and

(3) Can prescribe appropriate remedial action to correct or safely compensate for those deviations.

§ 243.715 Personnel qualified as signal maintainer.

(a) Each individual designated as a signal maintainer by the Railroad shall complete a training program during the first two years of employment by the Railroad. Upon successful completion of the training program, the signal maintainer shall be authorized to work in the proximity of high voltage lines and on signal equipment.

(b) When required to maintain the signal system for defects, each individual designated must demonstrate annually to the Railroad that the individual:

(1) Knows and understands the requirements of subpart C;

(2) Can detect deviations from those requirements; and

(3) Can prescribe appropriate remedial action to correct or safely compensate for those deviations.

§ 243.717 Personnel qualified to supervise signal inspectors and maintainers.

When required to supervise the inspection and maintenance of signal systems, each designated supervisor must:

(a) Successfully complete the program that covers the employees they supervise; and

(b) Exercise oversight to ensure that all of the identified tasks are performed in accordance with the Railroad's qualification program.

Rolling Stock Personnel

§ 243.719 Personnel qualifications for rolling stock personnel.

(a) *General.* The Railroad shall designate qualified individuals responsible for the inspection and maintenance of the Railroad's rolling stock. Each designated individual, including contractors and their employees, shall meet the minimum qualifications set forth in this section.

(b) *Recordkeeping.* With respect to the designation of individuals under this section, the Railroad shall maintain written records of:

(1) Each designation in effect;

(2) The basis for each designation, including but not limited to:

(i) The exact nature of any training courses attended and the dates thereof;

(ii) The manner in which the Railroad has determined a successful completion of that training course, including test scores or other qualifying results;

(c) The Railroad's qualification program for rolling stock personnel shall, at a minimum:

(1) Identify the safety-related tasks that shall be performed on each type of equipment that the Railroad operates;

(2) Include written procedures for the performance of the tasks identified;

(3) Identify the skills and knowledge necessary to perform each task;

(4) Include classroom and ''hands-on'' lessons designed to impart the skills and knowledge identified as necessary to safely perform each task;

(5) Require periodic refresher training at an interval not to exceed three years that includes classroom and ''hands-on'' training, as well as testing; and

(6) Include new equipment in the qualification and designation program prior to its introduction to revenue service.

§ 243.721 Personnel qualified to inspect and maintain rolling stock.

Each designated individual required to inspect and maintain rolling stock shall, at a minimum:

(a) Successfully complete the training course that covers the equipment and tasks for which they are responsible;

(b) Pass a written examination covering the equipment and tasks for which they are responsible; and

(c) Successfully demonstrate ''hands-on'' capability to perform the assigned tasks on the type of equipment to which they are assigned.

§ 243.723 Personnel qualified to supervise the inspection and maintenance of rolling stock.

Each individual designated to supervise the inspection and maintenance of rolling stock personnel shall, at a minimum:

(a) Successfully complete the program that covers the employees that they supervise;

(b) Exercise oversight to ensure that all the identified tasks are performed in accordance with the Railroad's qualification program.

Subpart I—Power Distribution

§ 243.801 Warning signs.

(a) The Railroad shall post warning signs concerning the danger of high voltage lines along the right-of-way, at regular intervals not to exceed 183 m (600 ft).

(b) The Railroad shall post warning signs concerning the danger of high voltage lines at all underpasses and overpasses.

(c) The Railroad shall attach warning signs concerning the danger of high voltage lines to each catenary mast, at a height of 1.2 to 1.5 m (4 to 5 ft).

(d) The Railroad shall post warning signs concerning the danger of high voltage lines on catenary masts that are adjacent to all overpasses. These warning signs shall be positioned so that they are clearly visible from the overpass.

§ 243.803 Clearance requirements.

Electrical clearance between the catenary system and fixed equipment in the right-of-way shall meet all pertinent international standards, including UIC 606–2 OR, in order to avoid fault currents.

§ 243.805 Catenary connections.

All catenary masts shall be connected to the ground or the rail, as determined by the Railroad's system safety plan. The electrical impedance of the connection shall meet the step and touch potential requirements given in international standards to protect against an electrical shock hazard.

§ 243.807 Access to stations.

Access to supply stations, substations and autotransformer stations shall be restricted to authorized personnel only.

§ 243.809 Actuators.

The actuators of high voltage switches shall be designed to protect the operator against electrical shock, either direct or induced.

§ 243.811 Power feeding.

(a) The parallel power feeder shall be protected against short circuits along the catenary.

(b) The parallel power feeder shall be protected from over-voltage power surges due to lightning and from surges caused by the utility system.

§ 243.813 Emergency devices.

(a) The Railroad shall install at each underpass, overpass, emergency entrance to the right-of-way, supply station, substation, and autotransformer station devices capable of disconnecting and isolating power and/or grounding the catenary to the rail that may be used in the event of an emergency.

(b) The Railroad shall install telephones along the right-of-way that are connected directly to the central power dispatching center. One telephone shall be located at each device provided in accordance with paragraph (a) of this section.

§ 243.815 Overpass protection.

The Railroad shall install at each overpass fencing, or other suitable protective device or equipment that shall prevent any accidental contact with the catenary.

§ 243.817 Safety work rules.

All pertinent safety standards issued by the U.S. Occupational Safety and

Health Administration, concerning personal protective equipment, practices, and work rules for employees involved with the electric power generation, distribution, and transmission system, shall apply to the Railroad. FRA has not exercised jurisdiction over those working conditions.

§ 243.819 Inspection, testing, and maintenance of the power distribution system.

(a) The Railroad shall establish a training and qualification program as requires by Subparts B and H to qualify individuals to perform inspections, tests and maintenance of the power distribution system. Only qualified individuals shall perform inspections, tests and maintenance of the equipment.

(b) Qualified personnel shall perform a visual inspection of performance of the current collection through the pantograph-catenary interface.

(c) Qualified personnel shall perform a walking inspection of each suspension and anchoring or supporting structure of the catenary system, all switching devices, and all telephones located along the right-of-way at least once every four months.

(d) Qualified personnel shall inspect all emergency shutdown devices and all manual switches annually.

(e) The Railroad shall provide to FRA for review detailed information on the inspection, test, and maintenance procedures necessary for safe operation of the power distribution equipment. This information shall include a detailed description of:

(1) Safety inspection procedures, requirements, intervals and criteria;

(2) Test procedures and intervals;

(3) Scheduled preventive maintenance intervals;

(4) Maintenance procedures;

(5) Special testing equipment and measuring devices required to perform safety inspections and tests; and

(6) Training and certification of employees and contractors qualified to perform safety inspections, testing and maintenance.

Appendix A to Part 243—Schedule of Civil Penalties—[Reserved]

Appendix B to Part 243—Test Performance Criteria for the Flammability and Smoke Emission Characteristics of Materials Used in Constructing or Refurbishing Locomotive Cab and Passenger Car Interiors

This appendix provides the performance standards for testing the flammability and smoke emission characteristics of materials used in constructing or refurbishing locomotive cab and passenger car interiors, in accordance with the requirements of § 243.413.

(a) *Definitions.*

Critical radiant flux (CRF) means, as defined in ASTM E–648, a measure of the behavior of horizontally-mounted floor covering systems exposed to a flaming ignition source in a graded radiant heat energy environment in a test chamber.

Flame spread index (I_S) means, as defined in ASTM E–162, a factor derived from the rate of progress of the flame front (F_S) and the rate of heat liberation by the material under test (Q), such that $(I_S) = (F_S) \times Q$.

Flaming dripping means periodic dripping of flaming material from the site of material burning or material installation.

Flaming running means continuous flaming material leaving the site of material burning or material installation.

Specific optical density (D_S) means, as defined in ASTM E–662, the optical density measured over unit path length within a chamber of unit volume, produced from a specimen of unit surface area, that is irradiated by a heat flux of 2.5 watts/cm^2 for a specified period of time.

Surface flammability means the rate at which flames will travel along surfaces.

(b) *Required test procedures and performance criteria.*

The materials used in locomotive cabs and passenger cars shall be tested according to the procedures and performance criteria set forth in the following table. In all instances, the most recent version of the test procedures or the revision in effect at the time a vehicle is ordered should be employed in the evaluation of the materials specified.

Category	Function of material	Test procedure	Performance criteria
Passenger seats, Sleeping and dining car components.	Cushions, Mattresses [1, 2, 5, 9] *	ASTM D–3675	$I_s \leq 25$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤175
	Seat and/or Mattress Frame [1, 5, 8]	ASTM E–162	$I_s \leq 35$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
	Seat and Toilet Shroud, Food Trays [1, 5].	ASTM E–162	$I_s \leq 35$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
	Seat Upholstery, Mattress Ticking and Covers, Curtains [1, 2, 3, 5].	FAR 25.853 (Vertical)	Flame Time≤10 sec; Burn length≤6 inch
		ASTM E–662	D_s (4.0)≤250 coated; D_s (4.0)≤100 uncoated
Panels	Wall [1, 5, 10]	ASTM E–162	$I_s \leq 35$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
	Ceiling [1, 5, 10]	ASTM E–162	$I_s \leq 35$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
	Partition, Tables and Shelves [1, 5]	ASTM E–162	$I_s \leq 35$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
	Windscreen [2, 5]	ASTM E–162	$I_s \leq 35$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
	HVAC Ducting [1, 5]	ASTM E–162	$I_s \leq 35$
		ASTM E–662	D_s (1.5)≤100
	Window [4, 5]	ASTM E–162	$I_s \leq 100$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
	Light Diffuser [5]	ASTM E–162	$I_s \leq 100$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
Flooring	Structural [6]	ASTM E–119	Pass
	Covering [7, 10]	ASTM E–648	CRF≥0.5 w/cm^2
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
Insulation	Thermal [1, 2, 5]	ASTM E–162	$I_s \leq 25$
		ASTM E–662	D_s (1.5)≤100
	Acoustic [1, 2, 5]	ASTM E–162	$I_s \leq 25$
		ASTM E–662	D_s (1.5)≤100
Elastomers	Window Gaskets, Door Nosing, Diaphragms, Roof Mat [1].	ASTM C–542	Pass
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200

Category	Function of material	Test procedure	Performance criteria
Exterior Plastic Components	End Cap, Roof Housings [1, 5]	ASTM E–162	$I_s \leq 35$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200
Component Box Covers	Interior, Exterior Boxes [1, 3, 5]	ASTM E–162	$I_s \leq 35$
		ASTM E–662	D_s (1.5)≤100; D_s (4.0)≤200

[1] Materials tested for surface flammability must not exhibit any flaming running or flaming dripping.
[2] The surface flammability and smoke emission characteristics must be demonstrated to be permanent by washing, if appropriate, according to FED–STD–191A Textile Test Method 5830.
[3] The surface flammability and smoke emission characteristics must be demonstrated to be permanent by dry-cleaning, if appropriate, according to ASTM–D–2724. Materials that cannot be washed or dry cleaned must be so labeled and meet the applicable performance criteria after being cleaned as recommended by the manufacturer.
[4] For double window glazing, only the interior glazing must meet the materials requirements specified herein; the exterior need not meet those requirements.
[5] ASTM E–662 maximum test limits for smoke emission (specified optical density) must be measured in either the flaming or non-flaming mode, depending on which mode generates the most smoke.
[6] Structural flooring assemblies must meet the performance criteria during a nominal test period determined by the railroad property. The nominal test period must be twice the maximum expected period of time, under normal circumstances, for a vehicle to come to a complete, safe stop from maximum speed, plus the time necessary to evacuate all passengers from a vehicle to a safe area. The nominal test period must not be less than 15 minutes. Only one specimen need be tested. A proportional reduction may be made in the dimensions of the specimen provided that it represents a true test of its ability to perform as a barrier against under-car fires. Penetrations (ducts, etc.) must be designed against acting as passageways for fire and smoke.
[7] Flooring covering must be tested in accordance with ASTM E–648 with its padding, if the padding is used in actual installation.
[8] Arm rests, if foamed plastic, are tested as cushions and, if hard material, are tested as a seat back shroud.
[9] Testing is performed without upholstery.
[10] Carpeting on walls and ceilings is to be considered wall and ceiling panel materials, respectively.

(c) *The sources of test procedures specified in the table are as follows:*

(1) Leaching Resistance of Cloth, FED–STD–191A–Textile Test Method 5830. (Available from: General Services Administration Specifications Division, Building 197 Washington Navy Yard, Washington, D.C. 20407.)

(2) Federal Aviation Administration Vertical Burn Test, FAR–25.853.

(3) American Society for Testing Materials (ASTM):

(i) Specification for Gaskets, ASTM C–542.

(ii) Surface Flammability of Flexible Cellular Materials Using a Radiant Heat Energy Source, ASTM D–3675.

(iii) Fire Tests of Building Construction and Materials, ASTM E–119.

(iv) Surface Flammability of Materials Using a Radiant Heat Energy Source, ASTM E–162.

(v) Bonded and Laminated Apparel Fabrics, ASTM D–2724.

(vi) Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source, ASTM E–648.

(vii) Specific Optical Density of Smoke Generated by Solid Materials, ASTM E–662. (Available from: American Society for Testing Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.)

Appendix C to Part 243—Railroad Safety—Critical Operating Rules [Reserved]

Issued in Washington, D.C. this 24th day of November, 1997.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 97–31457 Filed 12–11–97; 8:45 am]

BILLING CODE 4910–06–P

Friday
December 12, 1997

Part III

Department of Housing and Urban Development

Notice of Funding Availability for the Fair Housing Services Center in East Texas; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4127–N–03]

Notice of Fund Availability for the Fair Housing Services Center in East Texas

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Fund Availability (NOFA) for the Fair Housing Services Center (FHSC) in East Texas.

SUMMARY: This NOFA announces the availability of funds and HUD's request for proposals (RFP) to establish a Fair Housing Services Center in East Texas to be administered by a non-profit organization (NPO). HUD will award to and enter into a contract with an NPO to administer the FHSC as required by the Final Judgment and Decree (Final Judgment) in *Lucille Young* v. *Cuomo*, CA No. P–80–8–CA, (E.D. Tex.; dated March 30, 1995). HUD has been ordered to provide $500,000 per year for a period of at least five years to fund the FHSC to be located in Beaumont, Texas, with branch offices within the 36 county area that constitutes East Texas, and one mobile office unit to provide services to remote locations throughout East Texas. Appendix A to this Notice is a copy of the Request for Proposals (RFP) and Program Guidelines.

DATES: The deadline for proposals for the Fair Housing Services Center NOFA is February 10, 1998, 3:00 p.m., Washington, DC time.

The above-stated deadline for proposals is firm as to date and hour. In the interest of fairness to all competing NPOs, HUD will treat as ineligible for consideration any proposal that is not received before the deadline for proposals. NPOs submitting proposals should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, proposal materials sent via facsimile (FAX) transmission.

Preproposal Conference: A preproposal conference will be held by HUD on Friday, December 19, 1997, at 9:00 AM, for all NPOs interested in submitting a proposal in response to this NOFA. The preproposal conference will be held at Lamar University (1200 Martin Luther King Parkway), Education Building, Room 207, Georgia at Calahan Street, Beaumont, Texas. NPOs interested in submitting an application should contact Mr. Gerald J. Benoit, Director, Operations Division, Office of Rental Assistance, Department of Housing and Urban Development, Washington, D.C. at telephone number (202) 708–0477 (this is not a toll-free number) regarding the date, time and room number for the preproposal conference. For hearing-and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

Proposal Packet: A proposal packet containing a copy of this NOFA, the Court Order in *Lucille Young* v. *Cuomo*, and the format for three of the four certifications required of NPOs submitting proposals is available by contacting the address/telephone number indicated in the following two paragraphs entitled **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The original and five complete copies of the proposal should be submitted by the deadline to Mr. Gerald J. Benoit, Director, Operations Division, Office of Rental Assistance, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, S.W., Washington, D.C., 20410.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Division Office of Rental Assistance, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, S.W., Washington, D.C., 20410, telephone number (202) 708–0477 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this Notice have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0169. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Request for Applications

All information related to the RFP is available in Appendix A to this Notice. Appendix A is the only document potential bidders should use to determine the requirements of the RFP.

The plaintiffs, African-American residents of public housing in East Texas, filed suit in 1980 alleging that HUD had knowingly maintained a system of segregated housing in a 36-county area of East Texas, in violation of the U.S. Constitution and various civil rights laws. The plaintiffs contended that there was segregation in HUD-supported low income public housing, Section 8 Existing Housing and other HUD-assisted multifamily housing programs.

In 1982, the U.S. District Court for the Eastern District of Texas certified a class consisting of all African-American applicants for and residents of HUD-funded public housing, Section 8 housing and other assisted housing programs in the 36-county area. In 1985, the court issued a liability decision finding that HUD had knowingly and continually maintained a system of segregated housing in the 36-county area.

In 1987, while an appeal was pending, HUD and the plaintiffs reached an agreement to limit the scope of the case and the class of plaintiffs. In 1988, the court appointed a special master and issued an interim injunction which compelled HUD to require each of the 70 housing agencies to implement race-conscious Tenant Selection and Assignment Plans and to provide all class members a series of notices of desegregative opportunities in all HUD-assisted housing in East Texas. On March 30, 1995, U.S. District Judge William Wayne Justice issued the Final Judgment that approved the desegregation plans and the plan amendments and required HUD to fund the FHSC.

The following is an outline of the activities of the FHSC (NPOs submitting proposals should refer to the attached RFP for details of the activities and responsibilities of the FHSC):

1. Familiarity with all relevant HUD regulations;
2. Outreach to landlords and assistance with exception rents;
3. Eligibility review services;
4. Counseling services and other social services support;
5. Responsibilities to Class members who receive a desegregative voucher/certificate;
6. FHSC encouragement and assistance to class members to make desegregative moves;
7. Information provided to Class members;
8. Quarterly and Annual Performance Reports; and
9. HUD's Right to Request Information.

NPOs submitting proposals must respond to the requirements of the RFP attached to this NOFA and HUD encourages applicants to refer to the

RFP for all appropriate information concerning the Fair Housing Services Center.

Other Matters

Environmental Impact

This NOFA provides assistance in promoting and enforcing fair housing and nondiscrimination. Accordingly, under 24 CFR 50.19(C)(3), this NOFA is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. This notice is a funding notice and does not substantially alter the established roles of the Department, the States, and local governments, including HAs.

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

This notice will not pose an environmental health risk or safety risk to children.

Section 102 of the HUD Reform Act: Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each proposal submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 calendar days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (Reform Act), codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of proposals and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

NPOs submitting proposals or employees who have ethics-related questions should contact the HUD Ethics Law Division (202) 708–3815 (TDD/Voice) (this is not a toll-free number). Any HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact the appropriate Field Office Counsel or Headquarters counsel for the program to which the question pertains.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the ''Byrd Amendment'') and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

Dated: December 8, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

Appendix A

Request for Proposals (RFP) and Program Guidelines for Establishing a Fair Housing Services Center (FHSC) in East Texas

This is a request for proposals to establish an FHSC in East Texas to be administered by a nonprofit organization (''NPO'') as required by the Final Judgment and Decree (''Final Judgment'') in *Lucille Young* v. *Cuomo*, CA No. P–80–8–CA (E.D. Tex.; dated March 30, 1995). HUD has been ordered to provide $500,000 per year for a period of at least five years to fund an FHSC for East Texas to be located in Beaumont, Texas, with several branch offices within the 36-county area that constitutes East Texas, and one mobile office unit to provide services to remote locations throughout East Texas. The funding will provide for a variety of services designed to facilitate desegregative moves of class member applicants for and residents of public housing throughout the seventy (70) Public Housing Authorities (''PHAs'') located in the 36-county jurisdiction of the *Young* Final Judgment. The specific responsibilities of the FHSC are enumerated in the Scope of Work below, in the Final Judgment (copy attached), and the original desegregation plans and the plan amendments approved by the Court. The Final Judgment is the document that controls the activities of the FHSC. The FHSC is bound by the terms of the Final Judgment and final desegregation plans (as determined by the Court).

The U.S. Department of Housing and Urban Development (''HUD'') will award to and enter into a contract with an NPO. HUD's local Field Office will monitor the NPO's performance consistent with the requirements of 24 CFR Section 84.51. The specific monitoring requirements applicable to the NPO will be addressed in the contract to be entered into between HUD and the NPO. The term of the contract shall be for one year, renewable in one year increments, for a cumulative total of no less than five (5) one year terms. The renewal of the proposal is contingent upon the FHSC's ability in meeting the conditions set forth in Section I, ''Scope of Work'' below, and in complying with the Final Judgment. HUD will provide $500,000 for the activities of the FHSC for each year of

operation, and a total of 1,000 Section 8 rental vouchers and/or certificates (excluding incremental and turnovers) to be used toward HUD's obligation to provide 5,134 desegregative housing opportunities to *Young* class members.

The housing opportunity counseling funds will be provided to the FHSC through HUD's contract administrator. HUD is required to award 1,000 desegregation vouchers/certificates to PHAs that have jurisdiction in the areas where the *Young* class members move. The PHAs that are awarded these vouchers/certificates are herein called ''receiving PHA(s)''.

Sections of the RFP

I. Scope of Work

A. Background and Objectives

The plaintiffs in *Young,* African-American residents of public housing in East Texas, filed this action in 1980, alleging that HUD had knowingly maintained a system of segregated housing in a 36-county area of East Texas, in violation of the U.S. Constitution and various civil rights laws. The plaintiffs contended that there was segregation in HUD-supported low income Public Housing, Section 8 Existing Housing Program, and other HUD-assisted multifamily programs (including HUD-insured housing). While there are presently 70 individual public housing authorities (''PHAs'') in the 36-county area, none of the PHAs are included in the lawsuit as parties.

In 1982, the U.S. District Court for the Eastern District of Texas (''Court'') certified a class consisting of all African-American applicants for and residents of HUD-funded public housing, Section 8 housing and other assisted housing programs in the 36-county area.

In 1985, the court issued a liability decision, finding that HUD had knowingly and continually maintained a system of segregated housing in the 36-county area. In 1987, while an appeal was pending, HUD and the plaintiffs reached an agreement to limit the scope of the case and class of plaintiffs to public housing in the 36-county area. The *Young* class thus consists of all African-American residents of, or applicants for, public housing in the 36-county area.

In 1988, the court appointed a special master and issued an interim injunction, which, among other things, compelled HUD to require each of the 70 PHAs to implement race-conscious Tenant Selection and Assignment Plans and to provide all class members a series of notices of desegregative opportunities in all HUD-assisted housing in East Texas.

After settlement discussions between HUD and the plaintiffs proved unsuccessful in 1990, the court issued an Order for Further Relief, dated September 9, 1990, which required, among other things, that HUD develop desegregation plans or assertions of unitary status for each of the 70 PHAs. The court ordered HUD, in developing each plan, to provide for the equalization of conditions between predominantly African-American projects and the conditions in the projects and neighborhoods where the majority of white HUD-assisted housing recipients resided.

By June 1991, HUD had submitted desegregation plans or unitary status assertions for all 70 PHAs to the court for approval. Although the court did not rule as to the adequacy of the plans and unitary status assertions at that point, HUD began to implement the desegregation plans. In October 1993, after further analysis, HUD withdrew its submission of the plans and assertions after having determined that they did not fully or adequately address the requirements of the September 1990 Order.

HUD filed revised plans on February 8, 1994, along with the East Texas Comprehensive Desegregation Plan (Comprehensive Plan). The Comprehensive Plan reinstituted the original plans filed in 1990–91, but amended them to provide for further actions, and replaced all unitary status assertions with new desegregation plans (asserting that none of the 70 PHAs had, as of yet, attained unitary status).

The Comprehensive Plan filed in February 1994 called for the creation of 1,000 desegregative housing opportunities for class members over a five-year period. In May 1994, after further analysis, HUD agreed to provide for the creation of 5,134 desegregative opportunities within seven years. On March 30, 1995, U. S. District Judge William Wayne Justice issued the Final Judgment, that approved the original desegregation plans and the plan amendments and required HUD to fund the FHSC.

B. Activities of the FHSC

1. The FHSC Must Become Familiar With All Relevant HUD Regulations (e.g., Those Governing Section 8 Assistance, Public Housing, Assisted Housing, and Fair Housing), the Final Judgment and Applicable Individual Desegregation Plans

The FHSC shall order and/or approve all issuances by the receiving PHA of Section 8 rental vouchers or certificates to class members or others pursuant to the Final Judgment Decree, § II.

2. Outreach to Landlords and Assistance With Exception Rents

The FHSC shall encourage and assist in the development of desegregative housing opportunities, including outreach to private landlords in non-minority areas for the purpose of encouraging them to participate in the Section 8 existing housing program, as well as counseling and referral services to Section 8 existing housing tenants and applicants who wish to utilize their Section 8 rental vouchers or certificates in a manner furthering desegregation pursuant to ¶ IV.5.d. of the Final Judgment.

The FHSC, along with the PHAs, shall monitor rents in desegregative housing opportunity areas every six months to determine whether such rents are adversely affecting housing opportunities. If so, the FHSC shall take such steps as are necessary to overcome this adverse affect, including requesting that HUD consider granting exception rents for certificates or payment standards for vouchers, pursuant to the Court's 1990 Order for Further Relief, if such exception rents or payment standards would increase the availability of desegregative housing opportunities for class members.

Landlord Outreach Activities include, but are not limited to:

a. Identify potential landlords and market the program to them; make special efforts to obtain the participation of owners and managers who control a large number of units, and especially, of owners and managers of units with three or more bedrooms;

b. Maintain a data base of available housing in desegregative areas;

c. Carry on outreach using a variety of methods including recruitment in person, by telephone, in writing, at meetings of landlord associations, by special brochures, and by other economically feasible means;

d. Seek out landlords with a prior reputation for community involvement and civic commitment, especially those on the boards of civil rights or fair housing organizations;

e. Join property management associations and attend seminars on property management issues (especially where information about Section 8 opportunities for owners is discussed); solicit opportunities to make presentations at property owner and manager meetings about the needs of Section 8 families and the opportunities presented by the program; and

f. Network through personal contacts with established owners and real estate organizations in the multifamily sector, to uncover potential vacancies and to update listings of units in new or existing developments.

3. Eligibility Review Services

The FHSC shall review all clients of the FHSC who have not already undergone a determination of eligibility by the receiving PHA, to document each client's ability and willingness to comply with an acceptable lease and HUD program requirements pursuant to ¶ IV.5.a. of the Final Judgment.

The FHSC shall determine the eligibility of families consistent with HUD's regulatory requirements pertaining to income, family composition, citizenship and eligible immigration status. Families who have members who have engaged in certain activities that are grounds for denying Section 8 assistance under the regulations, including drug-related and violent criminal activity, will not be offered a Section 8 rental voucher or certificate.

4. Counseling Services and Other Social Services Support

Pursuant to ¶ IV.5.b. of the Final Judgment, the FHSC shall provide counseling services designed to provide information and counseling with respect to class members including the following:

a. Initial Stage of Counseling. The FHSC will provide an initial counseling session to groups of class members. At the initial session, the FHSC will provide essential general information, for example:

(1) Explain the terminology of the Section 8 programs;

(2) Explain the program requirements pertinent to Section 8 rental vouchers and certificates;

(3) Inform families of the counseling services that will be available.

(4) Meet with families to help them assess their needs and solve problems in areas such as credit and housekeeping; and

(5) Provide training to families to enhance their housing search skills and ability to present themselves to landlords.

b. Second-stage Counseling (Motivational Support). From the first contact with the family, the FHSC will need to help families maintain a consistent and high level of enthusiasm and commitment to the program. For many families, the possibility of living in a new environment will be sufficient to energize their activities and strengthen their resolve. However, other families may be more timid about learning new skills (like finding available units and dealing with prospective landlords) or looking for units in unfamiliar locations. Keys to maintaining a family's motivation to succeed include:

(1) Provide detailed information to individual families about housing options in desegregative areas;

(2) Conduct individual sessions with each family about communities of interest to the family, including educational opportunities, housing, employment information, and transportation information;

(3) Refer each family to at least *three* vacancies in desegregative areas in neighborhoods selected by the family;

(4) Assist families in their housing search, as needed, including providing escorts and transportation to unfamiliar neighborhoods, and arranging day care for children;

(5) Assist in lease negotiation and assist the prospective landlord in obtaining lease approval from the local housing agency;

(6) Provide referrals to organizations that may provide assistance with security deposits, moving costs, and the like;

(7) Provide assistance in passing landlord screening requirements. The FHSC may also assist families by providing credit and tenant screening reports to landlords;

(8) Address fears directly and discuss them thoroughly; and

(9) Assure the family that it has the continuing and active support not only of the FHSC, but also of an array of service providers available to solve particular problems.

c. Post-placement services. The FHSC will:

(1) Contact the family at move-in, again 30 days thereafter, and again three months after that, to assist in transition and inform the family about the availability of post-placement services.

(2) Inform the family about the Section 8 self-sufficiency program.

(3) Mediate disputes between the family and the landlords and between the family and the neighborhood, if and when they arise, and counsel families in resolving such disputes themselves.

(4) Facilitate support networks among families moving to nearby areas, to the extent families express a desire for such networks.

(5) Provide information about educational and employment opportunities; parenting skills classes, general equivalency diploma (GED) classes, and other such services.

5. Class Members Who Receive a Desegregative Voucher/Certificate

Under the Final Judgment and Decree, HUD will provide to class members 5,134 desegregative housing opportunities, over a seven-year period. The actual placement of a total of 40 class members in Alba (1), Corrigan (2), Fruitvale (2), Kirbyville (8), Mount Pleasant (22), Talco (2), and Trinidad (3) is also required under the Final Judgment. Two hundred (200) desegregative vouchers/certificates will be provided in the first year of the FHSC's operation, and 200 per year thereafter for the following four years. The class members who receive one of the desegregative vouchers/certificates will be required to use their vouchers/certificates in rental housing that constitutes a desegregative opportunity as defined in the Final Judgment. The FHSC will provide to the class members who receive a desegregative voucher/certificate counseling services and other forms of assistance, as necessary, to aid them in locating desegregative housing.

Pursuant to ¶ IV.5.g. of the Final Judgment and Decree, FHSC will give each class member written notice, every six months, in a form and distribution method to be approved by HUD, of all HUD-assisted and/or HUD-subsidized low-income housing developments in the housing markets where the class member resides that offer the class members a desegregative housing opportunity, provide notice of the full address, telephone number, and name of the person responsible for accepting applications for the development, a short description of the type of housing offered by the development, and the general eligibility requirements for the development. The FHSC will include in the Notice to class members, information about the mobility program, and the opportunities available through it.

a. PHA Responsibilities. The receiving PHAs will be awarded 1,000 desegregation certificates and vouchers to be used toward HUD's obligation to provide 5,134 desegregative housing opportunities to *Young* class members; conduct the intake and initial eligibility determination of applicants; and conduct any required Housing Quality Standards (''HQS'') inspections of units.

The 1,000 desegregative vouchers/certificates are for the exclusive use of class members. Certificates or vouchers obtained by receiving PHAs from other East Texas Section 8 programs through turnover, recapture, or otherwise, may be provided to non-class members when required by HUD under subparagraph c below.

b. Award and Turn-in of Desegregative Certificates. Class members who initially receive a desegregative voucher/certificate will have 120 days within which to enter into a lease for a unit of desegregative housing as defined, or, if the FHSC has failed to offer a unit within that time, until a desegregative offer is in fact received. At the expiration of 120 days, if an offer and if a lease has not been entered, the applicant has the option of continuing to search for housing with no restrictions as to locations for an additional sixty days. At the end of the sixty day period, the voucher/certificate would revert to the receiving PHA (unless it grants an extension). (HUD Headquarters will grant the necessary waivers to allow the receiving PHA to grant an extension beyond the 120 day maximum currently allowed under HUD's regulations.) Should the class member locate in a minority neighborhood, this will not count toward HUD'S obligation to create 5,134 desegregative housing opportunities.

c. Special Procedures for Affirmative Action Waiting List Initiatives. HUD shall provide to the FHSC the name and address of every class member applicant who is to be offered a certificate and counseling as an alternative to public housing when a PHA uses an affirmative action waiting list procedure that has been approved by the Court to offer the unit that would otherwise have been offered to the class member, to a white applicant whose name is listed lower on the waiting list. Paragraph III of the Final Judgment is to be followed when implementing the Affirmative Action Waiting List initiatives. When a class member is offered a certificate or voucher under these circumstances:

(1) The class member is to be made an offer of alternative housing within 60 days of the date on which the public housing unit that is to be offered to a white applicant is available for assignment.

(2) The class member must be provided the Section 8 rental voucher or certificate and an offer of a unit must be made within 120 days from issuance of the certificate to the class member that meets the requirements of § II.7 of the Final Judgment and must notify HUD within one day if the applicant accepts the offer;

(3) If the class member rejects the offer of alternative housing, the FHSC must notify HUD within one day of the rejection, state the reason(s) for the rejection, and provide information as to the location of the rejected unit and evidence of its availability.

(4) If, after 120 days, an alternative housing opportunity has not been found for the class member, the class member may opt to hold the certificate for up to sixty additional days and to search for housing on her or his own without restriction as to location. (HUD Headquarters will grant the necessary waivers to allow the receiving PHA to grant an extension beyond the 120-day maximum currently allowed under HUD's regulations.)

HUD will provide the FHSC with the name and address of every non-class member who is to receive a Section 8 rental voucher or certificate as a result of the implementation of the Affirmative Action Waiting List. The FHSC must instruct the receiving PHA to issue a Section 8 rental voucher or certificate to the non-class member applicant who held the highest position on the waiting list and who would otherwise have been offered an available public housing unit but for the advancement of a class member to the head of the waiting list for that unit under the Affirmative Action Waiting List.

d. *Priority of Offers.* The FHSC will offer the desegregative certificates to class members according to the following priority:

(1) To class members residing in predominantly African American low-rent public housing projects;

(2) To class members who are on a waiting list for low-rent public housing as of March 30, 1995;

(3) To class members who apply for low-rent public housing subsequent to the date of March 30, 1995.

6. The FHSC Shall Encourage and Assist Class Members To Make Desegregative Moves Within the Low Income Housing Program and to Privately Owned Assisted Housing Programs Pursuant to ¶ IV.5.e. of the Final Judgment

The FHSC shall develop and implement a plan to refer class members, with or without the use of Section 8 rental vouchers or certificates, to privately owned, HUD-assisted, or FmHA housing located in areas which provide a desegregative housing opportunity. FHSC shall conduct outreach to the landlords and/or owners of all such HUD-assisted, or FmHA private housing providers located in areas which provide a desegregative opportunity and other Section 8 existing agencies, to encourage participation in the FHSC-developed referral plan. FHSC shall monitor the performance of other Section 8 existing agencies in the 36-county area in this regard, and shall also develop a system to record all offers of and/or placements of class-members in desegregative housing by other Section 8 agencies in East Texas.

7. Information

The FHSC shall designate specific personnel to respond to requests for information and requests for assistance from class members desiring to obtain a desegregative housing opportunity as defined in the Final Judgment. The assistance to be provided shall include referrals of interested class members to public housing developments, and to programs other than low income public housing, that offer desegregative housing opportunities in East Texas.

8. Quarterly Status and Annual Performance Report

The FHSC shall provide quarterly status reports on significant activities taken under the requirements of the Final Judgment and Decree. HUD will file each report with the court and serve it on plaintiffs' counsel within thirty days of the end of the quarter covered in the report.

The FHSC shall submit an annual report on their performance of their obligations under the Final Judgment and Decree to the plaintiffs, with a copy to go to the Court by April 30th of each year.

9. HUD's Right To Request Information

The FHSC will collect and maintain the data necessary to monitor the program toward providing desegregative opportunities. This would include: (a) the number of class members seeking desegregated housing opportunities; (b) evidence of each family (class member) having been referred to at least three vacancies in desegregative areas in neighborhoods selected by the family; (c) the number of class members actually leasing units in non-impacted neighborhoods; (d) the number and name of housing providers recruited into the program; and (e) the number of class members assisted and number of hours staff members devoted to assisting families, and similar data as HUD may require. The FHSC will comply with any informational requests from HUD that HUD, in its discretion, makes from time to time during the course of the program.

C. Administrative Requirements

The FHSC shall be required to adhere to the following three administrative

requirements in performing work under this award:

1. Submission of quarterly progress reports detailing progress made in fulfilling the tasks and sub-tasks in the approved Project Management Plan;

2. Distribution of an Evaluation Questionnaire to all persons, organizations, agencies, or other entities receiving services, participating, or otherwise involved in this project and submission of a ''Customer Satisfaction Report'' semi-annually; and

3. Preparation of a final report in a format suitable for information transfer, exchange and dissemination to other PHA's communities, or other entities interested in providing such services. The final report should detail the case study of East Texas Desegregation Counseling Project and provide insights and recommendations for others who may wish to develop similar programs.

D. Monitoring

The FHSC shall monitor the compliance of the providers of low-income housing in the class action area (low-income public housing and assisted housing) with the fair housing laws and the requirements placed upon the providers under the comprehensive plan and the individual desegregation plans pursuant to ¶ IV.5.c. of the Final Judgment. The FHSC shall coordinate all monitoring activities with HUD.

II. Contents of Application

A. Eligible Applicant

1. The application must be submitted by an NPO and must include all information requested in this section. Any application submitted after the due date or that does not contain the required information may be rejected. The NPO must submit documentation as a part of the application that verifies the 501(c)(3) and/or 501(c)(4) (IRS Code) status of the NPO and its legal authority to operate throughout the East Texas area.

2. *Corporate documents.* The NPO shall provide a copy of its Articles of Incorporation.

B. Description of Activities and Costs

It is to an NPO's advantage if it describes its experiences, if any, as requested in this section. In the case of an NPO that intends to use one or more subcontractors, the NPO must also submit the qualifications of the subcontractors and a description of the work to be performed by the subcontractors. In the case of a newly formed NPO, the NPO may substitute a description of experience and knowledge of its principal officers and employees where a description of its own experience is requested below.

1. Description of Experience

The NPO must submit a narrative description of its experience in assisting lower-income families and/or African-Americans or other minorities in the search for housing. The NPO should describe its working knowledge of HUD's Section 8 programs, as well as its public housing and assisted housing programs. The NPO should include a list of its projects over the last two years that are relevant to this procurement action. HUD reserves the right to request information from any source so named.

2. Knowledge of Fair Housing and Mobility Experience

The NPO must submit a narrative description of its knowledge of, and experience in assisting African-Americans with fair housing as well as monitoring providers for violations of the fair housing laws. The narrative should specifically address the NPO's knowledge of the rental market in racially non-impacted areas and the barriers that limit access to that housing by lower-income minority persons. The NPO shall also describe its experience with mobility activities.

3. Description of Organizational Capacity

The NPO must submit a narrative description of its capability and capacity to handle a project of this scope. The narrative is to include a list of current federally funded activities. The NPO should provide an organizational chart of key personnel to be involved in each activity under the agreement, and the percentage of time that they will devote to each activity. The NPO should include resumes, references, or other documents that show that key personnel have experience in the tasks described in the ''Scope of Work'', the Final Judgment and Decree, and applicable individual desegregation plans. If the NPO plans to utilize subcontractors, consultants or other agents, it should provide the same information with respect to them.

4. Management Plan (Includes Proposed Costs)

A management plan as described below, particularly as the plan pertains to the evaluation rating factors set out in Section III. A. of this RFP, shall be submitted as part of each NPO's proposal. A detailed narrative of a management plan to carry out the programs as outlined in the Final Judgment and Decree and this RFP will be delivered to the HUD's local Field Office within 15 days after the contract is awarded. The Plan will include:

1. Detailed and sequential list of tasks (and sub-tasks, if appropriate), by quarter, necessary to accomplish the work specified in the NOFA;

2. The methodology to be used in accomplishing each task and sub-task;

3. A list of the staff or subcontractors, consultants or other agents who will perform each task/subtask, including their hourly rates and the number of hours per individual to be charged to each task/subtask;

4. Other direct costs (e.g., travel, etc.) for each task/subtask;

5. Indirect costs (e.g., projected site and rental cost of office space and mobile unit, if applicable, telephone, postage, printing, etc.) for each task/subtask;

6. Any other costs (general and administrative overhead) to be charged and the method for allocating such costs;

7. Internal financial management and oversight procedures and policies;

8. When each task/sub-task and establishment of financial oversight procedures will be accomplished;

9. Staff and organization (including an organizational flow-chart); and (10) the support that is expected to be required from HUD and its contract administrator.

The costs may be more detailed than is specified above, but may not be less detailed. In reviewing the proposals, HUD shall consider the breakdown of the work, the list of tasks, and the level of effort and qualifications of staff and subcontractors and other resources as demonstrations of the NPO's understanding of the work described by the NOFA. Only costs that are detailed in the proposal will be eligible for billing and reimbursement. The final management plan will be submitted by HUD to the Court for approval.

C. Deficient Proposals for FHSC

A proposal will be deemed technically ineligible if:

1. It does not fully adhere to the guidelines established herein, including budgetary requirements;

2. The complete proposal is not received by the deadline;

3. A comprehensive line item budget is not included;

4. The project budget for costs charged against funds exceeds $500,000; or

5. Unsigned proposal or certification forms are submitted.

6. The proposal does not include letters of commitment from the subcontractors.

III. Factors for Award

A. Evaluating Rating Factors

HUD will use the following criteria to evaluate proposals received in response to this RFP. In all cases, the number of points stated represents the maximum. In the actual scoring, any given proposal may receive less than the maximum for each category, based on an evaluation of competing proposals.

1. Familiarity with housing mobility counseling and HUD housing programs (30 points).

a. Demonstrated work experience with fair housing mobility counseling of lower income and minority families. (10)

b. Demonstrated work experience with HUD's Section 8, public housing or privately owned assisted housing programs. (10)

c. Demonstrated work experience in coordinating resources and activities provided by a variety of government, private sector agencies, and organizations for providing housing and/or fair housing law enforcement support. (10)

2. Knowledge of fair housing laws and mobility experience. (25 points)

a. Demonstrated record of participation in fair housing activities, particularly with respect to low income families and racial or ethnic minorities and monitoring providers of low-income housing for violations of the fair housing laws. (10)

b. Demonstrated knowledge of and experience in mobility services for African-American tenants. (10)

c. Experience in rental markets in racially non-impacted areas. (5)

3. Organizational capacity. (20 points)

a. Demonstrated capability and capacity of the non-profit organization to effectively manage a grant of this scope. (10)

b. Demonstrated capability of the non-profit's key personnel, including officers, employees, partners, subcontractors, consultants and other agents to accomplish the work responsibilities of the FHSC. (10)

4. Quality of Proposal. (25 points)

a. Extent to which the proposal demonstrates an understanding of the Final Judgment and Decree, the applicable individual desegregation plans, and this RFP, and the extent to which the proposal proposes a realistic approach to all the work requirements that meet the conditions of the Final Judgment and Decree. In rating this factor, HUD will consider such activities as the proposed number of desegregated housing opportunities to be created with tenant-based assistance, the degree of coordination with public housing agencies to expand desegregated housing opportunities in each community, the types and level of effort to provide tenant counseling and outreach to owners, and the expected number of families to be counseled and placed in a unit that is not located in an area of minority concentration. (15)

b. Completeness and acceptability of the overall proposal and specific methods, procedures and steps as outlined in the Management Plan. In rating this factor, HUD will consider such factors as the adequacy of the staffing and other resources devoted to completing the tasks outlined in this NOFA, direct and indirect costs for the various subtasks, and methods for completing the tasks outlined in the NOFA. (10)

B. Certifications

Each proposal must contain an original and five copies of the certifications identified below. Each certification must be signed by the Chief Executive Officer of the applicant organization unless otherwise noted. The Proposal packet referenced at the beginning of the NOFA contains the certification formats for the Certification Regarding Drug-Free Workplace Requirements, Certification Regarding Lobbying, and the Equal Opportunity Certification.

1. *Drug-free Workplace Certification.* The non-profit organization must certify that it will provide a drug-free workplace and comply with the drug-free workplace requirements at 24 CFR part 24, subpart F.

2. Certification regarding Lobbying pursuant to Section 319 of the Department of the Interior Appropriation Act of 1989, generally prohibiting use of appropriated funds for lobbying.

3. Certification of no outstanding violations of: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations pursuant thereto (24 CFR part 1); the Fair Housing Act (42 U.S.C. 3601–19); Executive Order 11063, as amended by Executive Order 12892 and HUD regulations (24 CFR part 107); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR part 8); Title II of the Americans with Disabilities Act of 1990 (and applicable regulations at 28 CFR Part 36); the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and regulations issued pursuant thereto (24 CFR part 146); Executive Order 11246 and all regulations issued pursuant thereto (41 CFR Chapter 60–1); Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701U) and regulations pursuant thereto (24 CFR part 135).

4. *Conflicts of Interest.* The non-profit organization shall provide a statement which describes all relevant facts concerning any past, present or currently planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed which could present a possible conflict of interest with respect to: (a) Being able to render impartial, technically sound, and objective assistance or advice; or (b) being given an unfair competitive advantage. The non-profit organization shall describe its current and past relationship with HUD as it relates to a possible conflict of interest in carrying out the counseling program.

Such conflict could arise when any employee, officer or agent of the PHA, HUD or plaintiffs' counsel; any member of his or her immediate family, his or her partner, or organization which employs or is about to employ any of the above has a financial or other interest in the NPO that is selected.

C. Cost Factor

Cost will become relevant in the case of a tie score in the technical part of the evaluation, as stated under ''Contract Award'' below. It is the goal of the Final Judgment to provide high quality services that will contribute substantially to the desegregation of all federally assisted housing in East Texas. It is expected that the costs of each task and sub-task will be addressed in the proposal, including the costs for sub-contractors, etc. HUD reserves the right to reject any proposal that does not adequately reflect costs.

D. Contract Award

In the event that the proposals are not sufficiently complete to award the contract, HUD may request additional information from the highest scoring applicants in order to make a final decision. The additional information will be considered by HUD in establishing the final score for each NPO. Award will be made to the NPO whose proposal has the highest score. In the event two or more offerors have tied scores, cost efficiency—i.e., the extent to which the NPO has a plan that will accomplish the most desegregative placements of all kinds within the established financial parameters—will be the determining factor.

E. Approval by HUD and Court Review

Notwithstanding the foregoing, a contract shall not be entered into for the FHSC without the express written approval by HUD of the entity and

application selected, and of the contract with such entity. The initial and any subsequent HUD decisions to enter into a contract with an NPO and the initial and any subsequent HUD approvals of the proposal selected and of the contract with the NPO are subject to judicial review by motion of the plaintiffs under] IV.6. of the Final Judgment and Decree.

In the United States District Court for the Eastern District of Texas Paris Division Lucille Young, et al., Plaintiffs, v. Henry G. Cisneros, et al., Defendants. [P–80–8-CA, Final Judgment]

Final Judgment and Decree

In 1985, defendants in the above-entitled and numbered civil action were found liable for knowingly and continually maintaining a system of segregated housing in a thirty-six county area of East Texas in violation of the constitutional and civil rights of a class of African-Americans. Young v. Pierce, 628 F. Supp. 1037 (E.D. Tex. 1985). An interim injunction issued in this action in 1988. Young v. Pierce, 685 F. Supp. 986 (E.D. Tex. 1985). Such interim injunction was amended by order of this court in 1990. Order for Further Relief, September 10, 1990. After extensive briefing by the parties and a hearing on the plaintiffs' motion for final remedy, it is Ordered, Adjudged, and Decreed that the Honorable Henry G. Cisneros, as Secretary of the Department of Housing and Urban Development (''HUD''), his officers, agents, servants, employees, successors, and all persons in active concert or participation with them shall be, and are hereby, Permanently Enjoined, either directly, or through contractual or other arrangements, to take the actions necessary to effectuate the relief decreed by the provisions of this Final Judgment and Decree, as follows:

1. The individual desegregation plans and the individual desegregation plan amendments for each Public Housing Authority (''PHA'') submitted by the Department of Housing and Urban Development (''HUD'') are hereby approved, subject to the modifications contained in this judgment and decree. As used herein, ''individual desegregation plan'' or ''desegregation plan'' includes both the original, individual desegregation plan filed by HUD for a particular PHA and the individual plan amendment filed by HUD for that PHA. Within ninety days from the issuance of this judgment and decree HUD shall re-file the individual desegregation plans, which shall fully incorporate the amendments to such plans, in order that a fully integrated plan for each PHA will be on file.

2. The desegregation plans shall be implemented and interpreted in a manner consistent with the applicable provisions of HUD's East Texas Comprehensive Desegregation Plan (''Comprehensive Plan'') and with the provisions of this judgment and decree. HUD shall discharge all duties imposed upon HUD by the terms of the Comprehensive Plan and by the provisions of this judgment and decree. In the event of any inconsistency or conflict between the provisions of this judgment and decree and the provisions of either the Comprehensive Plan or the desegregation plans, the provisions of this judgment and decree shall be controlling.

3. All orders, including the interim injunction previously issued in this action, shall be in full force until HUD attains unitary status, as defined in this judgment and decree, and judicial supervision ends in accordance with this judgment and decree. All previous orders entered in this action shall be interpreted in a manner consistent with this judgment and decree. In the event of any inconsistency or conflict between the provisions of this judgment and decree and the provisions of any earlier order, the provisions of this judgment and decree shall be controlling.

4. All provisions of this judgment and decree shall require, or be construed as requiring, compliance with federal statutes as they now exist, or as they may be amended or enacted.

I. Physical Improvement to Projects and Neighborhoods

1. Financial assistance for physical improvements specified in the desegregation plans shall be provided by HUD or, in the case of neighborhood improvements receiving financial assistance under the Community Development Block Grant Small Cities Program (''CDBG Small Cities Program''), by the State of Texas, within seven years of the date of this judgment and decree. The review and approval process for applications for financial assistance shall be conducted in accordance with all applicable laws and regulations, including the rules governing competitive programs, where appropriate.

2. Each such physical improvement shall be completed as soon as is feasible and practicable after approval and funding and, in no event, shall the time period for the completion of any such physical improvement exceed a period of three years from the date upon which the application is approved and funded. With respect to neighborhood improvements being carried out by a municipal government with financial assistance under the Community Development Block Grant Program (''CDBG program''), it shall be the responsibility of HUD to take all appropriate actions within HUD's control to obtain completion of those neighborhood improvements within the time periods specified herein.

3. If any municipal government fails to take an action necessary to complete the neighborhood improvements specified in the PHA's desegregation plan, HUD shall take appropriate action in accordance with the regulations governing the CDBG program. These actions may include (i) enforcement mechanisms available to HUD under its obligation affirmatively to further fair housing and (ii) causing the PHA to institute against the municipal government enforcement based on the municipality's violation of the cooperation agreement between the PHA and the municipality.

4. If any PHA fails to take an action necessary to complete the physical improvements specified in the PHA's desegregation plan, HUD shall take appropriate enforcement action against the PHA. These actions may include one or more of the actions described in the Comprehensive Plan at p. 20 for dealing with the failure of a PHA to follow its desegregation plan.

5. Where HUD has required improvement of neighborhood conditions as part of the desegregation remedy for a PHA, HUD shall cause that PHA and the responsible municipality to enter into a memorandum of understanding under which the municipality agrees to carry out the required neighborhood improvements. Each such memorandum of understanding shall identify the neighborhood conditions to be corrected or upgraded and describe the work to be done in carrying out such correction or upgrading. If such work requires funding under the CDBG Program, the memorandum of understanding shall also contain a preliminary cost estimate for the required work. All such memoranda of understanding shall be entered into by the PHAs and their respective municipalities no later than July 1, 1995. All such memoranda of understanding shall be submitted for the approval of the court. Upon approval by the court, the memorandum of understanding between a PHA and a municipality shall define the full extent of the obligation to correct or upgrade neighborhood conditions in that PHA and in that municipality.

6. In approving applications for the funding of physical improvements, or the provision of amenities, to low-rent public housing projects in the class

action area, HUD shall, to the extent consistent with applicable statutory and regulatory requirements, give priority to the funding of applications for making such improvements, or providing such improvements, to racially identifiable African-American projects, i.e., low-rent public housing projects in which seventy-five percent (75%) or more of the residents are African-Americans.

7. The amended individual desegregation plans require, and the comprehensive plan contemplates, certain physical improvements which include, inter alia, the provision of air conditioning equipment, laundry facilities, community centers, and playgrounds. Plaintiffs additionally seek the provision of carpeting, dishwashers, a utility allowance to account for the reasonable use of air conditioning, and garbage disposals in predominately and historically African-American projects. Moreover, plaintiffs identify other conditions present at predominately and historically African-American projects that are not present at the historically and predominantly white projects, including inadequate security and maintenance.

HUD shall satisfy the obligations of the individual desegregation plans as they pertain to amenities and services. In addition to those amenities and services required by the individual desegregation plans, HUD shall provide the amenities and services available in any of the historically and predominantly white projects at the historically and predominately African-American projects of like or similar kind within the PHA. The amenities and services required at the non-elderly family units at historically and predominately African-American projects in a given PHA are to be determined by evaluating the historically and predominately white non-elderly family units within the same PHA. For example, HUD must ensure that the historically and predominately African-American non-elderly family units include carpeting if a historically and predominately white non-elderly family unit includes carpeting. Moreover, both projects shall be staffed with maintenance personnel in equal numbers or such numbers as necessary to maintain the premises in substantially similar condition.

II. Creation of Desegregated Housing Opportunities

1. Within seven years from the date of this judgment and decree, HUD shall create a total of 5,134 desegregated housing opportunities for elderly and non-elderly class members in non-minority census blocks in the class action area. Desegregated housing opportunities shall be offered, first, to class members residing in predominately African-American low-rent public housing projects, second, to class members who are on a waiting list for low-rent public housing as of the date of this judgment and decree, and, third, to class members who apply for low-rent public housing subsequent to the date of this judgment and decree.

2.a. The term ''non-minority census block'' is defined in accordance with the ''¼ mile radius'' methodology described in the report of the East Texas Demographic and Mapping Analysis conducted by George Galster of the Urban Institute under a contract with HUD (Defendants' Exhibit 116). A given census block shall be regarded as a non-minority census block, if the area consisting of the given census block, plus all census blocks within the PHA jurisdiction whose centroids lie within a ¼ mile radius of the centroid of the given census block (i) has a percentage of white population of more than eighty percent (80%), or (ii) has a percentage of white population greater than 100%, minus the PHA jurisdiction's overall percentage of African-American population. b. Notwithstanding subsection II.2.a., a census block will not be regarded as a non-minority census block, if (i) more than fifty percent (50%) of the African-Americans living in the area described by the ¼ mile radius methodology are concentrated in individual census blocks with more than eighty percent (80%) African-American population, or (ii) the population of the area described by the ¼ mile methodology is more than forty percent (40%) African-American or (iii) geographic, demographic, or social factors, including proximity to racially impacted areas or isolation from population centers or community services, indicate that the census block should be regarded to be in a racially impacted area.

3. To the maximum extent feasible and practicable, HUD shall, through the use of tenant-based housing assistance, create within each PHA jurisdiction, the number and type (elderly and non-elderly) of desegregated housing opportunities which HUD has determined to be needed within each particular PHA jurisdiction, as indicated in Defendants' Hearing Exhibit No. 119, Table 1.

4. If the number of desegregated housing opportunities needed within a particular PHA cannot be created through the use of tenant-based housing assistance, that PHA's unmet need shall be satisfied by offering class members residing within that particular PHA a desegregative housing opportunity located in an adjacent jurisdiction. Such adjacent jurisdiction can be no more than thirty-five miles from the PHA and must be accessible from the PHA by adequate and feasible highway links and public transportation.

5. If the number of desegregated housing opportunities needed within a particular PHA cannot be created through the use of tenant-based housing assistance, either within the PHA jurisdiction or an adjacent jurisdiction, the HUD shall, to the maximum extent feasible and practicable, and consistent with all statutory and regulatory requirements, satisfy that PHAs unmet need for desegregated housing opportunities through the use of project-based Section 8 existing housing certificates and vouchers.

6. If the number of desegregated housing opportunities needed within a particular PHA cannot be created through the use of either tenant-based or project-based Section 8 housing assistance, then that PHA's unmet need shall be satisfied through the creation of desegregative housing opportunities anywhere within the class action area.

7. HUD shall be given credit for the creation of a desegregated housing opportunity if:

a. A class member has been provided by HUD with a desegregative housing voucher or housing certificate. A desegregative housing voucher or housing certificate is a Section 8 existing housing certificate or housing voucher, limited for the first 120 days to use in non-minority census blocks.

b. The class member is offered mobility counseling to assist the class member to locate an appropriate housing unit.

c. The class member has been referred by the mobility counseling service to a landlord who is willing to accept the class member's certificate or voucher for the rental of a housing unit.

d. The housing unit offered by the willing landlord is located in a non-minority census block.

e. The unit offered by the willing landlord meets the applicable Section 8 existing housing quality standards in 24 CFR Sec. 882.109, and contains an appropriate number of bedrooms for the particular applicant's family size and composition.

f. The unit offered by the willing landlord is located outside an area where a reasonable African-American would perceive significant racial hostility.

g. There must be no legitimate basis for the class member to refuse the offered unit. Legitimate reasons to

refuse an offer are limited to remoteness to jobs or day care and lack of adequate and feasible transportation. The burden is on the applicant to demonstrate that the proffered reason is legitimate. The special master, or some designated representative of the special master, shall make the initial determination as to whether the applicant has carried his or her burden in this regard.

8. HUD shall also receive credit for the creation of a desegregated housing opportunity, whenever a class member who has been provided with a desegregative housing certificate or housing voucher accepts an offer of a housing unit located in any non-minority census block in the class action area, or in any other non-minority area, but the unit was not obtained through a referral from the housing mobility service.

9. HUD shall receive credit for the creation of a desegregated housing opportunity, if a class member is referred by the mobility counseling service to a landlord willing to rent the class member, with or without the use of a Section 8 housing certificate or voucher, a suitable housing unit in a privately owned, HUD-assisted and/or HUD-subsidized housing development, or in a housing development assisted or subsidized by the Farmers Home Administration, provided that the offered housing unit meets the location requirements set forth in Paragraph II.7.d., above, and provided that the African-American occupancy of the project in which the unit is located does not exceed fifty percent (50%).

10. HUD shall also receive credit for the creation of a desegregated housing opportunity whenever a class member, with or without the use of Section 8 housing certificate or voucher, accepts an offer of a housing unit in a privately owned, HUD-assisted and/or HUD-subsidized housing development, or in a housing development assisted or subsidized by the Farmers Home Administration, where (i) the housing unit is located in any non-minority census block in the class action area, or in any other non-minority area, (ii) the African-American occupancy of the project in which the unit is located does not exceed fifty percent (50%) and (iii) the unit was not obtained through a referral from the housing mobility service.

11. The mobility services referred to above shall be provided by the Fair Housing Services Center, a private, non-profit organization to be established and funded by HUD for a five-year period, as set forth below.

12. The Fair Housing Services Center shall administer the desegregative Section 8 housing vouchers and certificates under contract with one or more PHAs.

III. Elimination or Reduction of Racially Identifiable Low-Rent Public Housing Projects

1. If the individual desegregation plan for a particular PHA does not require the use of any of the Waiting List Initiatives, that specific PHA shall continue to use a race-conscious tenant selection assignment plan in conformity with the requirements of Paragraph 2 of the Interim Injunction entered in this action on March 3, 1988.

2. Any particular Waiting List Initiative specified in an individual desegregation plan shall be fully implemented by the PHA within six months of the date of this judgment and decree. Any PHA that is required to implement a Waiting List Initiative shall also continue to use a race-conscious tenant selection assignment plan in conformity with the requirements of Paragraph 2 of the Interim Injunction entered in this action on March 3, 1988. HUD shall provide any and all assistance to the PHA necessary to implement the Waiting List Initiative, such as the drafting of detailed instructions to guide the PHA in the implementation of the Waiting List Initiative, and the preparation of interagency agreements required for the Cross-Listing Initiative, the Merged Waiting List Initiative, the Area-Wide Waiting List Initiative and the Housing Opportunities Waiting List Initiative.

3. If any Waiting List Initiative, such as the Affirmative Action Waiting List Initiative, employs race-conscious practices for the selection of tenants for assignment to a low-rent public housing project, an offer of alternative housing shall be made to any class member who would otherwise have been offered a unit in the project but for the need to achieve a desired racial balance in the project within sixty days of the date on which the public housing unit in question became available for assignment.

a. Such an offer of alternative housing shall be made to a class member if (i) the class member has applied for low-rent public housing with the PHA operating the project; (ii) the class member meets all applicable eligibility and screening requirements for admission to public housing operated by the PHA; and (iii) and the class member would otherwise have been offered an available unit in the project but for the advancement of a non-class member applicant to the head of the waiting list for that unit under the terms of the Waiting List Initiative, i.e., the class member held the highest position on the waiting list above the non-class member applicant whose position on the waiting list was advanced under the terms of the Waiting List Initiative. A non-class member applicant may not be advanced on a waiting list, unless it has been verified that the non-class member applicant meets all eligibility requirements and tenant selection criteria applicable to the low-rent public housing project.

b. In order to satisfy the requirements for an offer of alternative housing (i) the class member must be provided with a desegregative Section 8 housing voucher or housing certificate and (ii) all other requirements for the creation of a desegregated housing opportunity specified in Paragraph II.7., above, must be satisfied.

c. The public housing unit that otherwise would have been offered to the class member shall remain vacant pending receipt by the class member of an offer of alternative housing.

d. If the class member who would otherwise have been offered the public housing unit rejects an offer of alternative housing HUD shall, within seven days of such rejection, provide plaintiffs with a written notice stating the name of the applicant and stating the basis for HUD's determination that the applicant rejected the offer of a dwelling unit meeting the requirements for an offer of alternative housing.

e. The plaintiffs shall have seven days from the date of notice under the preceding subparagraph to submit to HUD, in writing, any objections plaintiffs may have to HUD's determination. If timely objections are submitted by the plaintiffs, the public housing unit shall remain vacant pending a decision by the special master. Except as provided in Paragraph III.3.b. (referring to Paragraph II.7.g.), above, in any such proceeding, HUD shall bear the burden of proving that the applicant has rejected an offer of alternative housing. If no objection is made, or, upon objection, the special master determines that an offer of alternative housing was received by the class member who would otherwise have been offered the public housing unit, the class member shall be placed on the waiting list in the position occupied by the non-class member advanced in accordance with the Waiting List Initiative, and the non-class member applicant advanced under the Waiting List Initiative shall be assigned to the public housing unit. Either party dissatisfied with the decision of the special master may seek review of that decision by this court within seven days of the special master's decision.

f. If a class member rejects an offer of alternative housing after previously receiving an offer of alternative housing and rejecting such offer, the special master shall determine whether the applicant will again be placed on the waiting list in the position occupied by the advanced non-class member applicant or will receive different consideration in light of the unusual circumstances. Either party dissatisfied with the decision of the special master may seek review of that decision by this court, within seven days of the special master's decision.

g. If no offer of alternative housing is made within sixty days, HUD shall notify the special master, within seven days, of the circumstances preventing an offer of alternative housing. The special master shall investigate the conditions already causing HUD's failure to make an offer of alternative housing. If the special master determines that HUD is acting in good faith, the class member shall be provided a desegregative housing certificate or voucher which may be used without the geographic restriction described in Paragraph II.7.a., above, within the time period described in 24 CFR Sec. 882.209(d). A finding that HUD acted in bad faith shall be evidence to be considered in relation to any motion to hold HUD in contempt.

4. HUD shall provide a section 8 existing housing voucher to the non-class member applicant who would otherwise have been offered an available public housing unit but for the advancement of a class member to the head of the waiting list for that unit under the terms of a Waiting List Initiative, i.e., the non-class member applicant who held the highest position on the waiting list above the class member applicant whose position on the waiting list was advanced under the terms of the Waiting List Initiative.

5. In determining whether to require a PHA to use the Affirmative Action Waiting List Initiative, or any other race conscious tenant selection and assignment plan, for a particular low-rent public housing project, HUD shall not consider the impact of the integration of the project on the racial composition of the neighborhood surrounding that project.

IV. Fair Housing Services Center

1. HUD shall establish a Fair Housing Services Center (''FHSC''), the functions of which must include providing assistance to class members in locating and obtaining affordable desegregated housing in areas where they choose and, additionally, providing class members with fair housing counseling services.

2. The FHSC shall be operated by a private, non-profit organization. HUD shall provide funding to the FHSC in an amount no less than $500,000 per year for a period of five years.

3. Within sixty days of the date of the entry of this judgment and decree, HUD shall serve upon the plaintiffs, and submit for approval of the court, a proposed Request for Proposals (''RFP''), inviting private, non-profit organizations to apply for a contract with HUD to operate the FHSC. The plaintiffs shall have ten days from the date of service within which to file objections to the proposed RFP. If such objections are filed, the court shall conduct such proceedings as are required to resolve the objections.

4. Upon approval of the RFP by the court, HUD shall publish the RFP in the Commerce Business Daily. Within 120 days of the date of publication of the RFP, HUD shall make its selection of the organization to operate the FHSC.

5. The FHSC shall provide the following services:

a. Pre-screen all clients of the FHSC who have not already been screened by a PHA, to document each client's ability and willingness to comply with an acceptable lease and HUD program requirements;

b. Provide information and counseling with respect to housing opportunities to class members;

c. Monitor the compliance of the providers of low-income housing in the class action area (low-income public housing and assisted housing) with the fair housing laws and the requirements placed upon the providers under the Comprehensive Plan and the individual desegregation plans;

d. Encourage and assist in the development of desegregative housing opportunities, including outreach to private landlords in non-minority areas, as well as counseling and referral services to Section 8 existing housing tenants and applicants who wish to utilize their Section 8 certificates or housing vouchers in a manner furthering desegregation;

e. Encourage and assist class members to make desegregative moves within the low-income housing program and to privately owned assisted housing programs;

f. Administer the desegregative housing certificates and vouchers to be provided by HUD under contract with one or more PHAs;

g. Give each class member written notice, every six months, in a form and distribution method to be approved by HUD, of all HUD-assisted and/or HUD-subsidized low-income housing developments in the housing markets where the class member resides that offer the class members a desegregative housing opportunity, provide notice of the full address, telephone number, and name of the person responsible for accepting applications for the development, a short description of the type of housing offered by the development, and the general eligibility requirements for the development.

6. The plaintiffs may seek review, in this court, of HUD's final selection of the organization to operate the FHSC. Such review shall be in accordance with the standards and procedures for judicial review set forth in the Administrative Procedure Act, 5 U.S.C. Secs. 701, *et seq.*

V. Racially Hostile Sites

1. HUD shall utilize its statutory and regulatory authority to proceed against any resident who acts to deprive any other resident of his or her civil rights under the United States Constitution or applicable civil rights statutes.

2. HUD shall assist municipal leaders, including, but not limited to, the city's mayor and its city counsel, in undertaking actions to address hostility including, but not limited to, supplying trained security officers to protect the physical safety of African-American residents when necessary.

3. Within sixty days of issuance of this judgment and decree, HUD shall determine in which localities class participation is limited because of racial hostility such that it is unlikely class members will actually use the existing public housing.

4. HUD shall develop a supplemental desegregation plan for each site deemed by HUD to be racially hostile. The supplemental plan shall examine all avenues available to HUD effectively to counterbalance racial hostility, thereby facilitating class participation and the implementation of the individual desegregation plans and this judgment and decree. Such supplemental plan shall be submitted to the special master for his approval within six months of the designation of a site as racially hostile.

VI. Unitary Status

1. When HUD and each PHA have satisfied the requirements as provided for in this judgment and decree and no racially identifiable low-rent public housing projects exist within the class action counties, HUD may apply to the court for a declaration of unitary status because of the elimination of all vestiges of discrimination attributable to HUD. See *Hills* v. *Gautreaux*, 425 U.S. 284, 297 (1976). A project shall be regarded as non-racially identifiable if less than

seventy-five percent (75%) of the occupants of the project are members of the same race.

2. Upon issuance by the court of a declaration of unitary status, judicial supervision pursuant to this judgment and decree, or any other order entered in this case, of HUD's activities shall terminate.

3. Ten years after the date of this judgment and decree, if the court's jurisdiction has not been sooner terminated, the court shall determine whether its jurisdiction over HUD's actions should be continued or terminated. The court shall extend its jurisdiction over HUD if it determines that any of the specific obligations to be performed under this judgment and decree have not been accomplished within that time period. If the court extends its jurisdiction for this reason, its jurisdiction shall end upon fulfillment of those specific obligations.

[FR Doc. 97–32516 Filed 12–11–97; 8:45 am]

BILLING CODE 4210–33–P

Friday
December 12, 1997

Part IV

Department of Agriculture

Cooperative State Research, Education, and Extension Service; Notice of Intent To Extend a Currently Approved Information Collection; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service; Notice of Intent To Extend a Currently Approved Information Collection

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. chapter 35, and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320, this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to request an extension for three years for a currently approved information collection in support of programs administered by CSREES's Small Business Innovation Research (SBIR) Grants Programs.

DATES: Comments on this notice must be received by February 17, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Sarah J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, CSREES, USDA, STOP 2240, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2240, (202) 401–1761. E-mail: OEP@reeusda.gov.

SUPPLEMENTARY INFORMATION:

Title: Grant Application Forms for the Small Business Innovation Research Grants Program.

OMB Number: 0524–0025.

Expiration Date of Current Approval: May 31, 1998.

Type of Request: Intent to extend a currently approved information collection for three years.

Abstract: In 1982, the SBIR Program was authorized by Pub. L. 97–219, and in 1992 reauthorized through October 1, 2000, by Pub. L. 102–564. This legislation requires each Federal agency with a research and research and development budget in excess of $100 million to establish an SBIR program. The objectives of the SBIR Program are to stimulate technological innovation in the private sector, strengthen the role of small businesses in meeting Federal research and development needs, increase private sector commercialization of innovations derived from USDA-supported research and development efforts, and foster and encourage participation by women-owned and socially and economically disadvantaged small business firms in technological innovation. The Program is carried out in three separate phases. The purpose of Phase I is to determine the scientific or technical feasibility of ideas; Phase II is the principal research or research and development effort; and Phase III is to stimulate technological innovation and the national return on investment from research through the pursuit of commercial objectives resulting from work carried out in Phases I and II.

USDA conducts its SBIR program through the use of grants awards and these grants are administered by the Grants Management Branch, Office of Extramural Programs, Competitive Research Grants and Awards Management, CSREES. Each year, USDA issues an SBIR program solicitation requesting Phase I proposals. These proposals are evaluated by peer review panels and awarded on a competitive basis. The SBIR Program Solicitation follows the format outlined in the Small Business Administration (SBA) Policy Directive for solicitation and proposal requirements. This simplified and standardized proposal format is used by all of the Federal agencies participating in the SBIR Program in order to reduce the application burden of the small business firms that wish to apply to more than one agency.

Before awards can be made, certain information is required from applicants as part of an overall proposal package. In addition to project summaries, descriptions of the research or teaching efforts, literature reviews, curricula vitae of principal investigators, and other, relevant technical aspects of the proposed project, supporting documentation of an administrative and budgetary nature also must be provided. Because of the nature of the competitive, peer-reviewed process, it is important that information from applicants be available in a standardized format to ensure equitable treatment.

This program uses forms that were approved in OMB-approved collection of information packages (OMB No. 0524–0022 and 0524–0033).

Forms CSREES–667, ''Phase I and Phase II Proposal Cover Sheet;'' and CSREES–668, ''Phase I and Phase II Project Summary'' are used to obtain USDA recordkeeping data, required certifications, and information used to respond to inquiries from Congress, other Government agencies, and the grantee community concerning grant projects supported by the USDA SBIR Program.

The following information has been collected and will continue to be collected:

Form CSREES–667—*Identification:* designates the research topic area under which a proposal is submitted for consideration; *USDA recordkeeping data:* provides names and addresses of principal investigators and authorized agents of small business firms; and *Certifications:* Provides required certifications; for example, the applicant qualifies as a small business for purposes of the SBIR Program; the applicant qualifies as a socially and economically disadvantaged and/or women-owned small business.

Form CSREES–668—*Project Summary:* Provides a Technical Abstract used when releasing information about grant projects supported and keywords to identify the technology/research thrust/commercial application of the projects.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: Businesses or other for-profits.

Estimated Number of Responses per Form: 480 for Form CSREES–667 and 480 for Form CSREES–668.

Estimated Total Annual Burden on Respondents: 1,920 hours, broken down by: 960 hours for Form CSREES–667 (two hours per 480 respondents) and 960 hours for Form CSREES–668 (two hours per 480 respondents).

Frequency of Responses: Annually.

Copies of this information collection can be obtained from Suzanne Plimpton, Policy and Program Liaison Staff, CSREES, (202) 401–1302. E-mail: OEP@reeusda.gov.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Sarah J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, CSREES, USDA, STOP 2240, 1400 Independence Avenue, S.W., Washington, D.C. 20250–2240, (202) 401–1761. E-mail: OEP@reeusda.gov. Comments also may

be submitted directly to OMB and should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20502.

All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

Done at Washington, D.C., this 8th day of December, 1997.

Colien Hefferan,

Associate Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 97–32542 Filed 12–11–97; 8:45 am]

BILLING CODE 3410–22–P

Friday
December 12, 1997

Part V

Department of Education

Notice of Extension Inviting Applications for Designation as an Eligible Institution for Fiscal Year 1998 for the Strengthening Institutions Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.031A, CFDA No. 84.031G]

Notice of Extension Inviting Applications for Designation as an Eligible Institution for Fiscal Year 1998 for the Strengthening Institutions Program

PURPOSE: On November 13, 1997, the Department of Education published in the **Federal Register** (62 FR 60988) a closing date notice for applications from institutions that wish to be designated as an eligible institution under the Strengthening Institutions Program authorized under Title III, Part A of the Higher Education Act of 1965, as amended (HEA) for Fiscal Year 1998. The purpose of this notice is to extend the closing dates for transmittal of applications. This action is needed due to unforeseen administrative delays.

An institution that wishes to be designated as an eligible institution under the Strengthening Institutions Program for any purpose must submit its application to the Department by February 10, 1998.

If an institution submits its application by January 16, 1998, the Department will notify the applicant of its eligibility status by February 10, 1998. If an applicant believes it failed to be designated as an eligible institution because of errors in its application or insufficient information in its waiver request, it may submit an amended application to the Department no later than March 27, 1998.

If an applicant submits its initial application after January 16, 1998, but on or before February 10, 1998, the Department does not guarantee that it will be able to review the application and notify the applicant in time for the applicant to submit an amended application by March 27, 1998, the deadline date for amended applications.

An applicant will not be designated as an eligible institution if the applicant misses the February 10, 1998 deadline for initial applications or the March 27, 1998 deadline for amended applications. The Department strongly recommends that applicants apply by January 16, 1998 to take advantage of the opportunity to amend unapproved applications.

Deadline for Transmittal of Applications

January 16, 1998 for early applications, February 10, 1998 for all initial applications, and March 27, 1998 for amended applications. These deadlines apply to institutions of higher education that anticipate competing for new awards, under the Strengthening Institutions Program, and for institutions that plan to obtain a waiver of certain non-Federal share requirements under the Federal Supplemental Education Opportunity Grant and Federal Work Study Programs.

Applications Available: December 12, 1997.

For Applications or Information Contact: Blanca Westgate or Jane Wrenn, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 600 Independence Avenue, SW. (Portals CY–80) Washington, DC 20202–5335. Telephone (202) 708–8866, 708–9926 and 708–8839. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–9339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg/htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S., Government Printing Office toll free at 1–888–293–6498.

Program Authority: 20 U.S.C. 1057, 1059c and 1065a.

Dated: December 5, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–32649 Filed 12–11–97; 8:45 am]

BILLING CODE 4000–01–P

Reader Aids

Federal Register

Vol. 62, No. 239

Friday, December 12, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–523–5227**

E-mail **info@fedreg.nara.gov**

Laws

For additional information **523–5227**

Presidential Documents

Executive orders and proclamations **523–5227**

The United States Government Manual **523–5227**

Other Services

Electronic and on-line services (voice) **523–4534**

Privacy Act Compilation **523–3187**

TDD for the hearing impaired **523–5229**

ELECTRONIC BULLETIN BOARD

Free **Electronic Bulletin Board** service for Public Law numbers, Federal Register finding aids, and list of documents on public inspection. **202–275–0920**

FAX-ON-DEMAND

You may access our Fax-On-Demand service with a fax machine. There is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list is updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, NW., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, DECEMBER

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

Proposed Rules:
806.....65043
960.....65384

17 CFR

15.....65203
230.....64968, 65043
239.....64968
270.....64968
274.....64687, 64968

18 CFR

35.....64688
37.....64715
401.....64154

20 CFR

255.....64161
340.....64273
404.....64274
422.....64274
Proposed Rules:
211.....64188
422.....63681

21 CFR

101 .....63647, 63653, 64634
179.....64102, 64107
520.....65020
Proposed Rules:
200.....64048
808.....65384
1020.....65235
1308.....64526

22 CFR

Proposed Rules:
22.....63478
51.....63478
53.....63478

23 CFR

1327.....63655
Proposed Rules:
655.....64324

24 CFR

201.....65180
202.....65180
203.....65180
570.....64634
888.....64521

26 CFR

Proposed Rules:
1.....64190

28 CFR

0.....63453
540.....65184, 65196

29 CFR

520.....64956
521.....64956
522.....64956
523.....64956
527.....64956
1614.....63847
1910.....65203
Proposed Rules:
1910.....65388

30 CFR

Proposed Rules:
57.....64789
75.....64789
917.....63684, 65044
926.....63685, 64327

31 CFR

500.....64720
Proposed Rules:
356.....64528

32 CFR

320.....65020
Proposed Rules:
199.....64191
901.....63485

33 CFR

100.....65021
117.....63847
160.....65203
165.....65022

36 CFR

701.....64279
Proposed Rules:
1.....63488
14.....63488
327.....64192

37 CFR

202.....63657
Proposed Rules:
253.....63502
255.....63506

38 CFR

4.....65207
17.....64722
21.....63847, 63848
36.....63454
Proposed Rules:
20.....64790

39 CFR

111.....63850
262.....64280
265.....64280

40 CFR

52 .....63454, 63456, 63658, 64284, 64522, 64722, 64725, 65224
63.....64736, 65022
64.....63662
70.....63662
71.....63662
80.....63853
81 .....64284, 64725, 65025
180 .....63662, 63858, 64048, 64287, 64294, 65030, 65365, 65367, 65369
185 .....64048, 64284, 64287
186.....64048
261.....63458
264.....64636, 64795
265.....64636
268.....64504
270.....64636
300.....65225
721.....64738
Proposed Rules:
51.....64532
52 .....63687, 64329, 64543, 647389, 65046
63.....65049
80.....63918
81.....63687
112.....63812
194.....64327
721.....64738

41 CFR

105–60.....64740
301.....63798

42 CFR

417.....63669
Proposed Rules:
1001.....63689, 65049

43 CFR

3740.....65376
3810.....65376
3820.....65376
Proposed Rules:
4.....64544

45 CFR

205.....64301
232.....64301
233.....64301
235.....64301
250.....64301
251.....64301
255.....64301
256.....64301
257.....64301

46 CFR

114.....64303
116.....64303
117.....64303
118.....64303
121.....64303
122.....64303
175.....64303
177.....64303
178.....64303
180.....64303
185.....64303
514.....63463

47 CFR

20.....63864
22.....63864
25.....64167
43.....64741
52.....64759
54.....65036, 65389
63.....64741
64.....64741, 64759
73.....63674, 65392
74.....65392
Proposed Rules:
32.....65053
73.....63690

48 CFR

Ch. I.....64912, 64952
1.....64913, 64940
2.....64914
4.....64915, 64916
5.....64914
6.....64916
7.....64914
8.....64914, 64916
9.....64914
12.....64914, 64916
13.....64914, 64916
16.....64914, 64916
17.....64914
19 .....64914, 64916, 64940
22.....64914
25.....64929
29.....64930
31 .....64930, 64931, 64932
32.....64914, 64916
33.....64914, 64933
34.....64914
37.....64914
38.....64914
39.....64914
41.....64916
42 .....64915, 64931, 64934, 64940
43.....64916
45.....64914
46.....64914
47.....64936
49.....64916
51.....64914
52 .....64914, 64915, 64916
53 .....64914, 64916, 64934, 64936, 64940
Proposed Rules:
1843.....64545
1852.....64545

49 CFR

171.....65188
219.....63464, 63675
225.....63675
240.....63464
1241.....65378
Proposed Rules:
Ch. X.....64193
213.....65401
243.....65479
572.....64546

50 CFR

17.....64306
20.....63608
222.....63467
622.....63677
648.....63872, 64765
660.....63876
679 .....63877, 63878, 63880, 64760, 65379
Proposed Rules:
14.....64335
17 .....64337, 64340, 64799, 64800, 65237
23.....64347
229.....65402
600.....65055
622.....65056
648.....65055
679.....63690, 65402

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 12, 1997

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:
- Hybrid corn seed; published 12-12-97
- Hybrid sorghum seed; published 12-12-97
- Potatoes; published 12-12-97
- Sweet corn; published 12-12-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Ice and slime standard allowances for unwashed Pacific halibut and sablefish; published 11-12-97

ENVIRONMENTAL PROTECTION AGENCY

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Chlorothalonil; published 12-12-97
- Imidacloprid; published 12-12-97
- Myclobutanil; published 12-12-97

TRANSPORTATION DEPARTMENT

Surface Transportation Board

Acquisition regulations:
- Variable cost of privately-owned rail cars; verification procedure; published 12-12-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Hazelnuts grown in Oregon and Washington; comments due by 12-15-97; published 10-14-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Interstate transportation of animals and animal products (quarantine):
- Brucellosis in cattle and bison—
  - State and area classifications; comments due by 12-15-97; published 10-15-97

Plant-related quarantine, domestic:
- Oriental fruit fly; comments due by 12-15-97; published 10-14-97

Plant-related quarantine, foreign:
- Tomatoes from Morocco and Western Sahara, etc.; comments due by 12-15-97; published 10-16-97

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:
- Carrageenam, locust bean gum and xanthan gum blend used as binder in cured pork products; comments due by 12-19-97; published 11-19-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Alaska; fisheries of Exclusive Economic Zone—
  - Pacific halibut and red king crab; comments due by 12-18-97; published 12-3-97

Marine mammals:
- Endangered fish or wildlife—
  - Atlantic sturgeon; comments due by 12-16-97; published 10-17-97
- Incidental taking—
  - Vandenberg AFB, CA; missile and rocket launches, aircraft flight test operations, and helicopter operations; comments due by 12-15-97; published 11-14-97

DEFENSE DEPARTMENT

Acquisition regulations:
- Contract performance reporting outside the United States; comments due by 12-16-97; published 10-17-97
- Government property; comments due by 12-16-97; published 10-17-97

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Natural Gas Policy Act:
- Interstate natural gas pipelines—
  - Business practice standards; comments due by 12-18-97; published 11-18-97

ENVIRONMENTAL PROTECTION AGENCY

Air programs; approval and promulgation; State plans for designated facilities and pollutants:
- Florida; comments due by 12-15-97; published 11-13-97

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 12-19-97; published 11-19-97

FARM CREDIT ADMINISTRATION

Farm credit system:
- Leasing activities; comments due by 12-15-97; published 10-15-97

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
- Arkansas; comments due by 12-15-97; published 10-31-97
- Florida; comments due by 12-15-97; published 10-31-97
- Illinois; comments due by 12-15-97; published 10-31-97
- Michigan; comments due by 12-15-97; published 10-31-97
- Oregon; comments due by 12-15-97; published 10-31-97

FEDERAL DEPOSIT INSURANCE CORPORATION

Interest on deposits:
- Payment of interest; exception to prohibition; comments due by 12-15-97; published 10-16-97

FEDERAL LABOR RELATIONS AUTHORITY

Freedom of Information Act; implementation; comments due by 12-15-97; published 11-14-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Real Estate Settlement Procedures Act:
- Mortgage brokers; disclosure of fees; comments due by 12-15-97; published 10-16-97

INTERIOR DEPARTMENT

Indian Affairs Bureau

Law and order on Indian reservations:
- Courts of Indian Offenses and law and order code
  - Correction; comments due by 12-15-97; published 11-14-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
- Atlantic sturgeon; comments due by 12-16-97; published 10-17-97
- Mobile River Basin, AL; three aquatic snails as endangered and three aquatic snails as threatened; comments due by 12-16-97; published 10-17-97
- Newcomb's snail; comments due by 12-15-97; published 11-12-97
- St. Andrew Beach mouse; comments due by 12-16-97; published 10-17-97

INTERIOR DEPARTMENT

Conflict of interests:
- Ethical conduct for Department of Interior employees; supplemental standards; comments due by 12-15-97; published 10-16-97

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
- Louisiana; comments due by 12-19-97; published 11-19-97
- Montana; comments due by 12-17-97; published 12-2-97
- Ohio; comments due by 12-17-97; published 12-2-97

Surface coal mining and reclamation operations:
- Ownership and control, permit application process, and improvidently issued permits; comments due by 12-15-97; published 10-29-97

INTERNATIONAL TRADE COMMISSION

Freedom of Information Act and Privacy Act;